

Press and Information Division

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Judgment of the Court of Justice in Case C-243/01

Criminal proceedings against Piergiorgio Gambelli and 137 others

LAWS WHICH RESERVE THE COLLECTION OF BETS TO THE STATE OR ITS LICENSEES MUST BE JUSTIFIED

It is for the national court to determine whether the Italian legislation actually serves the aims of consumer protection and of public order and whether the restrictions imposed are disproportionate.

Piergiorgio Gambelli and 137 other persons manage data transmission centres in Italy which collect sporting bets in Italy on behalf of an English bookmaker to which they are linked by the internet. The bookmaker, Stanley International Betting Ltd, carries on business as a bookmaker under a licence granted pursuant to English law by the City of Liverpool.

In Italy this activity is reserved to the State or its licensees. Breach of the rule can result in criminal penalties of up to one year's imprisonment. Accordingly criminal proceedings were brought against Mr Gambelli and others for unlawfully taking bets and the data transmission centres were placed under sequestration.

Mr Gambelli claims that the Italian provisions are contrary to the Community principles of freedom of establishment and freedom to provide services. The Tribunale Ascoli Piceno, before which the case was brought, asked the Court of Justice of the European Communities how to interpret the relevant provisions of the EC Treaty.

The Court finds first of all that **the Italian provisions constitute a restriction on the freedom of establishment, the freedom to provide services and the freedom to receive or benefit from services** offered by a supplier.

As regards the possibility of **justifying** such restrictions, the Court states that they may be justified if they are **necessary for consumer protection and for the preservation of the social order**, taking account of moral, religious and cultural factors and of the moral and financial consequences for individuals and society. Furthermore, the main **aim** of such restrictions must reflect an overriding reason of general interest, such as **reducing gaming opportunities**. The **procurement of finances for public funds**, on the other hand, **cannot constitute justification**. The restrictions must **not go beyond what is necessary** to attain that objective and must be applied in a **non-discriminatory** manner.

The Italian court points out that the Italian State is pursuing a policy of substantial expansion of betting and gaming at national level to procure funds, while protecting licensees of the State. The Court of Justice finds that **if participation in lotteries, games of chance and betting are encouraged by a Member State with the aim of deriving a benefit for itself, that State cannot rely on the need to uphold public order in order to justify restrictive measures**.

The Court of Justice states that it is for the national court to consider whether the principle of non-discrimination has been complied with, and whether in practice the conditions for running betting operations can be more easily satisfied by Italian than by foreign operators. If so, those conditions are discriminatory.

Next, the national court will need to consider whether a criminal penalty imposed on any person who from his home in Italy connects via the internet to a bookmaker established in another Member State is not disproportionate, given that involvement in betting is encouraged by the State. Finally, the national court must determine whether criminal penalties applied to intermediaries who facilitate the provision of services by a bookmaker established in a Member State other than that in which those services are offered, constitute restrictions that go beyond what is necessary to combat fraud.

Unofficial document, for media use only, which does not bind the Court of Justice.

Available languages: All.

*The full text of the judgment can be found on the internet (www.curia.eu.int).
In principle it will be available from midday CET on the day of delivery.*

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