

European Court of Justice to pronounce long-awaited Placanica decision on 6 March 2007

New fundamental decision on the freedom to provide services and the freedom of establishment with regard to sports betting?

The European Court of Justice (ECJ) is going to pronounce its long-awaited decision in the joined cases Placanica et al. (Cases C-338/04, C-359/04 and C-360/04) on Tuesday, 6 March 2007, at 9:30 a.m. The operators and agents affected as well as numerous courts expect a further clarification of the legal situation with regards to the cross-border provision of sports betting.

As for the Gambelli and the Zanetti decisions, the facts of this decision are based on criminal proceedings against betting agents having transferred contracts for sporting bets from Italy to a British bookmaker, in this case, Stanley International Betting Ltd.

The three cases to be judged within the preliminary ruling proceedings were brought before the ECJ by the Tribunale Larino and the Tribunale Teramo which expressed doubts as to the justification for the Italian licensing system and its criminal sanctions.

The reason for bringing these cases before the ECJ was a decision pronounced by the Italian Cassation Court (Corte suprema di cassazione). Despite the ECJ's Gambelli decision rendered in 2003, in its decision no. 23271/04, the Italian court held that it was not the (national) judge's task to decide on the adequacy and the proportionality of criminal

sanctions. The license granted to the British bookmaker could only be attributed territorial character.

The Italian courts bringing the cases before the ECJ expressed severe doubts as to the compatibility of this argumentation with Community law. In its Gambelli decision, the ECJ expressly required the national courts to examine the adequacy and the proportionality of criminal measures taking into account the bookmaker's surveillance in his country of origin.

The ECJ's Advocate General published his comprehensive legal opinion on the case on 16 May 2006. He came to the conclusion that the bookmaker's surveillance in his country of origin was sufficient. The Italian approach to invoke the territorial character of the bookmaker's permit was in violation of the principle of full and accurate transposition of Community law. Invoking the principle of mutual recognition, the Advocate General explicates: „In case an operator from another Member State meets the legal conditions set forth in this state, the authorities of the state in which the service is rendered must act on the assumption that this is a sufficient guarantee for his integrity.“ For the rest he considered the Italian provisions to be discriminating, so that they were not applicable for this reason alone. Furthermore the provisions were not proportional as well.

It remains thrilling to see, whether the ECJ is going to follow the Advocate General's opinion. On the one hand, the case concerns a highly political subject, so that the ECJ might want to avoid a clear statement. If the ECJ would follow the Advocate General's opinion, this would have considerable financial implications (for Germany as well) since it would effectively mean the end of the state monopoly. On the other hand, the ECJ is probably not going to tolerate that a national high court (in this case the Italian Cassation Court) disregards the Gambelli criteria it had laid down only shortly beforehand. With regards to thousands of proceedings pending before national courts laying down the law from Luxembourg

would be more than desirable.