

# HISTORICAL AND CONTEMPORARY ASPECTS OF THE LAW OF GAMES OF CHANCE IN SPORT CONTEXT WITH REFERENCE TO MACEDONIAN LAW

(Original scientific paper)

**Goce Naumovski<sup>1</sup>, Aleksandar Klimovski<sup>1</sup>,  
Dimitri Chapkanov<sup>2</sup> and Timcho Mucunski<sup>1</sup>**

<sup>1</sup>SS. Cyril and Methodius University, Skopje,  
Faculty of Law "Iustianus Primus", Skopje, Macedonia

<sup>2</sup>SS. Cyril and Methodius University, Skopje,  
Faculty of Music, Skopje, Macedonia

## Abstract

*A research on historical and contemporary concept of legal regulation of games of chance is realized, including an analysis of the primary and secondary historical sources. Furthermore, a review of certain sports betting reports regarding market share in Europe is also provided. The concept of contemporary law of games of chance is elaborated, including links to other legal disciplines. The provisions of the Macedonian legislation is analyzed and evaluated in a detailed manner. Several conclusions are given with respect to the character of the law of games of chance, and the appropriate measures for enhancement of the regulations of contemporary law of games of chance..*

**Keywords:** sports betting, regulation, Macedonian legislation

## INTRODUCTION

Games of chance represent an important source of revenues for state budgets. Incomes from the games of chance cover significant portion of the annual programmes or they are used for funding humanitarian or sports activities of civil associations. Since the state cannot give up the funds it makes by issuing permits or fiscalisation of the games of chance, awareness needs to be developed to accept the games of chance as a kind of a "more expensive" entertainment, socialising thus achieving the fundamental goal of these games, and that is having mass of people participating and having fun, and not to create a picture that they could be the source of fast and easy enrichment, especially due to the fact that all the kinds of games of chance are conceptualised in a way where most of the chances, the greater percentage of winning is always on the side of the organiser. Hence, due to the historical, social and economic significance, the scope of contemporary legal science is enhanced by a relatively new discipline-law of games of chance, in national and in contemporary comparative legal perspective.

## METHODS

The historical method is applied during collection of data concerning the development of regulation of gambling in the antiquity in different time periods. Primary and secondary historical sources (written material) are particularly examined. This examination included historical legal acts and documents referring to games of chance. Internal and external critics and evaluation of the data in the sources have been conducted.

Besides by the historical method, the study of the research subject was realized by application of the descriptive method, i.e. its minor methods: analytical, synthetic, comparative and normative.

The obtained data are treated with inductive and deductive method of interpretation of facts relevant to regulations of games of chance as their corresponding forms in contemporary law.

The interpretation of the empirical data collected is realized by exploratory and logical approach of the essence of legal solutions concerning games of chance.

## RESULTS AND DISCUSSION

### *Regulation of the Games of Chance in History*

It is often considered that the roots of regulation of the games of chance in ancient times and the first written information about the game of chance called Wei-Qi, dates from 2300 BC in Ancient China (Burton, 1989). Furthermore, the original identified type of board games, b6xi, was conceived in China during the Xia dynasty (c. 2070–1600 bc) (Guo & Xiao, 1995). Games of chance were also common in the ancient Egyptian and Indian civilisations.

The ancient civilization was not immune to games of chance. Gambling was considered by Greeks as a phenomenon of divine nature, so Hermes was the patron of gamblers and the god of luck (Ahlstr6m, 2009). Historical sources (Herod. 1, 94) indicate that one of the most common games was the knucklebones (*astragali*, *αστραγαλισμος*) (picture 1).

Roman heritage offers concrete evidence of regulation of games of chance. The ancient Romans believed in the Goddess Fortuna considered as the protector of all games of chance and of their participants. She had a wheel of fortune that had multiple symbolic meanings, and it was believed that it was the destiny which spun the wheel of fortune (Gizycki & Gorny, 1973).

The latin term "alea" (dice) was not only used for the dice itself (Picture 2), but also in broader legal context to indicate any games of chance (Berger, 1953).

Evidence of the devotion of Roman to hazardous games were “present in the Forum, in the Basilica Julia, in the corridors of the Coliseum, on the steps of the temple of Venus and Rome, in the square in front of the Portico of the Twelve Gods, and even in the House of the Vestals” (Lanciani, 1982). However, the regulation of games of chance varied depending on the different periods of the history of the roman state. During the Saturnalias for instance, the law gave full freedom to play games of chance (Mart. IV.14, V.84, Gell. XVIII.13; Suet. Aug. 71).



Picture 1. Astrogalus



Picture 2. Ancient dice

Some researchers (Smith, 1875) outline that many Roman emperors such as Augustus, Caligula, Claudius, Vitellius, and Domitian, were passionate about the games of chance and the games were their favourite pass time (Suet. Aug. 70, 71; Dion Cass. LIX.22; Suet. Cal., 41, Suet. Claud. 33; Dion Cass. LXIV.2; Suet. Dom. 21).

Among the various legislations refereeing to the games of chance was *Lex Titia de Aleatoribus* (C.3.43), (allowing betting in sports by implying the courageousness of the competitors (Berger, 1953); as well as *Lex Publicia* and *Lex Cornelia* (with yet unknown provisions on the same matter).

*Lex Talaria or Lex Alearia* (Mil. Glor. II.2.9) was passed probably in 204 B.C., introducing changes in the freedom to play games of chance i.e. many of the games of chance that existed at the time were forbidden and in case of violation of the ban the fine was in the amount of four times the gain. According to some autors (Faris, 2016) “there was a fine on gamblers of four times amount wagered but in practice, state enforcement at best sporadic and selective”.

In addition, the oldest form of lottery also originates in Ancient Rome as a kind of a bond lottery that was organised by the emperors themselves. This type of organised lottery consisted of public distribution of money (*missilia*) thrown to the people in the theatres or at the streets (Begrer, 1953).

The Christian religion also had its own position on the games of chance bearing in mind that the Bible mentions the luck in rolling a dice when making a decision, so some people in the Early Christian period significantly practiced the games of chance, even some of the clergymen. In order to regulate the games of chance numerous laws were adopted, mainly with a restrictive approach for certain people, who could play the games of chance. Hence, only noblemen were allowed to play games of chance and only up to a certain amount of money, and for any disrespect of the prohibitions and of the limitations fines were provisioned such as confiscation of the stakes, a fine of 100 shillings in favour of the church and public whipping (Janjic, 1987).

In Middle Ages in Florence the first forms of commodity lottery are noted, which consisted of a monetary stake and a certain risk, and it later spread all over Europe. The stake in the first organised lottery in Florence, established in 1530, was one gold coin for which they received a lottery ticket that they called policy (*polizza*). The goal of organising the lottery and the lottery tickets was of fiscal character i.e. filling up the state treasury. In Paris in 1539 the first French state lottery was organised, called *Blanche*, in the Netherlands in 1549, in Germany in 1610 and in England in 1767. Unlike the lottery, the first form of the lotto game originates from Genoa, and it still exists. In Germany the lotto game for the first time was organised in 1763 by the state to the benefit of the state treasury (Gizycki & Gorny, 1973).

*Contemporary Sports Betting in the European Union*

In contemporary society, the games of chance continue to play an important role, specially when it comes to sports betting. According to the sports betting commercial and integrity issues report, prepared by the European Gaming and Betting Association (EGBA), the activities in 2013, compared to those in 2007, betting has been quite still, concerning its global gambling product share (14% to 13.9%), with most other sectors performing similarly or falling slightly to 2013 levels-lotteries (29% to 28.4%), gaming machines (21% to 20%), and other gambling e.g. bingo (3% to 2.7%). Only casinos have shown a rise, significantly up from 32% in 2007 to 35.1% in 2013.

Furthermore, subsequent developments indicate that the regulated European gambling market’s income estimated were 1.7% higher in 2013 to €90.0 billion (\$120.3 billion) in Gross gambling yield (GGY) having fallen by around 3.5% in 2012. Betting was estimated to have grown by almost 7% for the period of 2013 mainly because of the 2014 World Cup income enhancement.

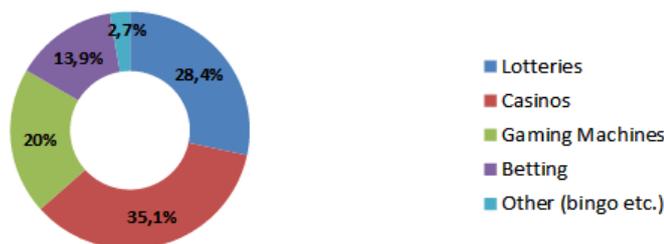


Diagram 1. Global Gambling Market Product Share (Source: Global Betting and Gaming Consultants)

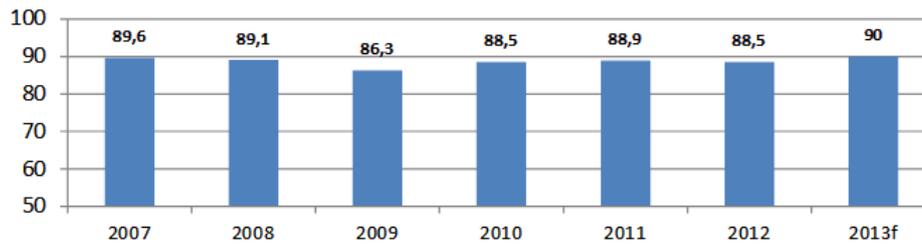


Table 1. Tendencies of the European Gambling Market  
(Source: Global Betting and Gaming Consultants)

The same report, among other issues demonstrates the following tendencies in sport betting in the EU: 1) legislation tends to promote interactive platforms, compared to the previous supremacy of the lottery sector; 2) the global sports sector continues to increase; 3) regulated betting operators also continue to invest considerably in sports broadcasts; 4) sponsorship is prevailing in the funding sources of sport bodies; 5) betting is still primary factor in match-fixing; 6) various initiatives of the European parliament are being brought, namely concerning new types of bets, in-play (or live) betting, placing restrictions on the new betting markets etc. This requires adequate enforcement of legislation by sports governing bodies as well as player education programmes and anticorruption activities for reduction of potential players' financial vulnerability.

#### *Juridical Response: Establishing the Notion of the Law of Games of Chance*

The subject of every branch of the law, including the law of games of chance is established primarily based on the study subject that must be specific and separate in order to justify the legal branch that studies it.

The law of games of chance studies the legal norms that regulate the particularities in the ways of conducting games of chance and lotteries i.e. the rules that establish the relation between the state and the organisers of games of chance on one hand and the organisers of games of chance and lotteries and their participants, necessary for creating legal safety and security by respecting the rules of the games of chance and lotteries.

Approaching this extensively defined subject of study in a more concrete manner, the law on games of chance, deals with the national and international aspects of the following issues: basic sources of the law on games of chance, determining the status of the businesses that organise games of chance; the conditions that need to be fulfilled in order to get permits; the rules for state supervision and sanctioning; legalising certain types of games by legal provisioning of the types of games of chance and lotteries and their definition; establishing the conditions and the types of games of chance and lotteries; the rules for protecting the rights and legal interests of the parties in the administrative procedures in the field of games of chance and lotteries, the procedures for establishing a supervisory information system and registration and the rules for fiscalisation and ensuring payment of the gains to the participants and of debts to the state by the organisers of games of chance.

The notion of the *games of chance* is multi-dimensional. Namely, it consists of two terms: 'game' and 'chance'.

The term '*game*' refers to three aspects: firstly, the ga-

me is a free activity that we accept as fictive and separate from the everyday life and which happens in a specific time and space, following an order established based on previously agreed rules, thus stimulating relations between the participants; secondly, it is unpredictable i.e. its development, end and outcome cannot be predicted, and thirdly, it is regulated with the legal rules on one hand and the rules of each type of game on the other. The term '*chance*' is double layered: Firstly, the meaning of this term refers to a certain internal subjective spiritual state of pleasant feelings that are caused by the human personal attitude towards certain situations, states or events. The second meaning refers to an external activity caused by random events or situations that influence the development and the outcome of some game.

Regardless whether the games are carried out with the mediation by the state and they are called legal games of chance or without the mediation of the state thus being illegal games (gambling), they have a common element and characteristics such as: following the rules of the game agreed in advance, having at least two opposing parties participating (the organiser vs. a participant or a participant vs. a participant), one or both parties have to participate with adequate stakes in the game, and the outcome from the game is gain or loss of money, material means or services (Sulejmanov & Stojanoski, 2002).

#### *The relation between the law on games of chance and the related branches of the law in the Macedonian legal system*

The law of games of chance is an independent legal branch that is part of the broader family of the private law, which as such determines its place in the legal system. The meaning and the multiple layers of social-economic relations that are regulated with the norms which studying belongs in the domain of this young branch of the law in our legal system, influences the fact that they are not sufficient in defining and establishing all the rights and obligations in those relations. In addition the fact that the legal basis is relatively undeveloped due to its youth, inexperience and insufficient practice also has an impact.

Hence, since this branch of the law, maybe more than any other branch of the law, often in order to regulate all the rights and freedoms that stem from its subject lends regulations to other branches of the law, especially to the private law (law of obligations, law of companies), as well as to the public law (administrative, tax and criminal law).

In these cases of intertwined legal relations, one often poses the question: which law's rules should prevail: those that belong to the private law or those that belong to the public law? All that points at the inability of any branch of the law to be seen as an isolated branch, but because the

relations that are regulated with adequate legal norms are intertwined, the branches of the law that study those norms are equally intertwined, and their separation is primarily used for educational and scientific purposes.

#### *Law of Games of Chance and Law of Obligations*

The law of games of chance and the law of obligations are separate branches in the law, but they have several touching points when establishing business relations with the participants in the games of chance (the betting ticket, the lottery ticket, the bingo ticket, the casino chips, etc. in their legal aspect are means of entering in certain contracting relations following the principle of offer and acceptance of the offer, while the rules of the games of chance i.e. the rules for the organiser are such that if one joins the game they are automatically accepted by the participants thus creating relations of rights and obligations on both parts: the organiser of the games of chance and the participants, the freedom of agreeing on the share, the equality of the parties, the prohibition of violating the interests of any of the parties, accountability in case of failure or improper delivery of benefits).

Still the relation of these two branches of the law cannot be positioned as a relation of the separate and of the general, as a relation between the law on contracts and torts and the civil law, bearing in mind that they are branches of the law with particular subjects of study. Hence, the law on games of chance mainly looks into the particularities of the contractual relations that are established between the organiser and the participants, their rights and obligations within different types of games of chance, while the law on contracts and torts looks into the establishment of contract obligations, the bases for the contract obligations, the subject of the contract obligations, the capabilities of the contracting parties, the contract's form, the terms of reference and the contract's validity, representation, invalidity, termination, damages, rights, obligations and responsibilities of the parties, etc.

#### *Law of Games of chance and Company Law*

Company law studies the static aspect of the companies (the forms of their entrepreneurship, foundation, management and termination), and the fact that the right to organize games of chance is always in the hands of the state, the Republic of Macedonia, but it can perform that activity only by establishing a company i.e. organising it by founding a company or transferring this right by issuing a permit i.e. a license to a company or a sole proprietor that fulfils the particular conditions established with the Law on Games of Chance and Lotteries, is the link between the law on games of chance and the law on companies.

For the state it is especially important to know the legal-organisational form of the organiser of games of chance who is issued a permit, since the type of the responsibility for the undertaken obligations in the legal turnover, the members of the company's management and supervisory bodies, the persons that represent and manage the operation of the company, the identity of the stockholders or founders of the company and the fixed assets of the company as well as its economic-financial status depend on it. In addition the management of the company's operation, organisation, how decisions are made by the company's bodies, requirements for initiating bankruptcy procedure, managing of the bankruptcy procedure, liquidation, transformation, status changes in the company that organises

games of chance are part of the subject of the law on companies.

#### *Law of Games of Chance and Administrative Law*

The law of games of chance and the administrative law are closely linked even though in the former the private-legal elements prevail, and the latter falls within the scope of the public law. The state has significant obligations towards the economic entities (supervision of their legal compliance, licensing, concessions and permits for performing certain activities, approving the issuing of bonds and supervising the bonds market, customs and foreign trade competences, foreign-exchange competences, antitrust competences, state subsidies and reductions, price controlling and establishing the scope and regulating the public procurements procedures).

In these and similar cases, the company or the sole proprietor that organizes games of chance i.e. lotteries in order to do the business needs to be licensed i.e. to get a permit or a request for changing the business premises, for which the rules of the administrative procedure and administrative dispute apply. At the same time the organiser is exposed to oversight and supervision by the state authorities, primarily by the Public Revenues Office, that issues a decision as an administrative act that imposes a certain type of actions, and if certain shortcomings are established that cannot be dealt with, an official from the Public Revenues Office seals off the business premises of the organiser.

Consequently, the state using the administrative instruments at its disposal has significant impact on maintaining the legality in the operation of the companies that organise games of chance and lotteries and creates management mechanisms for dealing with irregularities in the business of these organisers.

#### *Law of Games of Chance and Budget Law*

The connection between these two branches of the law is based on the origin i.e. the sources of revenues that go into the budget from the games of chance. Those are funds that are accumulated from the fees for the licenses, permits, taxes, compensations, etc. that fall under the tax law as public revenues. The share of the funds collected on these bases in the budget and their distribution for the needs of the state depend significantly on the collected revenues and the fees for the permits, as well as from the taxation on the profit of the organisers of games of chance.

The tax regulations, unlike the administrative ones cannot influence the nullity of some legal aspects of the organiser or their decisions, but they can have an impact on the economic effect from those activities that are part of the regime of the law on games of chance. Namely, the profit of the organiser depends significantly on the fee for the permit i.e. the license and other fiscal payments, as well as the attitude of the organiser towards the participants in the sense of providing better conditions for the same, even at a higher level of standards than those provisioned in the law and the rulebooks.

#### *Law of Games of Chance and Criminal Law*

The organisers of games of chance and the responsible individuals in those entities while performing their duties they may commit a violation, and in that case the rules from the criminal and administrative law apply, as well as the rules of the law on games of chance. The rules from the law

on games of chance are rules for legal organising of the regulated types of games of chance, which violation is sanctioned with the rules from the criminal and administrative law.

The Criminal Code incriminates certain actions linked to unauthorised organising of gambling or other games of chance which are illegal, for which a fine or a sentence imprisonment of up to one year is envisaged. The same punishment is imposed also to those who would make available premises for gambling or in another way will enable gambling or force others to gamble. For those persons that will use false or marked playing cards or steep to some other fraud, which are not serious crimes a sentence of one to five years and a fine are provisioned.

The Criminal Code explicitly establishes that the items used for gambling, as well as the money discovered with the perpetrator of gambling will be seized (Article 398 (gambling) from the Criminal Code). Furthermore, the Criminal Code provisions a sentence imprisonment of at least five years, among others also for the person responsible at the company that organises the games of chance that will enable or allow a transaction or a business relation, contrary to his legal obligation or will perform transactions contrary to the prohibition expressed by the competent body or a temporary measure imposed by a court or to report money laundering, assets or gain in property, that s/he learned about while performing his/her duties. If there are factual or legal obstacles for determining a punishable act and for prosecution of its perpetrator, the existence of such an act is established based on the factual circumstances of the case and the existence of founded suspicion that the assets were acquired by committing such an act. The knowledge on the part of the perpetrator i.e. the possibility that s/he knows that the assets have been acquired by committing a crime could be established based on the objective factual circumstances of the case. If this act is committed by a legal entity, it will be fined, and the money and the illegally acquired assets, items or other proceeds from the crime will be confiscated, and if confiscation is not possible than other property owned by the perpetrator that is of equal value will be confiscated (Article 273 (money laundering and other proceeds from crime) from the Criminal Code).

However, the criminal responsibility, the way it is regulated with the Criminal Code is evidently reinforced and increased with the Law on Games of Chance and Lotteries that regulates that the legal entity that organises games of chance in premises specially furnished for that purpose, without a permit i.e. a license from a competent authority will be fined in the amount of 20 million MKD, and the person responsible at the legal entity will be fined for the same offense with a sentence imprisonment of at least three years. The funds for organising the games of chance as well as the money found with the perpetrator will be confiscated (Article 156 from the Law on Games of Chance and Lotteries).

This approach in regulating the criminal responsibility in the system of the games of chance shows that the criminal law evidently has been insufficient in its scope of incrimination and the type of punishments so the legislator opted to reinforce regulation through the Law on Games of Chance and Lotteries when regulating the criminal responsibility, which in the case of the law on games of chance it represents reinforcing of the legal operation of the organisers of games of chance and lotteries.

## CONCLUSION

The justification of legal regulation of the games of chance lies in many centuries of existence, tradition, enormous expansion and profound presence of games of chance in the economy on one hand, and the awareness that they represent an instrument that channels the urges and the passions of a certain number of people among the population making them not to take part in gambling games prohibited by law, but to stay within the scope of permitted and legally regulated forms of games of chance, on the other hand.

Consequently, the law of games of chance studies the legal norms that aim at achieving equilibrium between the interests of both parties involved in the process: the interest of the state that the organization of games of chance should be valorised by charging the organizers for the permits and other taxes, and the interest of the participants in the games that demand legal safety at the moment of satisfying their urges for the game and the interest of the business entity (the organiser) that necessarily has to make a profit with the business venture in the field of the games of chance and lotteries.

Modern legal systems seem to offer appropriate response to the challenge imposed by the practice of games of chance. In recent years when many companies that organise games of chance and lotteries emerged, relevant legal and institutional infrastructure, business practice and case law, thus providing the necessary premises for the development of this branch of the law as a separate branch in the legal system of the Republic of Macedonia as well. It is understandable that for the time being here, when regulating the relations in this branch of the law, the legislation is the one that is most developed, animated with the Law on Games of Chance and Lotteries. However, it is evident that the legislation is accompanied, even though with low intensity, by the practice and experiences which are adequate to the level of development of the institutions that have developed in this field, as well as the legal doctrine. As a starting point in the development of the law of games of chance in the Republic of Macedonia all the necessary premises have been created, and based on the constant communication and meetings of the legislation, the practice and the legal doctrine the expectations are such that this branch of the law will develop and grow.

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## Correspondence:

Goce Naumovski  
 SS.Cyril and Methodius University  
 Iustinianus Primus Law Faculty  
 Bul. Goce Delcev 9B, 1000 Skopje, Macedonia  
 E-mail: [g.naumovski@pf.ukim.edu.mk](mailto:g.naumovski@pf.ukim.edu.mk)