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Advocate General's Opinion in Case C-530/24 | Tipico

Advocate General Emiliou: A sports betting operator which offers services on a national market without possessing the required licence may be obliged to refund the stakes collected from players

It should be otherwise if the operator was unable to obtain the licence owing to deficiencies affecting the licensing procedure and the national authorities assured it that the licensing requirement would not be enforced until a procedure compliant with EU law is put in place

A German consumer brought claims against the Maltese sports betting operator Tipico before the German civil courts, seeking to recover the stakes he wagered and lost by betting on Tipico's German website between 2013 and 9 October 2020.

At the relevant time, Tipico held a Maltese licence,¹ but not a German licence, as required under German law.² Under German law, such unauthorised offering of sports betting renders the contracts concluded with clients null and void and constitutes a tort, thereby giving rise to claims for restitution or compensation in favour of the affected consumers. Therefore, from the perspective of German law, the claims brought by the consumer in question against Tipico appear, in principle, to be well founded.

However, in its defence, Tipico contends that it was unable to obtain a German licence owing to certain deficiencies in the licensing procedure.

The German Federal Court of Justice therefore asks whether, in such circumstances, the civil courts seised are obliged, under the principle of primacy of EU law, namely the freedom to provide services, to leave the national licensing system unapplied in its entirety and, consequently, to reject the consumer's claims.³

According to Advocate general Nicholas Emiliou, that question calls for a **nuanced response**.

Where a Member State requires a licence for the provision of certain services on its territory, and that requirement is, in itself, as in the field of gambling,⁴ compatible with the freedom to provide services guaranteed by EU law, the national authorities, including the courts, are entitled to enforce that requirement against an operator which has provided services without the required licence. Those courts may, in particular, draw the consequences provided for in that respect under the applicable civil law.

That remains so even where the operator concerned claims it was unable to obtain such a licence owing to deficiencies affecting the licensing procedure. In that regard, the protection of the right that that operator derives from the freedom to provide services is sufficiently ensured by the possibility of challenging the licensing procedure or absence thereof before a court or tribunal.⁵

By way of exception, those civil-law consequences should not be imposed for infringing the licence requirement where that would be disproportionate. That is the case where authorised and reliable sources within the national authorities

provided the operator concerned with precise, unconditional and consistent assurances that that licensing requirement would not be enforced and that it could, accordingly, offer its services to consumers on the national market without a licence.

Thus, **the Advocate general considers that the freedom to provide services does not preclude the German authorities from requiring a German licence to offer sports betting services in Germany, nor does it in general preclude operators which did so without the required licence from being subject to consequences under civil-law, such as the nullity of the contracts they concluded with their clients.** Those consequences are, in principle, proportionate to the consumer-protection objective pursued.⁶ **In particular, the nullity of the gambling contracts** – which may entail an obligation to pay back the stakes received from players – contributes to dissuading gambling operators from circumventing the licensing system.

The primacy of the freedom to provide services does not require national authorities to leave unapplied a licensing requirement which is, in itself, compatible with that freedom whenever an operator has been unable to obtain a licence through a non-discriminatory and transparent licensing procedure. In such circumstances, the operator cannot begin providing services on the market without a license as a form of ‘self-redress’, as this would entail serious risks for consumers. As a rule, national authorities must remain entitled to enforce that requirement and to impose the criminal, administrative or civil consequences provided for under national law in the event of an infringement.⁷

However, if Tipico received from the German authorities precise, unconditional and consistent assurances that the licensing requirement would not be enforced against it, so long as it complied with certain basic conditions, no fault could be imputed to it for having infringed the contentious licensing regime. In such circumstances, the German courts should make use of the mechanisms available under German private law to exempt Tipico from the civil-law consequences in question. If harm was suffered by the consumers in such circumstances, any liability could only be borne by the public authorities that gave the assurances. This matter is to be determined by the national court, in this case the Federal Court of Justice.

NOTE: The Advocate General’s Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ Which is intended to permit Tipico to provide online sports betting services from Malta to the whole of the European Union.

² Tipico was granted a sports betting licence in Germany on 9 October 2020, following a new licensing procedure. The previous licencing scheme, which provided for only 20 licences, never came to fruition due to judicial review and suspension initiated by the unsuccessful tenderers, among them Tipico. According to the Administrative Court Wiesbaden, that earlier licensing procedure had been carried out in breach of Tipico’s rights under EU law, to a transparent and non-discriminatory licensing procedure. Specifically, limiting of the number of licences to 20, infringed the requirement of transparency,

since the Länder were unable to explain that limitation. Also, the selection by the awarding authority of the 20 operators to receive licences, from among those fulfilling the licensing conditions, likewise lacked transparency. Accordingly, that court declared that, as Tipico (among others) had satisfied all the licensing conditions, the awarding authority was obliged to grant it a licence. However, on appeal, the judicial proceedings came to an end without a decision on the merits of the case, as the period to which the licensing scheme was applicable had run out and the Länder had, in any event, adopted a new scheme.

³ Taking into account the deficiencies of the licensing procedure in question, German courts have already held that no criminal or administrative penalty could be imposed on gambling operators such as Tipico for offering unlicensed bets on the German market at the material time. The Federal Court of Justice nevertheless asks whether German courts are also precluded from imposing on such an operator the civil-law consequences.

⁴ Indeed, the Member States are under no obligation to permit operators established in another Member State to provide gambling services freely on their territory. They are entitled to subject such activities to a licensing requirement. Moreover, the freedom to provide services does not impose on Member States any obligation to recognise gambling licences delivered by other Member States. It follows that the freedom to provide services does not directly confer on gaming operators established (and, as the case may be, licensed) in one Member State any right to provide services in another Member State. Any such right derives, in fact, only from the licence which the operator must obtain in the host State. Nor does the freedom to provide services require Member States automatically to grant such licences to those operators. They may impose conditions for that purpose, provided that those conditions are proportionate and non-discriminatory, and may even limit the number of licences available.

⁵ The operator might, in particular, seek compensation from that State for the damage caused, including loss of business opportunities.

⁶ The purpose of the licensing system is to 'channel' the gaming instinct of the population towards licensed offers, monitored by the national authorities and framed by requirements designed to limit the risks of squandering and addiction.

⁷ The Advocate General thus proposes a nuanced reading of the case law originating in the judgment of 6 March 2007, *Placanica and Others*, [C-338/04](#), [C-359/04](#) and [C-360/04](#), see also Press release [No 20/07](#).