

Administrative Court of Berlin repeals prohibition order against a sports betting agent issued by the State of Berlin: Sports betting monopoly de facto terminated

The Administrative Court of Berlin (Verwaltungsgericht Berlin) had already voiced fundamental doubts regarding the constitutionality of the Interstate Treaty on Gambling in several summary proceedings during the last months and has thus granted relief from judicial execution to the sports betting agents involved (cf. German Gaming Law updated No. 102). The Administrative Court of Berlin has now repealed a prohibition order issued by the State Office for Citizens' and Police Affairs (Landesamt für Bürger- und Ordnungsangelegenheiten), holding it to be unlawful (decision of 7 July 2008, file no. VG 35 A 167.08). The claimant, represented by ARENDTS ANWÄLTE (www.gaminglaw.de), can thus continue to transfer sports bets to a bookmaker licensed in Malta, an EU member state.

This new decision involves a prohibition order of 6 March 2008 based on the Interstate Treaty on Gambling (Glücksspiel-Staatsvertrag) and the corresponding implementation act (Ausführungsgesetz zum Glücksspiel-Staatsvertrag – AG GlüStV). The detailed reasons are still due. However, as reported, the court had already voiced considerable doubts in the proceedings for relief from execution as to whether the new regulations could constitute a constitutional authority. The

state sports betting monopoly, as a considerable interference with the private sports betting providers' and agents' right to choose their profession was not justifiable from a constitutional point of view.

The Administrative Court of Berlin explicitly allowed appeal against this decision which will have to be reviewed by the Administrative Court of Appeal of Berlin-Brandenburg (Oberverwaltungsgericht Berlin-Brandenburg). In view of the scope of the decision, which declares the Interstate Treaty on Gambling to be untenable and contrary to constitutional law, one has to assume that the State of Berlin will exhaust this legal remedy. For the time being, though, the state monopoly has de facto ended, since the market for sports betting in Berlin cannot be sealed off from bookmakers, licensed in other EU member states, anymore.