[DE] New Court Decisions on the Gambling Monopoly

IRIS 2010-5:1/16

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Two decisions of the German administrative courts have once again dealt with the issue of acting as an agent for sports bets.

In an accelerated decision, the Oberverwaltungsgericht Bremen (Bremen Administrative Court of Appeal - OVG) dismissed the appeal of an operator of a betting business on 11 March 2010.

The appeal had been lodged against an order prohibiting the operator of a sports betting business from acting as an agent for sports bets from betting companies in other EU member states. In the court's opinion, this agency activity conflicts with the state's administrative monopoly enshrined in section 10(2) of the Glücksspielstaatsvertrag (Inter-State Treaty on Gambling - GlüStV). Firstly, it said, acting as an agent for games of chance was also covered by the rule and, secondly - in contrast to the operator's opinion - the GlüStV and the Bremisches Glücksspielgesetz (Bremen Gambling Act - BremGlüG) were compatible with the requirements set out by the Bundesverfassungsgericht (Federal Constitutional Court - BVerfG) in its decision of 28 March 2006 (see IRIS 2006-6: 8). The shortcomings in the regulations established by the Federal Constitutional Court had been remedied by the GlüStV and BremGlüG, which came into force on 1 January 2008. However, a number of issues remained unresolved, for example whether sufficient account was being taken of the required separation of the supervision of gambling and the state gambling monopoly. It also appeared questionable whether the implementation of the rules met the Federal Constitutional Court's demand for a reduction in the number of outlets.

The Verwaltungsgericht Weimar (Weimar Administrative Court) also concluded in its judgment of 4 March 2010, which is not yet final, that the state sports betting monopoly breached neither domestic nor EU law as it was sufficiently justified by grounds associated with the general public good. The court also pointed out that the legality of a prohibition order issued before the entry into force of the inter-state treaty depended on the legal situation at the time of the judicial decision.

Entscheidung des OVG Bremen (Az. 1 B 314/09)

http://www.oberverwaltungsgericht.bremen.de/sixcms/media.php/13/1b31409B.pdf

Decision of the OVG Bremen (Case 1 B 314/09)

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Pressemitteilung des VG Weimar zu seinem Urteil vom 4. März 2010 (Az. 5 K 1191/06 We)

http://www.vgwe.thueringen.de/webthfj/webthfj.nsf/EC4CEF023FF8583FC12576E700299396/$File/Pressemitteilung%20vom%2015.03.2010.pdf?OpenElement

VG Weimar press release on its judgment of 4 March 2010 (Case 5 K 1191/06 We)

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