

# Higher Administrative Court Baden-Württemberg: Transfer of sports bets to EU-licensed bookmakers continues to be possible

*A report by Rechtsanwalt Claus Hambach*

The Higher Administrative Court (VGH) of Baden-Württemberg held on 6 February 2007 (Az. 6 S 162/07) that an appeal by the Land Baden-Württemberg was to be dismissed.

Background: By virtue of the decision the claimant, a betting mediator represented by Hambach & Hambach LLP, at once succeeded in the last instance against a banning order of the regional council Karlsruhe. The Administrative Court (Verwaltungsgericht, VG) of Stuttgart had already ordered suspensive effect on 28 December 2006 (Az. 4 K 4393/06) and had thus granted the mediator protection from execution of the order.

Beforehand the lower court, i.e. the VG Stuttgart, had already, and it is submitted, rightly, decided that the outcome of the main proceedings regarding the prohibition of sports betting mediation directed to an Austrian provider of sports betting was at least uncertain. It was argued that judgments of the German Federal Constitutional Court (Bundesverfassungsgericht, BVerfG) and European Court of Justice (ECJ) raised considerable doubts as to the validity of the present state monopoly both in terms of German Constitutional and European Law. The court was particularly influenced in its decision by recent political developments in the month of December in 2006 which it interpreted to the

effect that the Land Schleswig-Holstein had made clear that it would not for the moment approve the new Draft Treaty but would rather observe the further progress of the notification process with the EU and wait for pending decisions of the ECJ (vgl. auch Betting-Law-News 6/2006). In the opinion of the VG Stuttgart, these inadequate circumstances had the effect that the sports betting mediator had a right to presume that the provisions of the present Lottery Treaty would continue to be in violation of the constitution (as the Federal Constitutional Court had already found on 28 March 2006). A balancing of the interest of the state in immediate execution on the one hand, and the interest of the claimant in the pursuance of his profession on the other hand could therefore, in the opinion of the court, only lead to a result which was favourable to the betting mediator.

Arguing that it had not been able to detect from the reasons for the appeal as advanced by the Land Baden-Württemberg why the aforementioned opinion of the VG was supposed to have been incorrect, the VGH Baden-Württemberg confirmed the groundbreaking decision of the VG.

In the exact words of the VGH:

*“ ... The appeal does not utter a single word about the advertising behaviour of the state-owned Toto-Lotto GmbH Baden-Württemberg which in the opinion of the court (the VG) went far beyond purely factual information about the exact nature of the betting possibility”.*

## **Summary**

The decision of the VG Stuttgart as confirmed by the VGH Baden-Württemberg on 6 February 2007 is already indicating the only possible way the administrative courts can decide following the publication of the so-called Placanica decision of the ECJ on 6 March 2007 if the ECJ follows the opinion of the Advocate General Colomer from 16 May 2006: the mediation

of sports bets to a bookmaker licensed in a Member State cannot be prohibited with immediate effect.