

LEGAL ANALYSIS OF SPORTS BETTING SHOPS' ACTIVITIES AND THE USE OF FUNDS FROM THE SPORTS GAMES OF CHANCE IN THE REPUBLIC OF MACEDONIA IN COMPARISON TO EUROPEAN STANDARDS

(Original scientific paper)

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Abstract

A study is realized regarding the Macedonian legislation approach for the definition of "games of chance" as well as the conditions for establishing, functioning and supervision of the betting shops. A reference is made to the rules for use of games of chance funds aimed at financing of sport activities. Also, a comparison is provided concerning of Macedonian sports betting and funding legislation and practice with the European Union tendencies. Conclusions are presented regarding the implementation of the Law of Games on Chance and Lotteries.

Keywords: *lottery, EU legislation, sports funding, Macedonian law*

INTRODUCTION

The interest in the games of chance among the academic and business community is increasing along with the trend of rapid increase in the size of the funds that enter the business entities that are allowed to organise games of chance, as well as developing instruments that the state can use for effective control and oversight over the legality of the activity as well as taxation of businesses, especially in the Republic of Macedonia where in the past twenty years we have witnessed rise in the interest in the games of chance, increase in their number, as well as foundation of numerous companies that organise games of chance, especially betting, slot machine clubs as well as casinos in the border regions. This is not by chance, if one has in mind the commercialisation of the sport, especially of football matches, for which there is relatively longer tradition of betting in the developed market democracies, as well as development of electronic means that have significantly brought the betting closer to our citizens. For that reason, responding to the demands (demand) of the public, the market responded with the emergence and development of companies (offer) that organise games of chance, and the state was forced to follow this trend and to adequately regulate the games of chance by adopting series of laws regulating this area, and more specifically the 2011 Law on Games of Chance and Lotteries and its novelties.

METHODS

The study was accomplished by appliance of the descriptive method, i.e. its minor methods: analytical, synthetic, comparative and normative methods. The normative method is applied during collection of data concerning the regulation of games of chance in the Republic of Macedonia. Primary and secondary legislation (written material) is particularly examined.

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 status and activities of sports betting shops.

RESULTS AND DISCUSSION

Definition of games of chance in Macedonian legislation

Article 4 of the Law on Games of Chance and Lotteries enacted in the Republic of Macedonia in 2011 (hereinafter: GCL) differs two groups of games of chance: general games of chance and special games of chance. Furthermore, the same article defines the games of chance on the internet as "general and special games of chance, as well as other games of chance in which the participant can take part through the global internet network".

The special games of chance are games of chance in which the participants play one against another or against the organiser of the game of chance and they have a possibility of making profit depending of the size of their bet and the rules of the game of chance.

With these games there is no limitation in the amount of the winnings or the losses and everything depends on the degree of continued success i.e. failure with every repetition of the game. There is usually no limit to the losses, while the gain limit could be set by every organiser in various ways, and it is usually set in the rules of the game that are placed in visible places (with the slot machines the maximum payment per game is marked, with the roulette and the games of chance usually there is no limitation in case of a continued winning streak on the part of the participants, except by putting white cover on the tables where

they are played, which means the amount of the guaranteed fund for which the organiser could guarantee the payment of the winnings was reached).

Article 4 (3) of the GCL regulates the following special games of chance: games of chance in a casino; games of chance in a betting shop; and games of chance with a slot machine.

The games of chance in a casino are games of chance in which the participants in the games of chance play against the casino or against another in compliance with the international rules of the tables for games with balls, dices and cards (European or American Roulette, Black Jack, Mediterranean Poker, Cyprus Poker, Texas Holdem Poker, 7/11, Baccarat, etc.).

Games of chance in a betting shop are games of chance in which the participant according to the rules of the game bets on future real events or real events that are underway at the time of the betting and events related to: sport matches, races, etc.; dances, singers, music and other similar competitions, and other competitions.

Games of chance in a slot machine club are games on slot machines, electronic roulettes and other machines with multiple roles and winnings ("multiplayer") and a system of machines that connects a number of slot machines in order to create single Jack Pot with the same and simultaneous opportunities for all the participants in the game. The multiplayer slot machines could be mechanical, electronic or similar devices where the participants in the games of chance by paying a certain amount (tokens, coins or direct payment at the cash register i.e. the slot machine) get a chance to win.

With sports betting each organiser may limit the amount of the payment per ticket. In addition the organiser may keep the right not to accept a bet for a sports match without providing any explanation about it, as well as to limit the total bet for some matches. Thus the organiser of sports betting is protected from the only thing that may cause its bankruptcy, and that is progressive limitless betting. Finally, in sports betting the quotas for every type of game of betting on sports matches is established by bookmakers, who when establishing the quotas (coefficients) for every type of game (final type, number of goals, half time – end of the game, whether there would be more goals in the first or the second half time, etc.) there are very precise mathematical formulae and statistical methods that do not allow the participants to eliminate the uncertainty and the risk. The combination of different quotas for any sport game (mix of more types) or conditional game, also does not guarantee any possible winning for the participants, having in mind the precisely worked out quotas by the bookmakers.

If the games are conceptualised with such chances of winning, and they are set up on the platform of the theory of large numbers i.e. endless repetition of the same events with such a proportion of outcomes, then it is clear that the possibility for the organiser to go bankrupt is meagre, especially if one takes into consideration the amount of money that go into the game i.e. the guarantee for the organiser is always bigger than the one for the individual participant.

In every sports betting shop there is a limit of the bet for every individual event in every game. This is for the purpose of protecting the organiser from progressive bets in every individual game, which if allowed in the short run might result in success for the participant in the game.

Hence, based on the foregoing the participants in the game always lose at the end, it is only question of time, when that inevitable moment will come. The longer they stay in the game the greater the chances are for personal bankruptcy. Thus these games of chance should be understood and practiced only for the purpose of satisfying the urge for moderate playing and some kind of particular adrenaline valve for the pressures that everyday life brings about.

Permit for organising games of chance at sports betting shops

A permit for organising games of chance at betting shops is issued by the Government of the Republic of Macedonia based on the submitted application to the Ministry of Finance within 30 working days from the day the application is submitted to the Ministry of Finance.

The request could be submitted by a company that on the day the application is submitted it has paid the fixed capital that cannot be less than EUR 500,000 in MKD counter value according to the middle exchange rate of the National Bank of the Republic of Macedonia on the day of the payment.

According to articles 73 and 74 from the Law on Games of Chance and Lotteries, the company is also obligated to submit: a certificate of the company's registration issued by the Central Register of the Republic of Macedonia, not older than six months from the day of its issuance and a proof of the size of the fixed capital; a founding act of the company; rules of the game of chance; a certificate that the transaction bank account of the company has not been blocked in the six months period before the application is submitted, and if the company is not older than six months than since its founding; a certificate that the company has been paying regularly the salaries of the employees for the period of six months before the application is submitted, and if the company is not older than six months than since its founding; information about the economic-financial state of affairs of the entity issued by the Central Register of the Republic of Macedonia that conforms the economic-financial operation of the company for the period of the last business year, and if the company is not older than one year – since the day of its founding until the day the offer is submitted; a certificate from the Register of fines for violations committed by the legal entities that there is no supplementary punishment imposed prohibiting the issuance of a permit for games of chance to it; a certificate from the Register of fines for violations that the legal entity has no supplementary punishment withdrawing its permit for games of chance; a certificate from the Register of fines for violations of the legal entities that there is no supplementary punishment of temporary or permanent prohibition to organise games of chance; a proof of origin for the funds i.e. for the means and the rights that are registered as fixed capital; a programme for preventing money laundering and terrorism financing in compliance with the regulations that regulate the prevention of money laundering and terrorism financing; a proof of origin for the money paid as compensation for acquiring a permit; a proof that the spatial and technical-technological requirements for organising games of chance in a betting shop have been met, issued by a competent authority, not older than 30 day from the day of its issuance.

The permits for organising games of chance in betting shops are issued for a period of three years. In order to get a permit for organising games of chance in betting shops a fee of EUR 105,000 is paid in MKD counter value according to the middle exchange rate of the National Bank of the Republic of Macedonia on the day of the payment. The permit for organising games of chance in betting shops is for organising betting games of chance using betting locations.

Changes of the business premises where the games of chance in betting shops are organised

The organiser of games of chance in betting shops has a right to change the business premises where the betting games of chance are organised.

The organiser of games of chance in betting shops along with the request on a prescribed form to change the business premises that is submitted to the Ministry of Finance it also has to submit: 1) a proof that the new business premises meet the spatial and technical-technological requirements for organising games of chance in betting shops not older than 30 days from the day of its issuance; and 2) a proof that the previous business premises are closed i.e. no betting games of chance are organised there by the organiser.

The Ministry of Finance adopts a decision regarding the change in the business premises within eight working days from the day the request is submitted.

The form and the content of the request form are prescribed by the Minister of Finance (Rulebook on the form and content of the application for non-adoption of a decision i.e. non-adoption of a decision for rejecting the request for adoption of a decision, Official Gazette of the Republic of Macedonia, No. 84/2011 and the application for non-adoption of a decision for changing of the business premises for organising games of chance in betting shops).

The applicant for a permit to organise games of chance in betting shops has to provide supervisory IT system connecting all the computers registering all the bets and winnings payments from all betting locations, so that the system would provide data about the bets and winnings payments on each of the computers that could be shown at any point of time and the system should have the option to be connected to the IT system of the Public Revenue Office (Article 75). This obligation provisioned by the Law went into effect on 1 January 2013.

A deposit or a bank guarantee

The organiser of games of chance in betting shops in order to guarantee the payment of the winnings of the participants in the betting games of chance, the payment of the public taxes provisioned with law, as well as the fees and the special tax established with this law is obligated to make a deposit or secure a bank guarantee in a bank with offices in the Republic of Macedonia in the amount of EUR 300,000 in MKD counter value according to the middle exchange rate of the National Bank of the Republic of Macedonia on the day when the deposit is made i.e. the day the bank guarantee is issued.

When the permit is issued and the deposit is made i.e. the bank guarantee submitted the organiser of games of chance in betting shops acquires the right to organise games of chance in betting shops on 25 locations at the most.

The organiser of games of chance in betting shops has a right to increase the number of betting locations after submitting a request to the Ministry of Finance accompani-

ed by the previously established proves, just as if it is applying for a permit for the first time, and for each additional ten betting locations the organiser is obligated to submit a proof of a deposit i.e. a bank guarantee in the amount of EUR 50,000 in MKD counter value according to the middle exchange rate of the National Bank of the Republic of Macedonia on the day when the deposit is made i.e. the day the bank guarantee is issued to be used as insurance for the payment of winnings of the participants in the betting games of chance, payment of public taxes provisioned by law, as well as the fees and the special tax established with the Law on Games of Chance and Lotteries.

If the deposit is reduced or the bank guarantee activated for an amount below the amount prescribed with this law the organiser of games of chance in betting shops is obligated to compensate the difference up to the full amount prescribed with this law within 48 hours at the latest, and for any change the organiser is obligated to inform the Ministry of Finance immediately (Article 76 GCL).

Rules of the game when organising games of chance in betting shops

The organiser of games of chance in betting shops sets up the rules of the game for organising betting games of chance that are applied after receiving permission from the Ministry of Finance. Before the start of the game of chance the organiser of games of chance in betting shops is obligated to make the rules of the game of chance public by putting them on a visible spot in the premises where the games of chance are organised i.e. on each betting location.

The bets and the winnings are paid at the betting locations of the organiser of games of chance in betting shops. The organiser of games of chance in betting shops is obligated to put up on a visible place at all betting locations a plate with all the information about the organiser, the location and the period for which the permit is valid (Article 77 GCL).

According to Article 78 of the GCL the rules for organising games of chance in betting shops should primarily consist of: name and address of the organiser of games of chance in betting shops; name, description and duration of the game of chance; conditions that need to be met for participating in the game of chance; size of the bet and deadline for making the bet in order to take part in the game of chance; location where the game of chance is organised i.e. the area where the bets are made in order to participate in the game of chance; type and total value of the winnings; manner, procedure and oversight in determining the winnings; the manner in which the results from the game of chance are announced; and the manner and deadline for paying the monetary winnings i.e. getting any other kinds of winnings.

Special tax for games of chance in betting shops

For organising games of chance in betting shops the organiser of the games of chance in betting shops pays a special tax in the amount of 20% which is calculated on the difference between the amount paid for bets from all computers in all the betting locations of that organiser and the paid out winnings from all the computers in all the betting locations monthly, and it should be paid by the 15th day of the current month for the previous month.

The proof of the payment of the special tax the organiser of games of chance in betting shops is obligated to submit to the Ministry of Finance by the 15th day of the cur-

rent month at the latest for the previous month (Article 79 GCL). This obligation went into effect on 1 January 2013.

Prohibitions for betting and participating in games of chance

Having in mind that it is a particular business with many serious social-moral and economic dimensions in which the involved persons should meet special conditions, the legislator in Article 19 of the GCL introduced general prohibitions for: participation in foreign games of chance, especially if the bets are made on the territory of the Republic of Macedonia (this prohibition protects the domestic companies that organise games of chance and the capital outflow from the country); sale, advertising and any other promotion of foreign lottery and bingo tickets, electronic cards, etc. on the territory of the Republic of Macedonia (this prohibition protects the domestic organisers of games of chance from unfair competition); organising games of chance and lotteries in technological industrial development zones on the territory of the Republic of Macedonia (this prohibition helps the state prevent tax evasion and use of other privileges by the companies due to the fact that in the TIDZ there are tax privileges for the investors); organising games of chance that are not regulated with this law, and which give an opportunity for acquiring gain; and participation in games of chance or lotteries that are organised without a permit.

Article 81 of the GCL prohibits organisation of betting on the territory of the Republic of Macedonia: which is contrary to the law, the good business customs and moral; and against the results from the presidential elections, the election of MPs in the Assembly of the Republic of Macedonia, election of mayors and councilpersons in the Councils of the municipalities, the Skopje municipalities and the city of Skopje.

The legislator introduces prohibition for the minors to participate in games of chance (Article 20 GCL). Namely, persons under the age of 18 are not allowed to participate in games of chance, and there is an obligation for the organisers of the game of chance not to allow persons younger than 18 to take part in games of chance. Specifically, persons younger than 18 are not allowed to enter casinos, premises where bingo of closed type is organised, in betting shops and slot machine clubs, and the organiser of the games of chance is obligated to prevent persons younger than 18 from entering casinos, premises where bingo of closed type is organised, in betting shops and slot machine clubs. The organiser of a game of chance has a right to check documents that prove the age of persons. Because this prohibition applies both to general and special games of chance the question is: What if the minor due to a fault on the part of the organiser for example bought an instant lottery ticket or has a sports betting winning ticket, is the organiser obligated to pay him the winnings? In compliance with the foregoing that persons under the age of 18 cannot participate in games of chance, and due to failure to prevent their participation, the organiser is obligated only to reimburse the betting amount. And vice versa, if bet was placed or an instant lottery ticket was bought under the same circumstances and they did not win anything the organiser has an obligation to reimburse the money they paid. However, since the ticket i.e. the instant lottery ticket belongs to the person that provides it and it does not bear any name, it could be misused by the participants. The legislator, intentionally provisioned misdemeanour sanction of EUR

1,000 for the person responsible at the legal entity that allowed for a minor to take part, but the issue of paying out those tickets remains i.e. the instant tickets that a minor submits for payment i.e. whether the organiser is obligated to pay those tickets i.e. instant lottery tickets provided for payment by a minor. Bearing in mind the fact that the minor has no working capacity i.e. independently cannot undertake rights and obligations the payment would be made out only to his/her parent or guardian.

Supervisory IT system for sports betting

The organiser of games of chance in betting shops has to have a supervisory IT system that should be on the territory of the Republic of Macedonia and which should be connected to the IT system of the Public Revenue Office.

The organisers of games of chance in betting shops that in the period from the day the Law on Games of Chance and Lotteries entered into force until the day the obligation for securing a supervisory IT system went into effect decided to install a supervisory IT system that connects the computers of the organiser of games of chance thus registering the bets and winnings that are paid and it is connected to the IT system of the Public Revenue Office, are obligated to pay a special tax in the amount of 20% that is calculated as the difference between the amount paid for bets from all the computers at all betting locations of the organiser and the paid out winnings from all the computers at all betting locations, monthly, and it should be paid by the 15th of the current month for the previous month.

The organisers of games of chance in betting shops that in the period from the day the Law on Games of Chance and Lotteries entered into force until the day the obligation for securing a supervisory IT system went into effect have failed to install a supervisory IT system that is connected to the IT system of the Public Revenue Office, do not pay the special tax but a duty of MKD 100,000 monthly for each betting location, and they should be paid by the 15th of the current month for the previous month.

The proof of the payment of the special tax the organiser is obligated to submit to the Ministry of Finance by the 15th day of the current month at the latest for the previous month (Article 161 GCL).

The organiser of games of chance in betting shops must have software that satisfies all the technical requirements for organising the game of chance and archiving of data in databases without a possibility to be changed.

The spatial and technical-technological requirements that need to be met by the premises of the betting shops of the organiser of games of chance in betting shops are prescribed by the Minister of Finance with a Rulebook of technical, technological and spatial requirements for organising games of chance and lotteries and professional requirements for the persons hired to conduct the games of chance (Article 82, GCL).

Use of funds from the sports games of chance

The funds from the games of chance the state usually uses to fund activities of broader social interest, usually humanitarian events and sports development.

Hence, the profits from organising games of chance are used for funding national disability organisations, their associations and unions, associations of citizens fighting domestic violence and the Red Cross of the Republic of Macedonia (Article 16, GCL). The amount of the funds for that purpose are set up at 50% of the total revenues from the

games of chance and lotteries established in the previous calendar year, but not less than MKD 60 million and not more than MKD 120 million. The distribution of these funds is done by the Government of the Republic of Macedonia with a decision based on the programme submitted by the Ministry of Labour and Social Policy, and the Ministry of Labour and Social Policy prepares this programme based in the submitted projects by the above mentioned entities, where the amount of funds and the purpose for which they would be used are stated.

The funds collected on any grounds of organising special games of chance are used for funding sports, sport federations and clubs through the Youth and Sport Agency. The amount of the funds for that purpose is established as an amount that must not be below MKD 30 million and more than MKD 50 million. The distribution of these funds is done by the Government of the Republic of Macedonia with a decision, based on a programme submitted by the Youth and Sports Agency and drafted based on the submitted projects by the sports federations and clubs as well as based on their own projects for advancing sports stating the amount and the purpose they would be used for.

Comparison of Macedonian sports betting and funding legislation and practice with the European Union tendencies

In general, Macedonian sports betting legislation is in line with the European standards. The EU Accession Reports on Macedonia clearly indicate the improvement of the legislation in the area of betting. For 2014 the Report states that “The system for taxing gains from games of chance and betting was also simplified”. This tendency is also confirmed in 2005 with the notion that “That taxation of gains from games of chance and betting was further improved with the introduction of obligatory automated IT tracking of payments”.

Future improvements of the Macedonian legislation and practice could continue to incorporate key European developments. This particularly refers to enforcement and raising of public awareness of all stake holders. For instance, it is of crucial importance for Macedonian secondary legislation to rely on the experiences outlined in the key documents that demonstrate the European Union tendencies in the area.

According to the Study on grassroots sports funding, the total budget for grassroots sport components are (demonstrated on Chart 1): membership fees and other expenditures by households; the economic value of the contribution of voluntary work; public sector funding, at national, regional and local levels; revenues from levies and charges on lotteries, betting and gambling operators; revenue from sponsorship, patronage and donations; and revenue from media rights.

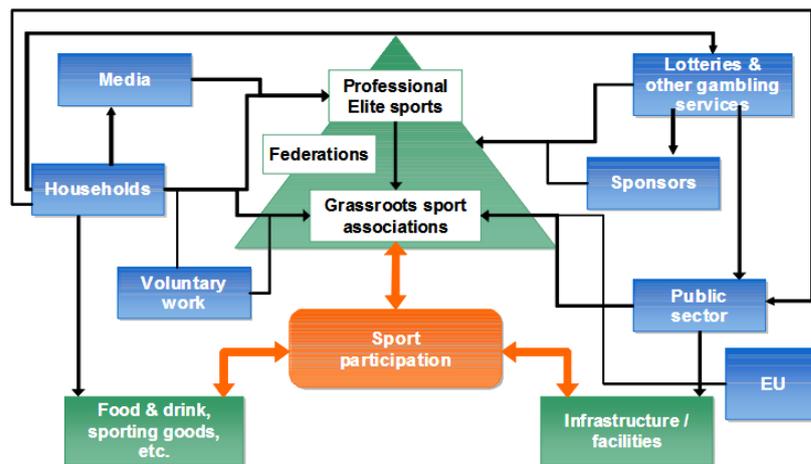


Chart 1. The EU Sport Funding System

Source: Eurostrategies consortium- Study on the funding of grassroots sports in the EU with a focus on the internal market aspects concerning legislative frameworks and systems of financing

CONCLUSIONS

From today's perspective it is evident that only with the mediation by the state the private sector may organise games of chance. Through the system of licensing and issuing working permits the state cedes, if certain conditions for organising games of chance are met, aware of the needs of the market, but it keeps the right to control the legality, the state treasury and activating of instruments for administrative and penal sanctions for the businesses that contrary to the rules it prescribes organise games of chance.

The existence of rules for organising games of chance is important and necessary due to the fact that a mechanism is established which goal is: licensing the right to organise games of chance; control and oversight by the state of a business sector that is prone to money laundering; and

providing legal security for the participants and organisers of games of chance.

The legal regulating of organising of games of chance has great economic significance having in mind the fact that public revenues collected from permits and bulk payments by businesses that organise games of chance and lotteries represent a significant share in budget revenues, and at the same time it means insight by the state in the funds that flow into this system and preventing possible legalisation of criminal proceeds.

The 2011 Law on Games of Chance and Lotteries, while developing solutions based on the previous related laws, created separate legal norms that regulate the related types of social-economic relations (implementation of licensing procedures and legal operation with particular legal

characteristics that enable the specialised business entities to perform a particular activity of legal, economic and social character). The specificity of these legal norms creates more related legal institutes that in their wholeness create a special branch in the law – *law on games of chance* that in its broader sense is part of the family of economic-legal branches of the law, that also belong to the family of the civil branch of the law.

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