[DE] Federal Administrative Court: League Manager Game Not “Gambling” in the Sense of Inter-State Gambling Agreement

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In a ruling of 16 October 2013 (case no. 8 C 21.12), the Bundesverwaltungsgericht (Federal Administrative Court - BVerwG) decided that the “Super-Manager” fantasy league game, which was advertised and organised online, did not constitute gambling in the sense of the Glücksspielstaatsvertrag (Inter-State Gambling Agreement - GlüStV).

The Regierungspräsidium Karlsruhe (Karlsruhe regional council) had previously banned the plaintiff from organising and advertising the game. After the organiser’s appeal against this ban had been rejected by the Verwaltungsgericht Karlsruhe (Karlsruhe Administrative Court) on 18 October 2010 (case no. 3 K 3226/09), the Verwaltungsgerichtshof Baden-Württemberg (Baden-Württemberg Administrative Court) lifted the ban on appeal and ruled that the game did not fall under the scope of application of the Glücksspielstaatsvertrag (decision of 23 May 2012 - case no. 6 S 389/11). The appeal against this decision by the Land of Baden-Württemberg has now been rejected by the BVerwG.

Participants in the “Super-Manager” fantasy league game could pay EUR 7.99 to select a football team comprising 18 Bundesliga players. They could adjust their team before each set of Bundesliga matches, received points after each match day depending on their players’ performances, and could compete against other managers and their teams in several leagues. The most successful managers could win prizes, with EUR 100,000 awarded to the overall winner, known as the “Super-Manager”.

In view of these rules, the BVerwG thought the fantasy league game did not constitute gambling in the sense of Article 3(1)(1) GlüStV because in gambling, not only was winning due to chance, but it was also dependent on a stake being put down. In the present case, however, the EUR 7.99 was only a participation fee and had no impact on participants’ chances of winning. Rather, these depended on whether the players they had selected actually played and how well they performed. A broader application of the concept of gambling defined in Article 3(1)(1) GlüStV could also be ruled out. In particular, the GlüStV limited gambling in order to combat addiction and crime and to protect young people and gamblers. This could only be justified under constitutional law if it was a suitable, necessary and reasonable means of achieving these objectives. Since, under the

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rules of the “Super-Manager” game, no additional money had to be paid during the game in order to make up for any losses suffered, the court thought there was only a small risk, which could be countered through less stringent means. Since commercial law in particular was sufficient to achieve this, banning the game was disproportionate.

Pressemitteilung des BverwG zum Urteil vom 16. Oktober 2013 (Az. 8 C 21.12)

http://www.bverwg.de/presse/pressemitteilungen/pressemitteilung.php?jahr=2013&nr=73

BverwG press release on the decision of 16 October 2013 (case no. 8 C 21.12)

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