

# Recent resolutions confirm unresolved legal position concerning sports betting in Germany

**[key:IC] introduces Attorney at Law Guido Bongers**

From now on Guido Bongers will regularly present his publications at [key:IC] We appreciate his competent contribution to our web-site under the column „Judgements & Publications“ and cordially welcome Guido Bongers.

## **Survey of trend-setting decisions of German Courts concerning sports betting**

Guido Bongers, who represented the clients in both cases mentioned below, obtained a ruling in February 2002 from the Bochum District Court (the first District Court in Germany to do so) that sports betting cannot be considered gambling. For lawyer Bongers, this was an important milestone on the way to liberalization of the sports betting market, even though the decisions were later annulled by the Federal Constitutional Court and referred back to the Courts for review.

Guido Bongers was the driving force behind a second fundamental decision on sports betting in September 2003. The Berlin District Court, as the first German court, ruled that dealing sports bets cannot be equated with organizing and providing sports bets.

Meanwhile, this interpretation of law has been confirmed in other lawsuits handled by the office of Guido Bongers at the Superior Administrative Courts in Sachsen and Schleswig-Holstein as well as the Ellwangen District Court.

In February 2004, Guido Bongers reached a further breakthrough. As the first German Court after the Gambelli decision of the European Court of Justice, the Hessen Superior Administrative Court decided in a provisional court procedure that the Hessian sports betting law infringes upon European law.

In addition, the Bongers office obtained important rulings and sentences from the Regional Courts of Ellwangen, Hamburg, Baden-Baden, Bochum, Kassel and Köln in 2004 and 2005. All courts ruled that § 284 of the penal code could not be applied in those criminal procedures considering the legal practice of the European Court of Justice.

Highlight of the various sports betting court procedures initiated by the Bogers legal office was the successful complaint regarding constitutionality of the decisions reached by the München Administrative Court and the Bavarian Superior Administrative Court in April 2005. With its decision dated 27 April 2005, the Federal Constitutional Court annulled all former rulings and referred them back to the Administrative Courts for reconsideration.

In consequence, this decision led to almost nationwide toleration of the 1,500 – 2,000 betting shops since immediate execution as a rule was not justifiable.

Attorney at Law Guido Bongers will be one of the authorized attorneys during the upcoming hearing at the Federal Constitutional Court in Karlsruhe in November 2005.

### **District Court Bochum: Sports betting agents are not gambling organizers**

**File number: 10 Qs 11/05**

According to the decision of the Bochum District Court dated 4 August 2005, sports betting agents are not gambling organizers. With this decision, the Court confirms the earlier ruling of the Bochum Municipal Court dated 2 March 2005 and

dismisses the administrative appeal of the office of the district attorney.

The district attorney's office had accused a sports betting agent of organizing professional gambling without official permission. The agent had set up a betting machine by Cashpoint Sportsbetting in his video game arcade.

On legal grounds, the Bochum Municipal Court had denied opening of the main trial noting the lack of evidence of organizing betting and the fact that the defendant had no influence on the result of the bet neither organizationally nor economically.

This legal view was now confirmed by the Bochum District Court. In addition, the District Court doubted that sports betting could be considered gambling, a precondition when applying § 284 of the penal code. The Court said that it was a moot point whether the success of betting was only due to luck or whether knowledge and information about the sports event also played a role in the result of the bet.

### **Stuttgart Administrative Court: Execution against sports betting agents remains suspended**

**File number: SP 14/05 – SB – N**

With its decision dated 27 July 2005, the Stuttgart Administrative Court restored the suspension of the appeal of a sports betting agent against the notice issued by the city of Stuttgart which had prohibited him from dealing sports bets.

In its opinion, the Court pointed out that a "clear evaluation" of the legal position could not be assumed. The Court referred to the decision of the Federal Constitutional Court dated 27 April 2005, which expressed doubt that § 284 of the penal code could be applied regarding European Law.

Considering this background, the vested interest of the petitioner was to bear greater importance than the public

interest in containing the dangers associated with sports betting.

Closing down the betting shop would deprive the petitioner of his economic basis and was not justifiable in light of the unresolved legal status. The city of Stuttgart has to pay the cost of the court proceedings.