

County Court of Porto refers sponsoring by bwin to the European Court of Justice

The County Court of Porto (Tribunal Judicial de Comarca do Porto) referred a Portuguese sports betting case concerning the listed bookmaker bwin to the European Court of Justice (ECJ). The proceedings, there registered as Case C-55/08, are the eleventh proceedings concerning the freedom to provide services with regards to sports betting and other games of chance (where eight proceedings from Germany alone are pending, which of the six proceedings of the Administrative Courts of Stuttgart and Giessen were already joined in the course of the last years; concerning the proceedings pending so far, see Arendts, *Zeitschrift für Wett- und Glücksspielrecht (ZfWG)* 2007, pages 347 et sq.). In its questions referred to the ECJ, the County Court of Porto, in addition to questions concerning the freedom to provide services also raises questions with regards to Community law rules on competition and the prohibition of state monopolies.

The parties of the initial proceedings are the same as the ones of the proceedings already pending since last year registered as Case C-42/07 (cf. German Gaming Law updated No. 79), but with inverted procedural roles. The plaintiff of the current proceedings is Santa Casa da Misericórdia de Lisboa (SCML). SCML is exclusively entitled to operate lotteries and games of chance similar to lotteries under Portuguese law. The defendants it sued are the Portuguese Football League (Liga Portuguesa de Futebol Profissional (CA/LPFP) and two bwin companies (the main company of the group being listed on the stock exchange, the affiliated company sued here holding a Gibraltar license). The matter in dispute is the bookmaker's sponsoring contract with the Portuguese Football League.

The County Court of Porto referred three questions to the ECJ:

- It wants to have clarified, whether the state monopoly on games of chance and bets under Portuguese law complies with Community law rules, in particular with the freedom to provide services, free competition and the prohibition of state monopolies.
- In a second question the Portuguese court inquires about the criteria for interpreting national provisions restricting these Community law principles. It would like to assess whether such restrictions are admissible in the light of Community law rules.
- Finally, the court inquires whether a ban on advertising games of chance complies with the principles of Community law, in particular with the freedom to provide services, free competition, and the prohibition of monopolies, if there is an exception under which Santa da Misericórdia de Lisboa can advertise the games of chance it organises.

Due to these preliminary questions, the ECJ will be able to comment on the significance of the competition rules of the EC Treaty (Articles 81 et seq. EC Treaty) for the gambling- and betting sector. This could have considerable implications on the German state monopoly. Moreover, the ECJ will also be able to comment on the legal provisions regarding the advertisement of sports betting and games of chance. Millions, which are so far lost to football associations and clubs due to the ban on advertisement for private operators, are at stake. Sponsoring by bwin has already effectuated dozens of lawsuits in Germany as well.