

**German Federal Constitutional Court:  
Decision regarding the state-run monopoly  
for sports betting (“Oddset“)**

by *Sabine Reinhardt*, University of Freiburg,  
translated by *Nicolas Glinka*

**Headnote**

A state-run monopoly for sports betting is only conformable with the fundamental right of freedom of profession under Article 12.1 of the Basic Law (Grundgesetz – GG), if its major intention is the fight against the risks of addiction.

**Background**

Until now, public gambling is illegal in Germany and thus punished by § 284 of the federal Penal Law (Strafgesetzbuch – StGB), except for horse-race betting under the Race-betting and Lottery Law (Rennwett- und Lotteriegeseztz). Hence, for the existing private providers it was only possible to offer sports betting, such as the popular betting on soccer matches or other sports, based on old concessions issued by the former German Democratic Republic (East Germany – DDR) which are still valid today, or based on concessions issued by other European Union countries. Only the state-run lottery-provider Oddset was authorized to offer sports betting other than betting on horse-races.

The complainant K., a private bookmaker for horse-race betting, applied in 1997 at the City of Munich for a concession to offer sports betting, or alternatively to arrange sports betting to providers in other European Union countries, which was refused by the City of Munich. The complainant challenged this decision, however without success. In her constitutional complaint, the complainant considers the state-run monopoly for gambling as a disproportional interference with her fundamental right of freedom of profession under Article 12.1 of the Basic Law, a violation of her fundamental right under Article 3.1 of the Basic Law, as well as a violation of European Community Law.

In its judgement of March 28<sup>th</sup> 2006, the Federal Constitutional Court held that the maintenance of a state-run monopoly for sports betting is unconformable with the fundamental right of freedom of profession under Article 12.1 of the Basic Law. According to the court, the fight against the risk of addiction represents an objective of the common welfare of outstanding importance, for which the state bears a duty to protect the health of its citizens. Offering sports betting, Oddset can not consequently pursue the fight against the risks of addiction, since the existing laws do not provide sufficient measures against the risk of addiction. Furthermore, the dangers arising from criminality connected to or following betting have to be antagonized more effectively.

For this reason, the court obliges the legislator to readapt the laws regarding sports betting by December 31<sup>st</sup> 2007 the latest. Though, it is up to the legislator to decide, whether to introduce a liberalization of the sports betting market or to adhere to the monopoly. In particular however, the court requires sports betting to consequently aim for the fight against the risks of addiction in the future. Advertising will only be allowed for the purposes of information and education about the risks of addiction.

For this reason, the respondent – the Free State of Bavaria – has already presented a catalogue of measures on April 4<sup>th</sup> 2006 in order to comply with the Federal Constitutional Court's decision: In particular, there will be no betting during the half time of soccer matches and live-betting

during the matches provided any longer. Furthermore, neither betting by SMS (short message service) nor betting inside football stadiums will be provided anymore. At Oddset's online-service, previous customers have to complete a strict identification procedure and temporarily, no new customers will be accepted. According to the information published by the Free State of Bavaria, the TV-commercials as well as the advertising on boards inside the stadiums will be stopped. The economic results for Oddset emerging from this decision remain to be seen, especially with regard to Oddset's encouragement as national supporter of the soccer worldchampionship 2006 in Germany.

**Decision of the German Federal Constitutional Court:**

[www.bverfg.de/entscheidungen/rs20060328\\_1bvr105401.html](http://www.bverfg.de/entscheidungen/rs20060328_1bvr105401.html)