

The Upper Administrative Court of Saxony questions the validity of the state monopoly on sports betting

In two decisions of the 22nd of December 2004 (Case Nos.: 3 Bs 405/04 and 3 Bs 28/04), the Upper Administrative Court of Saxony (Sächsisches Oberverwaltungsgericht (OVG)) assumes a wider applicability of the decision of the Hessian Upper Administrative Court (VGH) of the 9th of February concerning the market expansion strategy. The OVG goes on to say:

„The amendment (Note.: to the decision of the Hessian VGH of the 9th of February 2004) by the decision of the 27.10.2004 – 11 TG 2096/04 – followed solely because the EC Treaty provisions were not applicable to the local provider of bets with residence on the Isle of Man.”

The “Gambelli Criteria” are according to this view (and contrary to a view widely held by the authorities) to be continued to be examined by the German courts where the bookmaker concerned has his residence and authorisation within the European Economic Area (EEA) (in practise, particularly, in Austria, Great Britain, Gibraltar and Malta). The following determination, made by the Hessian Upper Administrative Court (Hessischen Verwaltungsgerichtshof) in its 9th of February decision (Case No.: 11 TG 3060/03), referring to the “Gambelli” Decision made by the ECJ, is of particular significance:

„The above mentioned reasons speak in favour of the view that the monopolisation of the organisation and provision of sporting bets by state and state licensed operators, Art. 1 para. 1 s. 1 und para. 5 of the State Sporting Bets and

Lotteries Law of Hesse (Spw/LottoG Hessesches Sportwetten und Lotteriegesez), constitutes an inadmissible restriction to a foreign betting provider in respect of the freedom of services and freedom of establishment guarantees granted by Community Law, with the result that these rules to bear down on foreign companies may not be applied. “