



Co-funded by the
European Union

Co-funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the Academy of European Law. Neither the European Union nor the granting authority can be held responsible for them.

Prof. dr hab. Monika Szwarc (19 June 2024/in Riga)



PRELIMINARY RULING PROCEDURE - WORKSHOP MATERIALS

CASE-STUDY 1

National law

According to national provisions taking bets is reserved to the State. Exceptionally taking bets on races, regatta, ball games or similar contests is allowed, but enterprises must hold a licence granted by responsible Ministry. In practice there is only one organisation that holds licence for sporting bets (which excludes any other organisations on the national market for sporting bets). Criminal penalties are as follows:

Article 4

1. Any person who unlawfully participates in the organisation of lotteries, betting or pools reserved by law to the State or to entities operating under licence from the State shall be liable to a term of imprisonment of 6 months to 3 years. Any person who organises betting or pools in respect of sporting events run by CONI, by organisations under the authority of CONI or by UNIRE shall be liable to the same penalty. Any person who unlawfully participates in the public organisation of betting on other contests between people or animals, as well as on games of skill, shall be liable to a term of imprisonment of 3 months to 1 year and a minimum fine of ITL 1 000 000.
2. Any person who advertises competitions, games or betting organised in the manner described in paragraph 1 without being an accomplice to an offence defined therein shall be liable to a term of imprisonment of up to 3 months and a fine of between ITL 100 000 and ITL 1 000 000.
3. Any person who participates in competitions, games or betting organised in the manner described in paragraph 1 without being an accomplice to an offence defined therein shall be liable to a term of imprisonment of up to 3 months or a fine of between ITL 100 000 and ITL 1 000 000.

(...)

Article 4a

The penalties laid down in this article shall be applicable to any person who without the concession, authorisation or licence required by Article 88 of [the Royal Decree] carries out activities in Italy for the purpose of accepting or collecting, or, in any case, assisting in the acceptance or collection in any way whatsoever, including by telephone or by data transfer, of bets of any kind placed by any person in Italy or abroad.

Article 4b

... the penalties provided for by this article shall be applicable to any person who carries out the collection or registration of lottery tickets, pools or bets by telephone or data transfer without being authorised to use those means to effect such collection or registration

Facts of the case

It was established during the investigation procedure that there are several national agencies operating on the market of this state according to the following scheme: the bettor notifies the person in charge of the national agency of the events on which he wishes to bet and how much he intends to bet; the agency sends the application for acceptance to the bookmaker by internet, indicating the national football games in question and the bet; the bookmaker confirms acceptance of the bet in real time by internet; the confirmation is transmitted by the Italian agency to the bettor and the bettor pays the sum due to the agency, which sum is then transferred to the bookmaker into a foreign account specially designated for this purpose. The bookmaker is a capital company, registered in another Member State, it carries on business as a bookmaker under a licence granted according to its home state and subjected to the legal regime of its home state.

In the criminal proceeding against such persons in charge of the national agency (under article 4 of the national law) they invoke the freedom to provide services under Article 56 of the Treaty on functioning of European Union.

Questions

- Whether the facts of the case fall under the scope of EU law? Please explain
- If the answer to the first question is YES, then whether there is any incompatibility of national law with EU law? Please explain?
- If the answer to the first question is YES, then let us try to formulate preliminary question with explanation

CASE-STUDY 2

see PDF of the preliminary question

CASE-STUDY 3

Facts of the case

A European arrest warrant was issued by the court of the Member State A against Mr. X, who resides in the Member State B for the purposes of conducting a criminal prosecution in the Member State A. He was suspected of having committed, in 2014 and on the territory of the Member State A the offence of possession of narcotics for the purpose of distribution and sale. Then, Mr X – before the judicial authority in the Member State B competent to execute that European arrest warrant several medical documents attesting to significant psychiatric problems. On the basis of those documents this judicial authority required Mr X to be assessed by a psychiatrist. The opinion issued by the expert revealed that due to psychotic disorder Mr X should undergo medical treatment and psychotherapy in order to avoid probable episodes of psychiatric decompensation. The expert also identified a significant risk of suicide in the event of imprisonment and concluded that Mr X was an individual unsuitable for prison life.

Questions

- Whether the facts of the case fall under the scope of EU law? Please explain
- If the answer to the first question is YES, then whether there is any incompatibility of national law with EU law? Please explain?
- If the answer to the first question is YES, then let us try to formulate preliminary question with explanation