



Wednesday, July 19, 2006

Q & A: Martin Arendts

by Rob van der Gaast

European gambling's legal battlefield is amassing court cases, particularly in the area of sports betting, and one of the hottest spots has been Germany, where hundreds of cases on sports betting have been heard in the last three years. Making matters particularly interesting are famous verdicts, such as Gambelli (November 2003) and the German Federal Constitutional Court's ruling on March 28, 2006, which have even further complicated a convoluted issue.

One of the main experts in this arena is lawyer Martin Arendts, M.B.L.-HSG. He studied in Passau, Speyer and Hamburg as well as in Switzerland, and he holds sway over four attorneys-at-law and four associates in his "Kanzlei," Arendts Anwälte (www.gaminglaw.de) in Gruenwald, close to München, in south Germany.

Arendts is a well known guest speaker at conferences and seminars in Germany, Austria and at international meetings His specialties are gaming law and associated issues (community law, trademark law, unfair competition law, etc.), as well as capital markets /investment, law (securities regulations, etc.) Arendts, who turns 40 in October, has two sons aged six and seven.

IGN: [How did you get involved in the gambling industry?](#)

Martin Arendts: I represented an Austrian bookmaker in a criminal case and reached the first positive decision of a German court in favor of a foreign bookmaker, simply arguing with Community law (freedom to provide services, inconsistent behavior of the state gaming operators). This bet-at-home.com decision of 27 October, 2003 was even pronounced before the Gambelli judgment.

IGN: [How many clients do you have in this industry?](#)

MA: Quite a few. We represent and give advice to some of the "big players," bookmakers and gaming operators from the U.K., Malta and Austria, but we also act for small betting shops that fight against being closed down by the local authorities. We, of course, represent private operators against state operators which try to foreclose the German gaming market with all means, e.g. claiming unfair competition (with the aim to bar any competition from private operators, which is paradoxical) or monopolizing all relevant terms related to gaming (like "Lotto" or



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"Toto").

IGN: Why did you start up the German Gaming Law Updated news letter?

MA: I asked several bookmakers at the end of 2003 whether they would be interested in a newsletter about legal developments, as I expected the law to change due to the Gambelli decision. The response was quite resounding, so we published the first edition in January 2004. Shortly afterwards, I decided also to publish an English version. The circulation of "Sportwettenrecht aktuell" and "German Gaming Law Updated" is about 300. Apart from direct circulation, our newsletter is published on several Web sites.

IGN: Why is there so much interest in the legal gambling matters in Germany?

MA: Germany is certainly a very interesting market. The legal situation will now definitely change in 2007 with regard to sports betting, as the German Federal Constitutional Court asked the legislator for a new coherent and consistent law. Upholding the state monopoly may prove to be economically unfeasible, so there might be the possibility for an official gaming license in Germany quite soon (although most politicians at the moment want to uphold the state monopoly at any price).

IGN: Is Germany the biggest legal gambling battlefield of the world?

MA: Well, not of the world, but maybe in Europe. Several hundred court decisions have dealt with gaming (almost entirely sports betting) issues over the last three years. Before administrative courts alone, at the moment, there are several hundred cases pending. The Administrative Court of Appeal North Rhine-Westfalia has more than 200 appeal cases at the moment in preliminary proceedings with regard to the closure of betting shops. There are also several hundred criminal procedures against CEOs and agents of foreign bookmakers. Fortunately, most criminal court decisions have been positive.

The state operators, mainly Westlotto, have filed suites against almost all private bookmakers from other EU member states, arguing that the cross-border offering of gaming services is illegal and therefore amounts to unfair competition. Westlotto played this game on its home turf and filed the suits in Cologne. In this case, the judges seemed to be a little bit home-biased. Recently, one presiding judge compared a foreign bookmaker with the Mafia, so I don't really expect an impartial judgment.

The state operators also tried to monopolize all terms associated with gaming by trade marking it. The Federal Court of Justice cancelled the trademark "Lotto" ... (and) argued the term was purely descriptive with regard to gaming and therefore inappropriate for a trademark. We also filed for a cancellation of the trademark "Toto.

Competition law might play a crucial role for the opening of the gambling and betting market. The German Federal Court of Justice, in

its Faber decision, already held a few years ago that the cartelizing of state operators in the Deutscher Lotto- und Toto-Block was problematic. The German Cartel Authority recently pointed out that the remaining private competition had to be protected. The Deutscher Lotto- und Toto-Block must not dictate the conditions of distribution.

IGN: What are the most important gambling verdicts in Germany?

MA: Clearly the decision of the Federal Constitutional Court of March 28, 2006 is the most important judgment. The court framed the rules for the new law. For practical reasons, the new decision of the Administrative Court of Appeal North Rhine-Westphalia of June 28, 2006 has the most damaging effects at the moment. In the long run, however, it might prove to remain a Pyrrhic victory for the supporters of the state monopoly. The decision is so obviously against the fundamental principles of Community law (the court simply suspended the applicability of Community law), that a German court may now finally bring a German case to the European Court of Justice.

IGN: And what is still in the legal pipeline?

MA: Lots of courts decisions and lots of political hearings and initiatives. Suddenly, gaming has become a highly political topic. It is still not clear how the legal situation will look like next year.

IGN: What was your most important legal gambling court case?

MA: Still my first court case with regard to gambling: the bet-at-home.com decision. I also hope to bring a German case to the European Court of Justice.

IGN: What will happen with sports betting in Germany? Will it lead to a free market?

MA: In the long run, certainly. However, I fear that quite a lot of betting shops will be closed in the next months. At the moment, there is really a street battle between the supporters of the state monopoly (supported by the federal and state governments) and the supporters of a liberalized, but regulated market.

IGN: What do you think of the role of the EU Commission?

MA: The Commission is quite important, as it put gaming on the agenda (and commissioned a comprehensive study on the gaming market). From a political point of view (also most court cases on gaming issues are somehow political), the letter of formal notice (the first step to start an infringement procedure) is already a quite important political statement. However, it will take years for a decision of the European Court of Justice in the infringement procedure.

IGN: Do you see any positive legal developments in Europe?

MA: Yes, the Placanica decision might open up the market, if the

European Court of Justice follows the well reasoned opinion of the Advocate General. Also, the EFTA Court might decide quite soon on the Norwegian monopoly with regard to gaming machines.

IGN: [What irritates you the most in the gambling industry?](#)

MA: At the moment, biased judges. I also want a level-playing field for state and private operators. In the present era of globalization, national monopolies are out-dated.

IGN: [How will the legal situation evolve?](#)

MA: There is a very simple truth about betting and other forms of gaming: You can make it illegal, but you cannot make it unpopular. Therefore, from my point of view, a change of the status quo is inevitable. The European Union might play a decisive role. It is unlikely that member states will adopt, on their own initiative, fair betting regulation in the near future (except for Germany, which will have to follow the guidelines of the Constitutional Court). So the Commission should propose harmonized rules in this field, which would meet consumer protection and public order objectives. With harmonized rules betting and gaming can be conducted in a fair, crime-free and socially responsible way, on a par with other businesses. Maybe in 10 years gaming operators can work on a pan-European level with a "European passport."

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About the Author

Rob van der Gaast has a background in sports journalism. He worked for over seven years as the head of sports for Dutch National Radio and has developed new concepts for the TV and the gambling industry. Now he operates from Istanbul as an independent gambling research analyst. He specializes in European gambling matters and in privatizations of gambling operators. Rob has contributed to IGN since Jul 09, 2001.