[DE] Discussion on Advertising Restrictions for Private Betting Services

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After the ruling on the lottery by the German *Bundesverfassungsgericht* (Constitutional Court - BVerfG), interested parties are now debating its consequences for advertising law. The *Landesmedienanstalten* (*Land* media authorities), as the regulators of private broadcasting, are currently discussing the different versions of the ruling with private broadcasters.

In its decision of 28 March 2006, the *Bundesverfassungsgericht* had ruled that the state's sports betting monopoly in the *Bundesland* of Bavaria was incompatible with the basic right to the freedom of occupation. Under the *Gesetz über die vom Freistaat Bayern veranstalteten Lotterien und Wetten* (Act on lotteries and betting organised by the Free State of Bavaria - *Staatslotteriegesetz*) of 29 April 1999, commercial betting services may not be provided by private betting companies. The reasons for the ban include the need to fight gambling and betting addiction, to prevent gamblers from being cheated by betting companies and to protect them from misleading advertising.

However, the BVerfG decided that the ban on private companies could only be justified under constitutional law if the Act did in practice provide an effective means of combating addiction and gave the legislator until 31 December 2007 to revise the relevant provisions.

If the legislator wanted to retain a state betting monopoly, the law needed to be more clearly aimed at fighting gambling addiction and limiting people's obsession with betting. For example, the marketing of betting services should be restricted. In particular, advertising for such services should only provide information about the service rather than make it sound attractive. However, the Court ruled that, rather than a betting monopoly, if private betting companies were allowed to operate under certain legislative standards and controls, such a system would be in conformity with the Constitution.

Until new rules were adopted, the BVerfG stated that commercial betting services offered by private betting companies and agencies should remain prohibited by law.

At its meeting on 16 May 2006, the *Direktorenkonferenz der Landesmedienanstalten* (Conference of Directors of *Land* media authorities - DLM)

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said that it would only consider intervention by the *Land* media authorities against private broadcasters who broadcast advertising for private betting services as possible if the responsible administrative body had previously issued an enforceable order. Talks on this subject with the responsible *Land* authorities were under way.

With regard to new regulations governing advertising for betting services, the *Verband Privater Rundfunk und Telekommunikation e.V.* (Private Broadcasting and Telecommunications Union - VPRT) expressed reservations about a total advertising ban, since currently licensed betting services were important advertising partners for private media companies, spending well over EUR 10 million on advertising.

Urteil des BVerfG vom 28. März 2006, 1 BvR 1054/01

http://www.bundesverfassungsgericht.de/entscheidungen/rs20060328_1bvr105401.html

Ruling of the Federal Constitutional Court, 28 March 2006, 1 BvR 1054/01

Pressemitteilung 07/2006 der DLM

http://www.alm.de/index.php?id=34&backPid=67&tt_news=350&cHash=64d053a94f

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