Content

i. Gambling: within the space of a few days, a spate of liberalisation has hit not just France, but also Denmark, Switzerland and again Italy - does a recent ruling from the European Court of Justice clear the way for Germany? 2

ii. Blind zeal - Prof. Dr. K. Schelter on the sport betting judgment of the German Federal Constitutional Court of 20th March 2009. 5

iii. Legislators, companies from the telecommunications, IT and media sector to meet in Hampshire at the end of June to discuss the topic of “Prospects in the field of Gambling” 8

iv. Guest Authors in this issue 9

v. In-house news 10

vi. Editorial Details 13
i. **Gambling: within the space of a few days, a spate of liberalisation has hit not just France, but also Denmark, Switzerland and again Italy - does a recent ruling from the European Court of Justice clear the way for Germany?**

A comment from attorney Dr. Wulf Hambach and Dipl.-Jur. Tobias Kruis, LL.M., Hambach & Hambach Law Firm.

A leading global information service (GamblingCompliance.com) headlined within the space of just a few days:

- Denmark To Dismantle Gambling Monopoly (22nd of April 2009)
- Switzerland Prepares Online Casino Reforms (24th of April 2009)
- Earthquake Brings Avalanche Of Reforms in Italy (24th of April 2009)

Although it has attracted comparatively little attention, the so-called Hartlauer-Decision of the European Court of Justice (case C-169/07 of 10th March 2009, Hartlauer Handelsgesellschaft MBH vs. Vienna State government) could have far-reaching consequences for the German gambling market. In this decision, the European Court of Justice, in the same composition as in the eagerly expected Liga Portugisa-Decision, opposed Advocate General Yves Bot. The European Court of Justice reprimanded Austria, with reference to its so-called Placanica-Decision, because of an infringement against Community law and, in particular, because of an unjustified restriction of the Single European Market in the dental sector. But what has this decision about dental practices in Austria to do with Germany’s justification of the gambling monopoly? At first sight: just as little as the Californian returnee Klinsmann will have to do with FC Bayern in the future. A second and closer look reveals a predetermined breaking point in Community law regarding the justification chain of the Inter-State Treaty on Gambling.

In detail:

The present Austrian legislation requires prior official approval from the competent authorities before the setting up of autonomous ambulatory dental services where medical practitioners are active as employees. This approval is only granted if there is a corresponding requirement. On the other hand, group practices can be established at any time by independent practitioners without an approval or an economic requirements test.

Surgeries and group practices not only have similar equipment and numbers of doctors at their disposal, but also usually offer the same medical services so that patients generally
cannot differentiate between them. The European Court of Justice now had to answer the question as to whether such a licence requirement in combination with a requirements test complies with Community law, i.e. the freedom of establishment. The court determined that this rule represents a restriction and generally requires justification. Subsequently, the court carries out an extensive and detailed examination regarding the suitability of the regulation to attain a high standard of health care and to avoid substantial threat to the financial balance of the social security system. It finally reaches the conclusion that it is not suitable. The main emphasis lies with the examination of the Consistency Requirement, developed in the Gambelli judgment[1]. According to this, the legal regulation has to allow the achievement of the aim in a consistent and systematic way. From the point of view of the European Court of Justice, the Austrian Regulation is not consistently designed, since there is no approval regulation for the equipment, furnishing or services of similar group practices. The Court also held that the member state had not put forward any justification for this unequal treatment.

What is the impact of this verdict, within community law, on the possible justification of a gambling monopoly?

Firstly, it shows that the European Court of Justice continues to strictly scrutinise the suitability of legislation, even in areas of competence that are basically the responsibility of the member state itself, leaving no wide-ranging scope for regulation for the member state. With that, the European Court of Justice continues its increasingly strict examination of the legal justification. Beyond that, the court reaffirms that the burden of explanation and investigation of the justification still remains with the member states, meaning that a gambling monopoly in a member state can only be justified if the level of protection is based on facts proved by a conclusive study. It is decisive that there is no consistent restriction of fundamental rights, where comparable categories are treated differently. That is why there must be a lack of consistency, when, as in Germany, fairly harmless gambling offers such as Lotto are forbidden while considerably more dangerous forms of gambling such as, for instance, slot machines and online horse betting, may be organised.

Conclusion

If one wanted to make a prediction, it would be: It is to be expected that these effects will become noticeable no later than in the pending preliminary ruling led by the Hambach & Hambach Law Firm, C-46/08, Carmen Media Group. In this case, the question of the consistency of the German gambling monopoly will be the centre of attention[2]. If there is no political relenting shown by the legislative body, then the monopoly will probably not stand up to the strict examination of the consistency requirement by the European
Court of Justice to be expected after the Hartlauer ruling. To get back to the initial metaphor: the monopoly in Germany would end up just like Jürgen Klinsmann: served its time.


Blind zeal - Prof. Dr. K. Schelter on the sport betting judgment of the German Federal Constitutional Court of 20th March 2009.

An article by attorney Prof. Dr. Kurt Schelter (Minister a.D.)

During the last few days, the former judge at the Federal Constitutional Court, Professor Dr. Paul Kirchhof said the following in a newspaper interview about the causes of the financial crisis.

“Investors and asset managers no longer bet on interests and dividends, but on gambling and chance”

And what about the state? The behaviour of some of those responsible for gambling in the German Länder who are involved in the controversy over the monopoly or controlled liberalisation of sports betting, have given the fatal impression over the years that tough fiscal interests are pursued under the cover of the fight against gambling addiction. The income for the German Länder from Oddset is only the secondary concern. The major issue is the preservation of the billions paid for decades by the state lottery companies to the treasury. The lottery company strategists and gambling advisers to the Länder ministries are afraid of the domino effect: If the monopoly for sports betting comes to an end, then the lottery monopoly is not tenable. Under constitutional law, this is not automatic, but there is no guarantee of perpetuity for the lotto monopoly.

With this Damocles sword hanging over them, some of those responsible abandon their inhibitions during their daily efforts to strengthen the sports betting monopoly. The end justifies the means - even the audacious attempt to quite simply reinterpret a decision of the Federal Constitutional Court and deceive the public:

On 20th March 2009, the 3rd chamber of the first senate did not accept the constitutional complaint filed by a foreign sports betting broker. The constitutional complaint was directed against the decision of the Higher Administrative Court of Lower Saxony, which rejected the interim legal protection against the immediate enforcement of a prohibition order.

In a detailed explanatory memorandum, the chamber

- denied the fundamental constitutional importance of the complaint and
- did not hold its acceptance as appropriate concerning the implementation of the rights of the complainant.
The fundamental constitutional importance is denied, amongst other things, with reference to the fact that “the Länder have created…a uniform nationwide framework for the necessary legal reorganisation of the sports betting sector” and thus - subject to a constitutional evaluation of the new legal situation - have drawn the necessary conclusions from the sports betting judgment at Länder legislation level” (Page 6 and 7 of the decision[1]).

Regarding the fundamental rights invoked by the complainant, the chamber points out that in this case the only question arising is, whether “the denial of interim legal protection … is objectionable in view of a breach of the fundamental rights under Art.12 (1) and Art. 19 (4) GG (German Constitution) as invoked by the complainant “.

The chamber answered in the negative, thereby following the considerations of the Higher Administrative Court which stated that “upon approximate examination” the regulations of the Inter-State Treaty on Gambling, in force since 01.01.2008, and the gambling law of Lower Saxony could “be assessed in such a way”, “as to ensure sufficient addiction prevention policy”, and notes:

“Pending an exhaustive constitutional examination of the new regulatory situation and the configuration of the state sports betting offers ensured through this, within the framework of constitutional complaints against decisions by the specialised courts in the main proceedings, it is to be noted that the lack of fundamental regulations, which was the hallmark of the old state law, can be regarded as rectified” (P. 11 of the decision[2]).

Reading these parts of the decision, one can only be surprised about headlines such as “Federal Constitutional Court confirms Inter-State Treaty on Gambling” (news aktuell online of 7th April 2009) and the assessment of the responsible minister, who is quoted as saying, that the highest German Court stressed the constitutional validity of the Inter-State Treaty on Gambling (isa-casinos.de and Ministry for the Interior, Sport and Integration of Lower Saxony of 7th April 2009). Highly irritating and dubious is, that the managing director of a state lottery company who is also responsible for Oddset on the Federal level, claims: “The Federal Constitutional Court emphatically confirms the German gambling regulation in its decision” (news aktuell online on 7th April 2009).

In these difficult times the preservation of assets prevails over natural virtues. Officials in politics and administration and captains of the economy rightfully deplore this too. But they should abide by this themselves first. It wouldn’t take much in this case:

- He who comments on a decision of the Federal Constitutional Court, should have read it first.
- He who invokes the highest German judges in support of his own opinion, may not simply ignore the most important message of its decision, as hard as it may seem.

Some people concerned will see the repeated advice of the court that the new legal situation has not yet undergone detailed constitutional examination as an invitation to be taken up in due time.

Moreover:

The defenders of the monopoly should remember that we live in the European Union, in which there are basic freedoms, which are in principle anti-monopolistic. The European Court of Justice has not yet dealt with the new German law...

[1] Accentuation by the author

[2] Accentuation by the author
iii. Legislators, companies from the telecommunications, IT and media sector to meet in Hampshire at the end of June to discuss the topic of “Prospects in the field of Gambling”

**SUMMER RETREAT 2009**

29 & 30 JUNE 2009

TYLNEY HALL, HAMPSHIRE, UK

The Summer Retreat 2009 will be held on 29 and 30 June, and is set to be the best yet!

We are delighted to announce that, thanks to enthusiastic support from leading industry figures, the 7th Summer Retreat will go ahead.

In the dark days of December and January we were forced to consider postponing the Retreat due to the dismal economic climate; but after leading European lawyers insisted the Summer Retreat was too important an event in the remote gambling calendar to lose, we were convinced to proceed.

We are delighted to say that our decision has already been backed with industry sponsorship.

Sponsors so far include; Wulf Hambach of Hambach & Hambach, Thibault Verbiest of Cabinet Ulys, Quirino Mancini of Sinisi Ceschini Mancini & Partners, Justin Franssen, of Van Mens en Wisselink, Santiago Asensi of Asensi Abogados and TÜV Rheinland Secure IT GmbH.

This year’s Summer Retreat will focus on three key issues facing the industry:

- The contractual and regulatory challenges posed in the development of technology platforms;
- Strategies for obtaining white listing in European jurisdictions; and
- The challenges faced by new entrants

After short presentations, expert moderators will lead discussion with delegates to address the real issues facing the industry. The main emphasis of the event is on free and open discussion whereby participants can share their questions and solutions with others facing the same challenges.
iv. Guest Authors in this issue

**Prof. Dr. Kurt Schelter** co-designed labour and social politics in and for Bavaria from 1974 to 1987, working for the Bavarian Ministry of State for Labour and Social Affairs.

As department head of the Bavarian Ministry of State for Federal and European Affairs from 1989 to 1993, he accompanied the German unification, the introduction of the internal market in the EC and the Maastricht Treaty on the Establishment of European Union, based in Munich, Bonn, Berlin and Brussels.

His term of office as state secretary at the Federal Ministry of the Interior between 1993 and 1998 saw the German presidency of the EU in 1994 and of the Schengen states in 1998, to which we owe the intensified cooperation in the fields of interior politics and justice, the opening of the internal frontiers in the Schengen area, and the rapprochement of the Central and Eastern European states to the EU. During this time, he was responsible for all issues regarding domestic security and substantially contributed to legislation in the areas of the law of aliens and asylum, on the national and European level.

In his capacity as Minister of Justice and European Affairs for the State of Brandenburg between 1999 and 2002, and as the head of the conference of the Ministers of Justice, he conducted the first meeting of the Ministers and Senators of Justice of the German States in Brussels. His term of office saw the preparation of the new member states, in particular Poland, for the joining of the EU. Prof. Dr. Schelter published numerous works on labour and social law, on administrative law and an amplitude of essays in the named areas as well as European politics, domestic security and justice. Inter alia, he is the editor of “Zeitschrift für Sozialrecht in Deutschland und Europa” (magazine for social law in Germany and Europe).

The author is an honorary professor at the Ludwig-Maximilian University in Munich, and Attorney at law. Among others, he represents various associations and providers in the area of gambling with regard to questions of European and constitutional law and, in this capacity, took part in the hearing on this topic before the Bundesverfassungsgereicht (Federal Constitutional Court) on 8 Nov. 2005.
v. In-house news

Hambach & Hambach is looking for...

Attorneys-at-law (♂♀)

We are a law firm in Munich, specialising in commercial law, recipients of CHAMBERS GLOBAL awards in 2008 and 2009. We provide consultancy services for international clients in the TIME sectors (telecommunications - IT - media & entertainment). We cooperate continuously with partner law firms in the Netherlands, Belgium, France, Italy and Spain in the area of Gaming Law.

We are an attorney at law (male or female) to carry out consultancy services looking for international companies from the e-commerce sector (main focus: e-entertainment).

Well-established knowledge regarding internet and gambling law, several years of experience in providing consultancy services for e-commerce companies (preferable: former head of legal affairs) are imperative.

Our team’s varied scope of tasks encompasses, in addition to the support of clients, the compilation of legal opinions and the preliminary scientific work for legislators and political institutions on the national and international level.

We expect two degrees with distinction, an entrepreneurial mind, confident manners and very good command of English. A doctorate degree and/or LL.M. are welcome. You have in-depth knowledge in European law / New Media / IT.

We offer a salary which reflects the high demands, a friendly work environment in a dynamic and growing team of attorneys as well as premium training opportunities with high practical relevance.

Please send your online application to Dr. Wulf Hambach, info@timelaw.de / www.timelaw.de

★
New internet presence

Hambach & Hambach law firm is now able to present its new look on the internet. The new internet presence is characterised by improved clarity and a better structure as well as easy handling.

We are looking forward to your visit to our new Internet presence.

★

Hambach & Hambach recommends the following conferences:


4th Annual Online Bingo Summit
BulletBusiness

29. – 30. June 2009 | Tylney Hall, Hampshire, UK

World Online Gambling Law Report Summer Retreat 2009
WorldOnlineGamblingLawReport

15. - 17. September 2009 | Copenhagen, Denmark

EiG 2009 - European i-Gaming Congress and Expo
ClarionGaming

**Mobile Betting and Gambling Forum 2009**

marcus evans

★

Dr. Wulf Hambach will speak on the following conferences:


**4th Annual Online Bingo Summit**

BulletBusiness

29. – 30. June 2009 | Tylney Hall, Hampshire, UK

**World Online Gambling Law Report Summer Retreat 2009**

WorldOnlineGamblinLawReport

15. - 17. September 2009 | Copenhagen, Denmark

**EiG 2009 - European i-Gaming Congress and Expo**

ClarionGaming


**Mobile Betting and Gambling Forum 2009**

marcus evans

★
TIME Law News offers gratuitous information on current events in European and international gaming law. Hambach & Hambach do not accept any liability for the accuracy of the contents of TIME Law News. Please note that TIME Law News is only meant to serve as a source of information and can under no circumstances replace legal advice by a lawyer.

Re-printing (second publishing) is only admitted in case of gratuitous dissemination and under the condition of quoting the source and address information (on the internet with the additional requirement of a link). Please also provide us with a specimen copy.

The TIME Law Newsletter has been registered with the national ISSN centre for Germany (ISSN 1866-7848).

**Responsible Editor**
RA Dr. Wulf Hambach
Haimhauser Str. 1
D-80802 Munich
Fon: +49 89 389975-50
Fax: +49 89 389975-60
E-Mail: info@timelaw.de
www.timelaw.de

**Editors**
RA Dr. Wulf Hambach
RA Claus Hambach
RA Dr. Michael Hettich
RAin Susanna Münstermann
RAin Andrea Stumbaum
RA Daniel Feuerbach
Dipl.-Jur. Tobias Kruis LL.M.

**Guest Authors**
RA Santiago Asensi
RA Tony Coles
RA Justin Franssen
Thietmar Hambach
(Journalist)
Jens Leinert
(Dipl. Kaufmann)
Aernout Kraaijeveld
RA Quirino Mancini
RA Nick Nocton
Martin Oelbermann
Prof. Michael Rotert
Prof. Dr. Kurt Schelter
Prof. Dr. Dr. Friedrich Schneider
RA Dr. Walter Schwartz
Rolf vom Stein
(Dipl. Geophysiker)
RA Thibault Verbiest