

Hambach & Hambach obtain decision in the Upper Administrative Court of Baden-Württemberg

The Baden-Württemberg Administrative Authority suffers another setback – this time at the Upper Administrative Court in Mannheim (case no. 6 S 1947/05). Where sports bets are concerned, it is well known that the administrative authorities take drastic steps – unfortunately without regard to law and order.

A Report by Attorneys-at-law Dr. Wulf Hambach and Claus Hambach.

Private sports betting distributors, who distribute sports bets to organisers in other EU countries have long been a thorn in the side of the state. This is because they are competition to the state sports betting provider ODDSET and in doing so rely on their constitutional rights and European law guarantees, freedom of establishment and freedom of services. However, the administrative authorities are increasingly finding themselves on the losing side. The reason for this is the many decisions in favour of private operators, in particular from the criminal and administrative courts. Furthermore, the Federal Constitutional Court has already requested numerous authorities to refrain from instituting any enforcement measures against the sports bet distributors in advance of the seminal decision expected at the start of 2006.

As a result the administrative authorities are now increasingly relying on the classical public order law, such as e.g., building regulations, the food safety regulations as well as the additive and pricing regulations. Exemplary are

the scandalous proceedings brought by the Administrative Authority of Heilbronn against caterers in that area. The authority withdrew the pub license from a Baden-Württemberg pub manager and demanded that he close his premises. The decision was justified solely on the basis that he might have distributed sports bets in the past. The decision was declared to be for immediate execution (§ 80 para. 2 No. 4 VwGO). The law firm Hambach & Hambach filed an objection to this administrative act on behalf of the pub manager and applied to the Administrative Court of Stuttgart for the suspension of the closure order.

As the Administrative Authority clearly feared that there was insufficient justification for the immediate execution of the order, it submitted further reasons to justify the withdrawal of the pub license, such as e.g., the lack of a solenoid gas valve as well as the lack of a safety appliance for a CO₂-holder in the store room etc.. The pub manager was set a deadline to remedy these defects. When this deadline had expired the Administrative Court of Stuttgart decided to reject suspending the order (case no. 15 K 1563/05).

However, the Upper Administrative Court of Baden-Württemberg overruled this decision. The Upper Administrative Court stated that there were sufficient reasons submitted on behalf of the pub, which dispelled the idea that a particular danger was posed by the operation of the pub until the conclusion of the main proceedings. In contrast with the previous instance court and the submissions of the administrative authorities, the Upper Administrative Court considered that a cessation of the pub to be unnecessary. Why: the cessation of the pub would be a serious violation of the freedom of profession guarantee of the pub manager.

Conclusion: The Administrative Authority of Heilbronn had already been renounced by the court in the decision of the 8th of December 2005 (see Betting-Law-News 7/05) and told to only bring proceedings for immediate closure of betting shops where

there was proof of concrete danger to the common good. If the administrative authorities now consider that they can dodge this by relying on other – non sports betting – dangers without closer examination, this crude proceeding is unlikely to stand up to legal examination.

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