

The impact of monopolization of the gambling sector in the Republic of Moldova on criminal liability for manipulation of an event and arranged bets¹

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Abstract

This paper analyzes the impact of monopolization of the gambling sector in the Republic of Moldova on criminal liability for manipulation of an event and the arranged bets. In this respect, the author made use of the regulatory framework, doctrinal approaches, as well as the judicial practice in this field. In the light of the jurisprudence of the Court of Justice of the European Union, it was concluded that monopoly in the field of gambling could be justified only if the goal to combat the dangers of gambling is pursued in a coherent and systematic manner. Moreover, it has been stated that the Parliament of the Republic of Moldova hurried to decide on the establishment of the state monopoly on the gambling sector, there being no large public debate in respect of this issue. On the other hand, it was shown that the state cannot appear as a victim of the arranged bets offence, even though in the Republic of Moldova the activity of organizing and conducting betting is the monopoly of the state. It has also been concluded that there is no objective and reasonable argument to prohibit bets on events that have no sporting nature in the Republic of Moldova. Furthermore, legislative inconsistencies in this field have been highlighted and solutions have been proposed.

Keywords: monopoly, gambling, betting, sports event, betting event, manipulation of sports competitions, match-fixing.

JEL Classification: K14

1. Introduction

Gambling has a considerable economic significance. At the same time, this activity rises serious risks to society. For these reasons, states have felt the need to establish rigorous and unitary regulations in this matter.

In the Republic of Moldova, the legal framework for the organization and conduct of gambling was first set up by Law no. 285 of 18 February 1999 on gambling³ (hereinafter referred to as *brevitatis causa* – „Law no. 285/1999”).

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³ The Law of the Republic of Moldova no. 285 of 18 February 1999 on gambling (repealed), published in the Official Gazette of the Republic of Moldova, 1999, no. 50-52.

According to this Law, only the development of national lotteries constituted the monopoly of the state.

In essence, Law no. 285/1999 regulates, under certain conditions, an open market for the organization and carrying of gambling on the territory of the Republic of Moldova.

Later, things took another turn. *In concreto*, on 16 December, 2016, the Parliament of the Republic of Moldova enacted the Law no. 291 on the organization and carrying of gambling⁴ („Law no. 291/2016”), which, as a matter of fact, has replaced (from 6 January 2017 – the date of publication and, accordingly, the date of entry into force) Law no. 285/1999.

According to Art. 3 para. (1) of the Law no. 291/2016, the organization and conduct out of the activity in the field of gambling on the territory of the Republic of Moldova, except for the maintenance of casinos, is a state monopoly and takes place under the provisions of that law.

At the same time, according to paras. (2) and (3) of the same article, the state monopoly on gambling activity is carried out by the state through the National Lottery of Moldova. Moreover, gambling organization activity, which is a state monopoly – the National Lottery of Moldova – is not subject to licensing.

Some of the provisions of the Law no. 291/2016 are reference norms for Art. 242¹ „Manipulation of an event” and Art. 242² „Arranged bets”⁵ of the Penal Code of the Republic of Moldova („PC RM”).

In this article the author proposes to estimate the impact of the monopolization of the gambling sector in the Republic of Moldova on the criminal liability for such activities as manipulation of an event and arranged bets, taking into consideration in this respect the broad legal provisions, doctrinal approaches, as well as the judicial practice.

2. The concept of „manipulation of an event” and „arranged bets”

In order to achieve the proposed goal, first of all, it is necessary to elucidate the concepts of „manipulation of an event” and „arranged bets” in the meaning conferred by the criminal law of the Republic of Moldova.

Thus, according to Art. 242¹ para. (1) PC RM, „manipulation of an event” means encouraging, influencing or training a participant in a sports event or a betting event to take actions that would produce a vicious effect on the event in order to obtain goods, services, privileges or benefits in any form whatsoever, for

⁴ The Law of the Republic of Moldova no. 291 of 16 December 2016 on the organization and conduct of gambling, published in the Official Gazette of the Republic of Moldova, 2017, no. 2-8.

⁵ Art. 242¹ „Manipulation of an event” and Art. 242² „Arranged bets” have supplemented the Criminal Code of the Republic of Moldova following the enactment by the Parliament of the Republic of Moldova of the Law no. 38 of 21 March 2013 amending and supplementing certain legislative acts (published in the Official Gazette of the Republic of Moldova, 2013, no. 75-81), in force since 12 April 2013.

which he is not entitled to himself or to another person⁶. Such unlawful conduct shall be punished by a fine of 2350 to 4350 conventional units or by one to three years imprisonment, in both cases with the deprivation of the right to occupy certain positions or to exercise a particular activity for a term up to 3 years; the legal entity is punished by a fine from 6000 to 9000 conventional units⁷ with deprivation of the right to exercise a certain activity⁸.

The same actions committed by a coach, an agent of the athlete, a jury member, a sports club owner or a person in charge of a sports organization shall be punished, in accordance with Art. 242¹ para. (2) CP RM, with a fine from 3350 to 5550 conventional units or 2 to 6 years' imprisonment, in both cases with deprivation of the right to occupy certain positions or to exercise a certain activity for a period of 4 to 7 years.

In turn, in accordance with Art. 242² para. (1) PC RM, „arranged bets” involve betting on a sporting event or other betting event or informing others about the existence of an agreement regarding the trickle of that event in an attempt to cause them to participate in the bet made by a person who knows for sure about the existence of a deal about the harassment of that event. Such actions shall be

⁶ According to Art. 3 on the Convention on the Manipulation of Sports Competitions, drawn up at Magglingen/Macolin on 18 September 2014*, „manipulation of sports competitions” means an intentional arrangement, act or omission aimed at an improper alteration of the result or the course of a sports competition in order to remove all or part of the unpredictable nature of the aforementioned sports competition with a view to obtaining an undue advantage for oneself or for others**. It is worth mentioning that on June 18, 2015 the President of the Republic of Moldova issued the Decree no. 1646***, approving the signing of the Council of Europe Convention on Handling in Sport Competitions (the Permanent Representative of the Republic of Moldova to the Council of Europe signed the Convention of April 29, 2016 in Strasbourg, and therefore the Republic of Moldova became the 22nd state signing this Council of Europe legal instrument), which is salutary. However, it is unclear: why is the Republic of Moldova hesitating to ratify this Convention? For now, this Convention has been signed by 31 states (but for unexplained reasons, they are not in a hurry to ratify it) and, regrettably, we find that it has not yet entered into force. This is because the Convention has so far been ratified only by three countries - Norway (9 December 2014), Portugal (29 September 2015) and Ukraine (10 January 2017). However, this Convention will enter into force only upon the submission of 5 instruments of ratification, 3 of which needs to come from the Council of Europe member states. Thus, it seems that the entry into force of this Convention is a matter of time.

* Council of Europe Convention on the Manipulation of Sports Competitions, Magglingen/Macolin, 18.IX.2014, available online on: <https://rm.coe.int/16801cdd7e> (consulted on 20.03.2018)

** For a thorough analysis of the text of the Council of Europe Convention on Manipulation of Sports Competitions, see: Tom Serby, *The Council of Europe Convention on Manipulation of Sports Competitions: The Best Bet for The Global Fight Against Match-Fixing?*, in „The International Sports Law Journal”, 2015, vol. 15, iss. 1, p. 83-100.

*** Decree of the President of the Republic of Moldova no. 1646 of 18 June 2015 approving the signing of the Council of Europe Convention on the Manipulation of Sports Competitions, published in the Official Gazette of the Republic of Moldova, 2015, no. 161-167.

⁷ According to art. 64 para. (2) of PC RM, a conventional unit of fine is equal to 50 lei. At the time of drafting these lines, a Moldovan lei (MDL) equaled about RON 4,4 Romanian (RON) or EUR 0,05.

⁸ According to art. 65 para. (2) PC RM, deprivation of the right to occupy certain positions or to exercise a certain activity may be determined by the court for a period of 1 to 5 years, and in the cases expressly provided for in the Special Part of this Code – for a term from one year to 15 years.

punished by a fine of 2350 to 4350 conventional units or by one to three years' imprisonment, and the legal entity shall be liable to a fine of between 6,000 and 8,000 conventional units with deprivation of the right to exercise a particular activity.

Lastly, liability gets worse, pursuant to Art. 242² para. (2) PC RM, whether the actions provided in para. (1) of the same article are committed by an organized criminal group or by a criminal organization [letter a)] or have caused particular damage⁹ [letter b)]. Under such circumstances, the offence of the arranged bets is punished by a fine of 3350 to 5350 conventional units or by imprisonment from 2 to 6 years, and the legal entity is punished by a fine of 9000 to 11000 conventional units with deprivation of the right to exercise a certain activity.

3. Justification of the state monopoly in the field of gambling

The aforementioned legal provisions on the manipulation of an event and betting imply the question: is the Moldovan lawmaker's option to monopolize the gaming sector justified (except for the maintenance of casinos, which has not been monopolized by the state)? Striving to seek the answer, we shall refer to the case-law of the Court of Justice of the European Union („CJEU”), as well as to the preparatory acts underlying the enactment of Law no. 291/2016.

In this regard, we assume that the gambling sector is not subject to uniform regulation at the level of the Council of Europe or of the European Union (although the European Union's endogenous structures are making efforts to do so¹⁰), and there are considerable differences between national laws, dictated by the particular cultural, social and historical particularities of each country. Lacking a consensus, the States have a wide margin of appreciation and are therefore free to set their own gaming policy objectives according to their own scale of values and to adopt

⁹ In accordance with Art. 126 para. (1¹) of PC RM, the value of stolen, acquired, received, manufactured, destroyed, used, transported, stored, marketed, stolen goods, the value of the damage caused by a person or group of persons exceeding the value of the goods stolen, acquired, received, manufactured, 40 monthly average monthly salaries forecast, as established by Government decision in force at the time the crime was committed. In the Republic of Moldova, for the year 2018, the average forecasted monthly salary per economy is 6150 MDL. *See*: Government Decision of the Republic of Moldova no. 54 of 17 January 2018 regarding the approval of the average monthly salary per economy, planned for 2018, published in the Official Gazette of the Republic of Moldova, 2018, no. 18-26.

¹⁰ Under the auspices of the European Union, a number of acts aimed at harmonizing the legislation on gambling have been adopted, *see*: Conclusions on the framework for gambling and betting in the EU member states, available online on: <https://goo.gl/cZkDvC> (consulted on 20.03.2018); Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the regions Towards a comprehensive European framework for online gambling (COM/2012/0596 final), available online on: <https://goo.gl/bsUX1q> (consulted on 20.03.2018); European Parliament resolution of 10 March 2009 on the integrity of online gambling (2008/2215(INI)), available online on: <https://goo.gl/qbMrB8> (consulted on 20.03.2018); European Parliament resolution of 15 November 2011 on online gambling in the Internal Market (2011/2084(INI)), available online on: <https://goo.gl/gt57q4> (consulted on 20.03.2018); etc.

the most appropriate regulatory model for the national gambling market. However, as we shall see below, this margin of appreciation is not unlimited, being circumscribed to the requirements of the CJEU case law.

The CJEU has often been called upon to rule on the conformity of a monopoly on gambling with the freedom of movement of services, guaranteed by art. 56 of the Treaty on the Functioning of the European Union („TFEU”). Preliminary, CJEU tried to define the scope of the fundamental freedoms in the area of gambling and to identify which fundamental freedoms could be claimed to protect gambling operators planning to expand their activities at cross-border level¹¹. Thus, in the *Schindler* case¹², ECJ held that the provision of cross-border gambling opportunities or the marketing promotion of such opportunities (this case was about lottery tickets and advertisements) fall within the scope of the right to provide services¹³. This is taken up by the CJEU in various cases¹⁴.

Therefore, the organization and carrying of gambling is an economic activity, falls under the scope of art. 56 TFEU¹⁵ (which, *inter alia*, provides that restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended) and therefore concerns the freedom to provide services¹⁶ (and not the freedom of movement of goods).

¹¹ Thomas Papadopoulos, *The Evolution of the European Court of Justice's Case Law on Gambling and Sports Betting: An Internal Market Perspective*, in Dimitrios P. Panagiotopoulos (ed.), *Sports Law: An Emerging Legal Order, Human Rights of Athletes*, Nomiki Vivliothiki, Athens, 2009, pp. 415-429; see also in „Revista română de drept al afacerilor”, 2012, nr. 10, p. 44-73.

¹² ECJ, Judgment of the 24 March 1994, *Schindler*, Case C-275/92, §36-37, available online on: <https://goo.gl/R3oa9N> (consulted on 20.03.2018)

¹³ Thomas Papadopoulos, *The Evolution of the European Court of Justice's Case Law on Gambling and Sports Betting: An Internal Market Perspective*, in „Revista română de drept al afacerilor”, 2012, nr. 10, p. 50.

¹⁴ For example, *see*: ECJ, Judgment of 21 September 1999, *Läärä and Others*, C-124/97, available online on: <https://goo.gl/oJxM2F> (consulted on 20.03.2018); ECJ, Judgment of 21 October 1999, *Zenatti*, Case C-67/98, available online on: <https://goo.gl/6Q7TNk> (consulted on 20.03.2018); ECJ, Judgment of Court 6 November 2003, *Gambelli and Others*, Case C-243/01, available online on: <https://goo.gl/iZiYnR> (consulted on 20.03.2018); ECJ, Judgment of 6 March 2007, *Placanica*, joined Cases C-338/04, C-359/04 and C-360/04, available online on: <https://goo.gl/xXMwzy> (consulted on 20.03.2018)

¹⁵ In the same sense, *see*: Alan Littler, *Regulatory perspectives on the future of interactive gambling in the internal market*, in „European Law Review”, vol. 33, no. 2, p. 211-229; Anastasios Kaburakis, *European Union Law, Gambling, and Sport Betting: European Court of Justice Jurisprudence, Member States Case Law, and Policy*, in Paul M. Anderson et al. (eds.), *Sports Betting: Law and Policy*, ASSER International Sports Law Series, T.M.C. ASSER Press, 2012, Hague, p. 31-32; Marius Pantea, *Managementul activităților de prevenire și combatere a ilegalităților în domeniul jocurilor de noroc în Uniunea Europeană*, Pro Universitaria, Bucharest, 2011, p. 462.

¹⁶ In contrast, the German Constitutional Court has held that the State monopoly on betting is an interference with the freedom of choice and exercise of the profession, guaranteed by par. (1) art. 12 of the Basic Law (*Grundgesetz*) of Germany. The interference is that the monopoly excludes the possibility of betting or intermediation by private companies as a professional activity. At the same time, it has been decided that the state monopoly on sports betting is compatible with the fundamental right of freedom of choice and exercise of the profession only if it consistently seeks

Hence the following finding: the establishment of the monopoly in the gambling sector affects the freedom to provide services and constitutes an interference (restriction) to it. However, the freedom in question is not part of the category of absolute rights¹⁷, the restriction of which is excluded *de plano*. It can not be exercised *in absurdum*, but may be subject to limitations which must be reasonably justified, necessary and proportionate to the aim pursued.

In accordance with settled case-law, Member States of the European Union (where the Republic of Moldova tends to become a member) may restrict the organization and operation of gambling activities on their territory for overriding reasons of general interest such as the fight against crime, consumer protection, prevention of fraud and incitement to excessive spending on gambling and the prevention of social unrest¹⁸. As an example, in case *Liga Portuguesa de Futebol Profissional*¹⁹, the CJEU noted that the fight against crime may constitute an overriding reason in the public interest that is capable of justifying restrictions in respect of operators authorised to offer services in the games-of-chance sector. Games of chance (in this case sports betting) involve a high risk of crime or fraud, given the scale of the earnings and the potential winnings on offer to gamblers. The CJEU has also recognised that limited authorisation of games on an exclusive basis has the advantage of confining the operation of gambling within controlled channels and of preventing the risk of fraud or crime in the context of such operation²⁰.

In *Zeturf*, the CJEU admitted that a Member State that is seeking to ensure a particularly high level of consumer protection in the gambling sector may be justified in taking the view that it is only by granting exclusive rights to a single body, subject to strict control by the public authorities, that it can tackle the risks connected with that sector and pursue the objective of preventing incitement to squander money on gambling and of combating addiction to gambling with sufficient effectiveness. In order to be consistent with the objectives of combating criminality and reducing gambling opportunities, national legislation establishing a gambling monopoly must: be based on a finding that criminal and fraudulent activities linked to gaming and gambling addiction are a problem in the territory of

to combat the dangers of addiction. For more details, see: BVerfGE 115, 276 (*Sportwetten*), în *Selecții de decizii ale Curții Constituționale Federale a Germaniei*, C.H. Beck, Bucharest, 2013, p. 412-416.

¹⁷ In this context, we adhere to the opinion expressed in the literature, according to which, from a legal point of view, „right is a freedom, and freedom is a right”. See: Ioan Muraru, Elena Simina Tănăsescu, *Drept constituțional și instituții politice*, vol. I, the 12th edition, All Beck, Bucharest, 2005, p. 141.

¹⁸ For example, see: ECJ, Judgment of 8 September 2010, *Carmen Media Group Ltd and Others*, Case C-46/08, §55, available online on: <https://goo.gl/5bRMQY>; ECJ, Judgment of 19 July 2012, *Garkalns SIA*, Case C-470/11, §39, available online on: <https://goo.gl/pNakRR>; etc.

¹⁹ For an economic approach to this case, see: Luca Rebeggiani, *The Liga Portuguesa Decision of the European Court of Justice – An Economist's View*, in „Rivista di Diritto ed Economia dello Sport”, vol. 5(3), p. 111-122.

²⁰ ECJ, Judgment of 8 September 2009, *Liga Portuguesa de Futebol Profissional*, Case C-42/07, §63-64, available online on: <https://goo.gl/EugFUT> (consulted on 20.03.2018).

the Member State concerned, which the expansion of authorised and regulated activities would be capable of solving, and allow only advertising that is measured and strictly limited to what is necessary in order to channel consumers towards controlled gaming networks²¹.

Applying these reasoning in *Stanleybet International and others*, the CJEU stated that European Union law is opposed to national regulation (in the case of Greece²²) which grants the exclusive right to run, manage, organise and operate games of chance (and in this case, it is sports betting) to a single entity, where, firstly, that legislation does not genuinely meet the concern to reduce opportunities for gambling and to limit activities in that domain in a consistent and systematic manner and, secondly, where strict control by the public authorities of the expansion of the sector of games of chance, solely in so far as is necessary to combat criminality linked to those games²³. Therefore, the CJEU has sent a clear and straightforward message to the Hellenic Republic, namely: the monopoly on the organization and conduct of bets, in the circumstances of the case, would be contrary to the principle of proportionality and non-discrimination, as outlined in the CJEU case-law. Moreover, the legality of the monopoly in Greece on the conduct and organization of sports betting has been questioned prior to the ruling of the CJEU in the above-mentioned case²⁴. It seems that some have anticipated the scenario (inevitable) that could follow.

Moreover, in another case (*Pfleger and others*) illustrative for our study, the CJEU has put some of the provisions in Austria under the wrath of the analysis, according to which the right to organize gambling is reserved for the federal state. In particular, it was noted that the court that heard the CJEU estimated that the national authorities (Austria is considering) have not shown that crime and/or addiction to gambling actually constituted, during the period at issue, a significant problem. And the real objective of the restrictive regime in question the real purpose of the restrictive system at issue is not the fight against crime and the protection of gamblers, but a mere increase of State tax revenue. In any event, that system appears to be disproportionate, since it is not appropriate for the purpose of guaranteeing the consistency required by the Court's case-law and goes beyond what is necessary in order to attain the declared objectives pursue. For these reasons, it was decided that Art. 56 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, where that legislation does not actually pursue the objective of protecting gamblers or fighting

²¹ ECJ, Judgment of 30 June 2011, *Zeturf Ltd*, Case C-212/08, §72, available online on: <https://goo.gl/9y91Rr> (consulted on 20.03.2018).

²² For a detailed analysis of this case, see: Petroula Lisgara, *A state supervised monopoly in the betting market: a legal and economic assessment of the regulatory framework in Greece*, in „The International Sports Law Journal”, vol. 13, iss. 3-4, p.251-267.

²³ ECJ, Judgment of 24 January 2013, *Stanleybet International Ltd and Others*, Joined Cases C-186/11 and C-209/11, para. 36, available online on: <https://goo.gl/RwssZf> (consulted on 20.03.2018).

²⁴ Marios Papaloukas, *The legality of the Greek Sports Betting Monopoly under European Law*, in „The International Sports Law Review”, vol. 9, iss. 1-2, 2011, p. 203-208.

crime and does not genuinely meet the concern to reduce opportunities for gambling or to fight gambling-related crime in a consistent and systematic manner²⁵.

On another occasion, the CJEU has decided that restrictions on the free provision of gambling services must additionally meet the requirements of the general principles of European Union law, in particular the principles of legal certainty and the protection of legitimate expectations and the right to property²⁶. In that context, it is for the national courts to carry out a global assessment of the circumstances in which restrictive legislation was adopted and implemented on the basis of the evidence provided by the competent authorities of the Member State, seeking to demonstrate the existence of objectives capable of justifying a restriction of a fundamental freedom guaranteed by the TFEU and its proportionality²⁷.

Nevertheless, in the most recent case (*Sporting Odds*)²⁸ relevant to our analysis, the CJEU reiterated that fact that some types of games of chance are subject to a public monopoly whilst others are subject to a system of authorisations granted to private operators cannot, in itself, deprive of justification, having regard to the legitimate aims which they pursue, measures which, like the public monopoly, appear at first sight to be the most restrictive and the most effective. Such a divergence in legal regimes is not, in itself, capable of affecting the suitability of such a public monopoly for achieving the objective of preventing citizens from being incited to squander money on gambling and of combating addiction to the latter, for which it was established. However, a system of dual organisation of the market for games of chance may be contrary to Art. 56 TFEU if it is found that the competent authorities pursue policies seeking to encourage participation in games of chance other than those covered by the State monopoly rather than to reduce opportunities for gambling and to limit activities in that area in a consistent and systematic manner so that the aim of preventing incitement to squander money on gambling and of combating addiction to the latter, which was at the root of the establishment of the said monopoly, can no longer be effectively pursued by means of the monopoly.

Generalizing the above, we conclude that the monopoly on gambling in general and on betting in particular could only be justified if the aim of combating the dangers of gambling is pursued consistently and systematically.

In the case of the Republic of Moldova, it should be recalled that in the informative note (explanatory memorandum) which accompanied the draft Law no. 291/2016 (we reiterate: the law that monopolized the gambling sector, except for

²⁵ ECJ, Judgment of 30 April 2014, *Pfleger and Others*, Joined Cases C-186/11 and C-209/11, §54-56, available online on: <https://goo.gl/PK9rS9> (consulted on 20.03.2018).

²⁶ ECJ, Judgment of 11 June 2015, *Berlington Hungary and Others*, Case C-98/14, §92, available online on: <https://goo.gl/PYb4jB> (consulted on 20.03.2018).

²⁷ ECJ, Judgment of 14 June 2017, *Online Games and Others*, Case C-685/15, §65, available online on: <https://goo.gl/R3QFBr> (consulted on 20.03.2018).

²⁸ ECJ, Judgment of 28 February 2018, *Sporting Odds Ltd*, Case C-3/17, §23-24, available online on: <https://goo.gl/zjWZe9> (consulted on 20.03.2018).

the maintenance of casinos) it was claimed that „following the analysis of the current situation and the legislation regulating the activity in the field of gambling, there were identified the following main problems existing in this field: 1) the low level, even complete lack, of social responsibility of gambling operators, which is expressed by the chaotic placement of gaming sites nearby the institutions of social importance (for example, educational institutions), which often do not meet the basic requirements of the sanitary-technical norms and safety requirements. This also contributes to attracting minors to gambling, which in itself is a negative factor in the education of young generation and of the citizens of the Republic of Moldova; 2) lack of adequate state control in regulating gambling in the Republic of Moldova, which jeopardizes the principle of equity (justice) towards all participants in this process both organizers and players; 3) lack of transparency of the economic and financial activity of economic agents – operators in the field of gambling, which leads to evasion from payment of taxes and duties to the local and national budgets; 4) import of gambling equipment, which in most cases does not meet modern requirements and represents a barrier to solving the problem of online control of electronic gaming connected to the single tax system; 5) lack of developed infrastructure in the field, which exerts a negative influence on tourism and leisure time of Moldovan citizens and guests”²⁹.

Under such circumstances, it was appreciated³⁰ that the establishment of state monopoly on gambling (except for casino maintenance, for which it is claimed that drastic regulatory conditions were foreseen) will ensure: a) rigorous control and monitoring system of the sector that will diminish the negative social impact registered in the last period; b) preventing and combating unauthorized gambling; c) reducing tax evasion and increasing the state budget revenues; d) protecting the general public interest and preventing addiction to gambling and consumer protection in general and among young people up to 21 years of age in particular.

We find that these arguments did not convince everyone. In particular, in the Anti-Corruption Expertise Report (prepared by the National Anticorruption Center of the Republic of Moldova) to the draft Law no. 291/2016 it was argued that the reasons provided in the Informative Note are too vague³¹. It was noted that although the state monopoly on gambling represented a radical change in the way this area activated at that moment, there was a risk that the current gambling problems would continue to persist. Also, the level at which the National Lottery of Moldova (entity in charge of state gambling activities) is prepared to manage the gaming sector was uncertain as well as the reason why certain limits have not been established with a view to expand and develop games in order to reduce the

²⁹ Informative note to the Draft Law no. 459 of 5 December 2016, available online on: <https://goo.gl/pQNTs9> (consulted on 20.03.2018).

³⁰ *Ibidem*.

³¹ Anti-Corruption Expert Report no. EL017/3874 of 23 January 2017 to the draft law on the organization and conduct of gambling, available online on: <https://goo.gl/pQNTs9> (consulted on 20.03.2018).

number of participants and the negative social consequences of this type of activity. However, although the gambling damage has been referred to, in fact, the new regulatory framework creates conditions for their development and expansion outside the municipalities inhabited by low-income citizens who are tempted by the opportunity to get a potential gain³². Also, it was noted that the authors of the draft Law no. 291/2016 have not specified whether other regulatory options for the gaming sector were also considered. It was also pointed out that the economic and financial analysis, as well as the regulatory impact analysis (including entrepreneurial activity), which will be the reasoning on the basis of the cost and benefit assessment, the necessity of adopting the normative act, is also necessary. However, such an analysis was missing³³.

In the same order of ideas, absence of a regulatory impact analysis and of a (necessary) expertise in respect of the legislative initiative aimed at monopolizing the gambling sector has also been emphasized by the Legal Directorate of the Parliament of the Republic of Moldova³⁴, as well as by some Members of Parliament during the debates and approval of the Law no. 291/2016³⁵.

We support these objections, too. According to the rules of legislative technique, the informative note (*i.e.* the explanatory memorandum) to a draft normative act must include, *inter alia*: the conditions that required the elaboration of the draft normative act and the goals pursued; description of the degree of compatibility in case of drafts aimed at harmonizing national legislation with European Union law; economic and financial reasoning; the manner in which the act shall be incorporated into the existing regulatory framework; opinions of public authorities and public consultation of the draft law; findings of the anti-corruption expertise; findings of the compatibility expertise with European Union legislation; findings of legal expertise; findings of other expertise.

The promoters of monopolization in the field of gambling in the Republic of Moldova failed to take into account all these requirements. In this context, we note that only anticorruption expertise has been performed in respect of the draft law, which, in fact, has revealed a number of inconsistencies, implicitly suggesting to abandon the idea of monopolizing the gambling sector. However, this expertise was presented *post factum* (Law no. 291/2016 was adopted on 16 December 2016, while the aforementioned expertise was submitted on 23 January 2017) and therefore remained unanswered, with no echo.

At the same time, the alleged „main problems” identified in the field of gambling (by the authors of the Law no. 291/2016) do not seem to be supported by probative evidence. As a matter of fact, no reference was made to an act that would

³² *Ibidem.*

³³ *Ibidem.*

³⁴ Opinion of the Juridical Directorate of the Parliament of the Republic of Moldova on the draft law on the organization and conduct of gambling (no. 459 of 5 December 2016), available online on: <https://goo.gl/pQNTs9> (consulted on 20.03.2018).

³⁵ Verbatim Report of the Parliament of the Republic of Moldova of 8 December 2016, available online on: <https://goo.gl/RbBJvW> (consulted on 20.03.2018).

prove the facts set forth in the informative note accompanying this draft normative act that underpinned the adoption of Law no. 291/2016.

Furthermore, the aims justifying the state monopoly on gambling sound quite reluctantly. Particularly, we should focus our attention also on the following issue (quite strident): was monopolization of the gambling sector in general and of bets in particular meant to combat the crime of manipulation of an event and arranged bets? This question is conditioned by the fact that, according to Art. 3 para. (5) let. d) of the Law no. 291/2016, one of the principles of state policy in the field of organizing and conducting gambling is to ensure that no external influence can be exercised upon the results of gambling.

In this regard, the preamble to the Council of Europe Convention on the manipulation of sports competitions of 18 September 2014, *inter alia*, emphasizes that: „[...] every country and every type of sport in the world may potentially be affected by the manipulation of sports competitions and emphasising that this phenomenon, as a global threat to the integrity of sport, needs a global response which must also be supported by States which are not members of the Council of Europe. [...] manipulation of sports competitions may be related or unrelated to sports betting, and related or unrelated to criminal offences, and that it should be dealt with in all cases”³⁶.

In his respect, the juridical doctrine has properly pointed out that „in the case of a sports event that is a betting event, it is not excluded that the same person commits both: the offense of manipulation of an event and the arranged bets. This may become possible if the information on the existence of a bargaining arrangement is held by a person who has previously encouraged, influenced or instructed a participant in a sports event or a betting event to take actions that would have a vicious effect on the given event in order to obtain goods, services, privileges or benefits in any form whatsoever which do not belong to him/her or to another person”³⁷. In brief, the offense specified in Art. 242¹ PC RM may be etiologically connected with the offense provided in Art. 242² PC RM³⁸.

In our opinion, the ability to obtain goods, services, privileges or benefits in any form as a result of betting on a certain result is the catalyst for committing the act of manipulation of an event. However, it is also true that the perpetrator may commit the offense of manipulating of an event not necessarily with a view to a later bet on that tricky event but, for example, to achieve certain sports objectives (semi-finals or the final of a championship, etc.). Even if we assume that when the offense of manipulating an event is committed, the perpetrator tends to bet on that

³⁶ In the same sense, *see*: Kevin Carpenter, *Global Match-Fixing and the United States' Role in Upholding Sporting Integrity*, in „Berkeley Journal of Entertainment and Sports Law”, 2013, vol. 2, iss. 1, pp. 214-229.

³⁷ Sergiu Brînza, Vitalie Stati, *Tratat de drept penal. Partea Specială, Vol. II*, Tipografia Centrală, Chişinău, 2015, p. 118-119; Vitalie Stati, *Răspunderea penală pentru pariurile aranjate (art.242² CP RM). Partea II*, in „Revista Națională de Drept”, 2014, no. 2, p. 3; Vitalie Stati, *Infrațiuni economice: Note de curs*, CEP USM, Chişinău, 2014, p. 199; Vitalie Stati, *Infrațiuni economice: Note de curs*, 2nd edition, reviewed and updated, CEP USM, Chişinău, 2016, p. 241.

³⁸ *Ibidem*.

vicious event or inform other people of the existence of a deal to trick a sporting event in order to cause them to bet (*i.e.* to commit the offence of the arranged bets); however, it is not clear, as it has been pointed out in the juridical literature, whether and to what extent the limitation of the offer of certain types of betting (sports) is intended to prevent match-fixing³⁹. *A fortiori*, it has been demonstrated that even where the betting market is monopolized, the phenomenon of arranged matches makes still exists⁴⁰. In the alternative, the monopoly on bets can be easily eluded, as other operators in other countries, where the gambling market is open, offer online opportunities to bet everywhere in the world (and it is not clear how will the Republic of Moldova fight this state of affairs). As a matter of fact, the study of judicial practice denotes that those who know about the existence of an agreement in respect of the trickle of a sports event bet on it, as a rule, in the digital environment⁴¹, making use of betting houses situated abroad.

Therefore, it would be an illusion to believe that the monopoly of gambling could lead to the complete eradication of the facts incriminated in Art. 242¹ and 242² PC RM.

In the context of the above stated, we cannot but notice the speed with which the proposed law was adopted. More precisely, the draft law preceding the adoption of Law no. 291/2016 was registered (by a group of MPs) in the Parliament of the Republic of Moldova on 5 December 2016 and was adopted in final reading on 16 December 2016, *i.e.* after 11 days in absence of a wide debate and without conducting empirical studies⁴². Why was it adopted in such a hurry? Is the monopolization of this sector the only solution to tackle alleged gambling problems? Why other variants have not been taken into consideration⁴³?

³⁹ Ben Van Rompuy, *Limitations on the Sports Betting Offer to Combat Match Fixing: Experiences from Europe*, in „Gaming Law Review and Economics”, 2014, vol. 18, no. 10, p. 993.

⁴⁰ Parimal Kanti Bag, Bibhas Saha, *Match-Fixing in a Monopoly Betting Market*, in „Journal of Economics & Management Strategy”, 2016, vol. 26, iss. 1, p. 257-289.

⁴¹ For more details, *see*: Gheorghe Reniță, *Controverse legate de răspunderea penală pentru manipularea unui eveniment și pariurile aranjate săvârșite în cyberspațiu*, in Scientific Review of the State University of Moldova „Studia Universitatis”, the "Social Sciences" series, 2017, no. 8(108), pp. 223-245.

⁴² In contrast, ECJ has stated that to justify a public monopoly on bets on sporting competitions and lotteries, such as those at issue in the cases in the main proceedings, by an objective of preventing incitement to squander money on gambling and combating addiction to the latter, the national authorities concerned do not necessarily have to be able to produce a study establishing the proportionality of the said measure which is prior to the adoption of the latter. *See*: ECJ, Judgment of 8 September 2010, *Stoß and Others*, Joined Cases C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07, §107, available online on: <https://goo.gl/KrLAKZ> (consulted on 20.03.2018).

⁴³ In this context, through an *obiter dictum*, the Constitutional Court of Romania has stated that the measure taken must be *adequate* - it can objectively achieve the necessary, *necessary* - goal to achieve the goal, and *proportionate* - to ensure the right balance between the concrete interests to be consistent with the goal pursued. *See*: §28 of the Decision of the Constitutional Court of Romania no. 662 of 11 November 2014 on the objection of unconstitutionality of the provisions of art. 771 par. (6) the final sentence of Law no. 571/2003 on the Fiscal Code, published in the Official Gazette of Romania no. 47 of 20 January 2015.

We thus tend to believe that the aforementioned law was adopted without providing „sufficient and relevant” grounds to detect a „pressing social need” regulate the monopolization of the gaming sector⁴⁴. On the contrary, we realize that the real reason for the monopolization of the gambling sector is to increase public budget revenues. Our assumptions are supported by the fact that through the Law no. 292 of 16 December 2016 amending and supplementing some legislative acts⁴⁵ (this law was adopted on the same day, immediately after the passing of the Law no. 291/2016) amendments were made, inter alia, to Art. 19 para. (8) of the Law of the Republic of Moldova no. 1227 of 27 June 1997 on advertising⁴⁶, to prevent prohibition of advertising of betting activity. This amendment has led to a corresponding change in the scope of the rule set out in Art. 364 para. (6) „Infringement of legislation on advertising” of the Contravention Code of the Republic of Moldova. More exactly, *de lege lata*, presentation and broadcast of advertising on bets and money earnings obtained following the participation therein is no more a contravention. Under such idealized conditions a natural question arises: why, as long as the organization and conduct of bets did not constitute a state monopoly, it was forbidden to advertise the entrepreneurial activity related to the maintenance of bets and money earned following the participation therein, and after such a rocade – it is not an offence anymore and thus such a conduct constitutes a mere contravention? Perhaps, it is expected that the National Lottery of Moldova will be broadcast advertisements on the organization and carrying out of bets in order to attract as many people as possible to bets⁴⁷ and ultimately to

⁴⁴ In addition, some Members of the Parliament of the Republic of Moldova expressed concern that monopoly of the gambling sector could violate the principles of market economy and free competition*. However, being previously called upon to rule on the constitutionality of a legal provision which grants the exclusive right to an economic agent (in this case, the National Lottery of Moldova) to carry out the national lotteries in absence of a license, by its Judgment no. 11 of 28 May 2013, the Constitutional Court of the Republic of Moldova reiterated that „the establishment of state monopoly does not contradict the constitutional provisions governing market economy”⁴⁴. It has been revealed that the state, through legal provisions and clearly determined conditions, can establish its monopoly in a certain field of activity**.

* See: Verbatim Report of the Parliament of the Republic of Moldova on 8 December 2016, available online on: <https://goo.gl/RbBJvW> (consulted on 20.03.2018)

** See: §50-51 of the Judgment of the Constitutional Court of the Republic of Moldova no. 11 of 28 May 2013 on the control of constitutionality of a provision in Art. 8 para. (1) let. a) point 5) of the Law no. 451-XV of 30 July 2001 on the licensing of entrepreneurial activity (Application no. 26a/2012), published in the Official Gazette of the Republic of Moldova, 2013, no.152-158.

⁴⁵ The Law of the Republic of Moldova no. 292 of 16 December 2016 amending and supplementing some legislative acts, published in the Official Gazette of the Republic of Moldova, 2017, no. 2-8.

⁴⁶ The Law of the Republic of Moldova no. 1227 of 27 June 1997 on advertising, published in the Official Gazette of the Republic of Moldova, 1997, no. 67-68.

⁴⁷ As such, in its case-law, ECJ has stated that, in order to draw players away from prohibited betting and gaming activities to activities which are authorised, a Member State is justified in offering them a reliable, but at the same time attractive, alternative which may entail offering an extended range of games, advertising on a certain scale and the use of new distribution techniques. However, advertising by the holder of a public monopoly is to be measured and strictly limited to what is necessary in order to channel consumers towards controlled gaming networks. Such advertising cannot aim to encourage consumers’ natural propensity to gamble by stimulating their active

maximize the revenues to the state budget. Gambling can continue to function only if the very great majority of players lose more than they win. The very principle of that activity, in which the expectation of profit derives from the power of dreams, holds out the illusion of potential enrichment but leads to the impoverishment of those who indulge in it⁴⁸. However, as the CJEU has uncompromisingly decided in the case of *Dickinger and Ömer*⁴⁹, only the objective of maximizing revenues to the State budget cannot justify the monopoly on gambling, and therefore constitutes a disproportionate restriction on the freedom to provide services.

Moreover, it seems that the National Lottery of Moldova does not represent a reliable alternative to organizing gambling which is the state monopoly. This supposition can be deduced from the fact of approving by the Government of the Republic of Moldova through Decision no. 639 of 14 August 2017 of the objectives and conditions of the public-private partnership for the development of the activities of the Joint Stock Company „National Lottery of Moldova”, as well as of the general requirements regarding the selection of the private partner⁵⁰.

Going in depth, we thus note that in fact there is a desire to conclude two agreements (for a period not less than 15 years) on the public-private partnership (one of the agreements relates to the development of activities of the National Lottery of Moldova in the lottery and betting sector, sports competitions/events, including via electronic communications networks, and the other agreement refers to the development of the National Lottery of Moldova in the field of cash machines, including via electronic communications networks), with private investors for lotteries and betting at sport competitions/events and automatic cash game events.

According to item 7 of the aforementioned Decision, the distribution of revenues following the implementation of the public-private partnership is intended

participation in it, for example by trivialising gambling, or increasing the attractiveness of gambling by means of enticing advertising messages holding out the prospect of major winnings. In particular, a distinction should be drawn between strategies of the holder of a monopoly that are intended solely to inform potential customers of the existence of products and serve to ensure regular access to games of chance by channelling gamblers into controlled circuits, and those which invite and encourage active participation in such games. See: ECJ, Judgment of 15 September 2011, *Dickinger and Ömer*, Case C-347/09, §67-69. available online on: <https://goo.gl/M4QvQr> (consulted on 20.03.2018).

⁴⁸ Joint Opinion of Advocate General Bot in Cases C-203/08, *Sporting Exchange Ltd v Minister van Justitie* [2010] ECR I-4695 and C-258/08, *Ladbrokes Betting & Gaming Ltd et al v Stichting de Nationale Sporttotalisator* [2010] ECR I-4757, §59, *apud*: Jacqueline Dutheil de la Rochère, *Betting, Monopolies and the Protect of Public Order*, in Niamh Nic Shuibhne and Laurence W. Gormley (eds.), *From Single Market to Economic Union, Essays in Memory of John A. Usher*, Oxford University Press, Oxford, 2012, p. 107.

⁴⁹ ECJ, Judgment of 15 September 2011, *Dickinger and Ömer*, Case C-347/09, §55, available online on: <https://goo.gl/M4QvQr> (consulted on 20.03.2018).

⁵⁰ Decision of the Government of the Republic of Moldova no. 639 of August 14, 2017 on the approval of the objectives and conditions of the public-private partnership for the development of activities of the National Lottery of Moldova, as well as of the general requirements regarding the selection of the private partner, published in the Official Gazette of the Republic of Moldova, 2017, no. 301-315.

to take place in percentages. Thus, the National Lottery of Moldova will hold 75% of the total revenues in the lottery sector, and the private partner – 25%. As far as the revenues from the betting sector on competitions or sports events are concerned, 90% will belong to the National Lottery of Moldova and 10% to the partner to be selected. Of the gross revenue on the slot machines sector, 51% will be held by the National Lottery of Moldova and 49% by the private partner.

Again, these circumstances reinforce the idea that by establishing monopoly on the gambling sector, it was intended to increase the revenues to the public budget. In this respect, it is estimated that following the implementation of the public-private partnership in the field of gambling, the national public budget will benefit from revenues in the form of dividends paid by the National Lottery of Moldova in the amount of EUR 42,000,000 during the term of contract, in the digital lottery sector, momentary lottery and sports betting and about EUR 98,000,000 in the field of gaming machines. Also, public revenues are expected in the form of taxes and fees paid by project partners in the amount of EUR 10,000,000 during the term of contract, in the sector of the lottery, momentary lottery, sports betting and EUR 22000,000 in the slot machines⁵¹.

In this logic of things we note that the deadline established for the submission of offers by private investors for the conclusion of public-private partnership agreements on the development of activities of the National Lottery of Moldova was 19 December 2017⁵². Thereafter, the deadline was extended until 22 February 2018⁵³. But, it does not seem that private partners (two private investors) have been selected so far.

Thus, starting with 6 January 2017 (the date of entry into force of Law no. 291/2016) and until the date of this article (*i.e.* after more than one year), the National Lottery of Moldova failed to organize and carry out, among others, a bet⁵⁴. Should we understand that in this period the offence of the arranged bets (in relation to the National Lottery of Moldova) could not be committed on the territory of the Republic of Moldova under the regulatory norms on betting on a sport event that is known to be a fixed one? A strange situation: isn't it? In fact, we find that the National Lottery of Moldova was not ready and did not have the necessary resources to manage gambling that has been subject to monopolization by the state. Then why was the state monopoly on the gambling sector established if the state was not ready to take over this area? Why have the gaming operators'

⁵¹ *A private partner is looking for the development of the Lottery of Moldova*, available online on: <https://goo.gl/srzt4P> (consulted on 20.03.2018).

⁵² *The Public Property Agency announces the public tender for the selection of private partners for the implementation of the PPP project services in the State Monopolizing Domains, managed by S.A. „National Lottery of Moldova”*, available online on: <https://goo.gl/8hFVbG> (consulted on 20.03.2018).

⁵³ *The Public Property Agency announces the extension until 22 February 2018*, available online on: <https://goo.gl/LvQ8Mg> (consulted on 20.03.2018).

⁵⁴ This situation may direct persons towards unauthorized and clandestine gambling. However, it is known that a limited (or even forbidden) thing becomes more attractive.

licenses⁵⁵ been withdrawn, in absence of a transitional period, if the state has not been able to offer a suitable alternative?

Incidentally or not, but until the entry into force of the Law no. 291/2016, by the decision of the Chisinau Court, Center district, on 17 November 2016, the temporary suspension of 14 licenses was ordered (for a series of violations, among which the non-payment or delayed payment of license fees, in the amount of 28% the total amount of accepted bets, etc.) issued to operators (14 limited liability companies) for the type of gambling business: betting in sports competitions⁵⁶. The same conclusion was upheld by the Court of Appeal by its Decision of 7 November 2017⁵⁷. However, in the meantime, on 6 January 2017 (the date of entry into force of Law no. 291/2016), the licenses issued to operators for the organization and carrying out of gambling that was monopolized by the state were canceled by the effect of the law. It seems that the ground for setting up state monopoly on gambling has been prepared.

Following this digression, we reiterate the conclusion that the arguments advanced to support the monopolization of the gaming sector seem implausible. At the same time, given the aspirations of the Republic of Moldova regarding its European integration, the legislative forum, when adopting the Law no. 291/2016, should not have ignored the case-law of the ECJ (which is, in fact, quite rich in the area of gambling).

⁵⁵ In the light of the European Court of Human Rights case-law, the withdrawal of a licence to carry on business activities (including those related to gambling*) amounts to an interference with the right to peaceful enjoyment of possessions enshrined in art. 1 of Protocol no. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms**. In essence, the Court's case-law requires that, in order for an interference to be compatible with Article 1 of Protocol No. 1, it must be lawful, in the general interest and proportionate, that is, it must strike a „fair balance” between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The requisite fair balance will not be struck where the person concerned bears an individual and excessive burden. In that regard, it should be noted that, when the national legislature revokes licences that allow their holders to exercise an economic activity, it must provide, for the benefit of those holders, a transitional period of sufficient length to enable them to adapt or reasonable compensation system***. We doubt that the Moldovan Parliament took due account of these statutes when it decided to monopolize the gambling sector. However, upon the entry into force of Law no. 291/2016 the licenses issued for organizing and carrying out state monopoly on gambling activities were declared invalid. This optic does not seem to be the fruit of a mature reflection process.

* ECtHR, Case of *Laurus Invest Hungary KFT and Continental Holding Corporation (and 5 other applications) against Hungary*, Decision of inadmissibility of 8 September 2015, §29, available online on: <https://goo.gl/zXr7Jq> (consulted on 20.03.2018).

** ECtHR, Case of *S.C. Antares Transport S.A. and S.C. Transroby S.R.L. v. România*, Application no. 27227/08, Judgment of 15 December 2015, §39, available online on: <https://goo.gl/UMJ35H> (consulted on 20.03.2018).

*** ECtHR, Case of *Vékony v. Hungary*, Application no. 65681/13, Judgment of 13 January 2015, §34-35, available online on: <https://goo.gl/widBVe> (consulted on 20.03.2018).

⁵⁶ The decision of Chisinau Court, Centru district, of 17 November 2016, case file no. 2c-934/16, available online on: <https://goo.gl/vQUZVv> (consulted on 20.03.2018).

⁵⁷ The decision of Chisinau Court of Appeal of 7 November 2017, case file no. 2ac-1153-1116, available online on: <https://goo.gl/ZETA1W> (consulted on 20.03.2018).

4. Events which may be betted on

In the following, we will cover those events that can be handled (within the meaning of Art. 242¹ PC RM) and on which bets can be placed in the context of monopolization of the gambling sector.

By definition, in the context of the offense listed in Art. 242¹ PC RM a manipulated event may be in the form of a sports event (in respect of which bets can be placed) or a betting event that may not have a sporting character (*i.e.* Oscar and other film awards, Miss World, Eurovision, TV contests and TV shows, TV reality shows, political events, financial events, etc.)⁵⁸. *Per a contrario*, in the context of the offense provided in Art. 242² PC RM, betting (or informing others of the existence of an agreement to fix an event in order to cause them to participate in the bet) may take place in respect of a sporting event or other betting event by a person who knows with certainty that he is being vitiated.

In this context, it has been proven that „the legal provision of Art. 242² PC RM envisages the hypothesis of legally deploying the activity of organizing betting, regarded as one of the forms of entrepreneurial activity”⁵⁹. The unlawful conduct of betting activity will be the responsibility, as the case may be, according to Art. 241 PC RM (which establishes criminal liability for illegal practice of entrepreneurial activity) or Art. 277¹ para. (2) of the Contravention Code (which is sanctioned with a fine of 60 to 120 conventional units applied to the person in charge, with a fine of 120 to 180 conventional units applied to the legal entity, the act of carrying out activity in the field of gambling without license or suspended/withdrawn license, or with invalid license).

After this clarification, we note that according to art. 42 of the Law no. 285/1999 (repealed): „In order to conduct bets directly *on sports competitions and other competitions and actions* (emphasis belongs to the authors, in this example and further on throughout this study), the agreement of organizers of competitions and actions is needed to use the results thereof”. Thus, it was clear from this provision that victims of the offense referred to in Art. 242¹ PC RM could be the participants in betting events that were of sporting or extrasporting⁶⁰ nature.

⁵⁸ Sergiu Brînză, Vitalie Stati, *Tratat de drept penal. Partea Specială, Vol. II*, p. 107; Vitalie Stati, *Infrațiunea de manipulare a unui eveniment (art.242¹ CP RM): studiu de drept penal. Partea I*, „Revista Națională de Drept”, 2013, no. 11, p. 13; Vitalie Stati, *Infrațiuni economice: Note de curs*, CEP USM, Chișinău, 2014, p. 176; Vitalie Stati, *Infrațiuni economice: Note de curs*, 2nd edition, reviewed and updated, CEP USM, Chișinău, 2016, p. 217.

⁵⁹ Vitalie Stati, *Răspunderea penală pentru pariurile aranjate (art.242² CP RM). Partea I*, „Revista Națională de Drept”, 2014, no. 1, p. 9-10; Vitalie Stati, *op. cit. (Infrațiuni economice: Note de curs)*, p. 191-192; Vitalie Stati, *op. cit. (Infrațiuni economice: Note de curs)*, p. 232-234.

⁶⁰ In the same sense, see: Vitalie Stati, Gheorghe Reniță, *Efectele adoptării Legii Republicii Moldova nr. 291/2016 asupra aplicării răspunderii penale pentru manipularea unui eveniment și pariurile aranjate*, „Актуальные научные исследования в современном мире: XXI Международная научная конференция, 26-27 май 2017 г., Переяслав-Хмельницкий: Сборник научных трудов”, 2017, Выпуск 5(25), Часть 10 (Actual scientific research in the modern world: XXI International Scientific Conference, May 26-27, 2017, Pereyaslav-Khmelnytsky: Collection of Scientific Works”, 2017, Issue 5 (25), Part 10), p. 97.

As a mirror effect, the above-mentioned provisions have been reflected, with some nuances, in the new legal framework regulating the field of gambling. In particular, according to Art. 44 of the Law no. 291/2016: „In order to conduct bets directly at the venue of sports competitions and other competitions and actions, the consent of the organizers of competitions and actions is needed to use the results thereof”.

Seen in isolation and interpreted *ad literam*, the aforementioned article implies the idea that bets can still be carried out both in respect of sporting competitions and other competitions and actions that may not have a sporting character. However, at an overall inspection of the provisions of Law no. 291/2016 and making use of systemic interpretation, we come to a different conclusion.

Thus, it is noted that art. 44 is placed under Chapter VIII „Organizing and conducting bets for sports competitions/events” of the Law no. 291/2016. This would accredit the thesis that betting can only be carried out on sports competitions, but not in respect of other competitions and actions as suggested by art. 44 of the Law no. 291/2016.

In addition, Law no. 291/2016 establishes: „For the purpose of this law, the following main notions shall mean: [...] *betting on sports competitions/events (betting)* – gambling between the organizer and the player or between the players, using the results of sport competitions/events⁶¹ produces without the organizer’s involvement, provided that the results on which the bet is placed are not simply determined [Art. 2]; „It is considered to be activity in the field of gambling: [...] d) organization and conduct of bets on sports competitions/events” [Art. 6 para. (1)]; „Gambling that does not meet the requirements of this law *is forbidden*, including: [...] c) *betting games*, regardless of the organizational form and the means of play used, which use as a support (game object) the results of the lotteries, regardless of the way in which these games are organized, and where participants are able to point out the results of these events; d) *other gambling not covered by this law*” [Art. 6 para. (4)]; „In the Republic of Moldova, the activity of organizing and conducting bets on sports competitions/events is a state monopoly and is carried out by the National Lottery of Moldova [Art. 43 para. (1)]; „Through the electronic communications networks, any gambling may be *carried out if the provisions of this law* and the rules approved by the Ministry of Finance are complied with” [Art. 47 para. (2)]; „Breaches of this law are considered: a) the organization and conduct of prohibited gambling [...]” [Art. 54 para. (2)].

It follows from the corroborated analysis of these provisions that the term „bet” is equated with the phrase „bet on sports competitions/events”. Thus, we can

⁶¹ The use by the legislator of the vertical bar to create a „or” condition falsifies the idea that conceptually the notions of „sport competition” and „sport event” have a distinct legal connotation. But, in fact, Art. 3 para. (1) of the Council of Europe Convention on the manipulation of sports competitions of 18 September 2014, provides that: „Sports competition means any sport event [...]”. Hence the natural conclusion: the conflicting syntaxes have the same legal burden. *Apud: Vitalie Stati, Gheorghie Reniță, op. cit. (Efectele adoptării Legii Republicii Moldova nr. 291/2016 ...)*, p. 97.

deduce that Law no. 291/2016 allows bets only for sports competitions/events. Correlatively, it is forbidden to run and organize bets on events that are not sporting.

Therefore, it would appear that the provisions of Art. 44 of the Law no. 291/2016 is contrary to other provisions of the same law. The existence of a legal shelter is obvious. We assume that the text of Art. 44 of the Law no. 291/2016 was „blindly” overtaken the legislator from the text of Art. 42 of the Law no. 285/1999 (the only difference is the fact that Art. 44 of Law no. 291/2016 also contains the syntagm „at the place of deployment”), without taking into account other provisions of Law no. 291/2016. In this way, we find that the rule of legislative technique has been defied, according to which the law must regulate in a unitary way, to ensure a logical-legal connection between its provisions and to avoid legal parallels, which generate uncertainty and legal insecurity. However, the legislative text must be consistent with the principle of unity of legislative matters or the correlation between regulatory texts so that individuals can adapt their behavior to existing regulations that exclude conflicting interpretations or competition between applicable rules of law. The *non liquet* solution cannot be accepted.

If we admit, *arguendo*, that the Moldovan lawmaker wanted to allow bets on sports events only in the new legislative configuration, it would appear as implicit that the syntagms „or to another betting event”, „another betting event” from Art. 242¹ para. (1) PC RM and, respectively, from Art. 242² para. (1) PC RM are decorative and, therefore, superfluous. As a consequence, within the meaning of Art. 242¹ PC RM, a participant in a sporting event could be encouraged, influenced or instructed to undertake actions that would have a vicious effect on the event in order to obtain goods, services, privileges or benefits in any form whatsoever they say, for themselves or for another person. Correspondingly, Art. 242² PC RM becomes applicable if the perpetrator bets on a sporting event or informs other people about the existence of an agreement regarding the fixing of that event with the intention to cause them to participate in the bet made by a person who certainly knows about the existence of an agreement regarding the fixing of that event. In plain words: the scope of offences referred to in Art. 242¹ and 242² PC RM is limited to sports events and sports betting, respectively.

However, is the view to circumscribe the organization and conduct of bets, under the conditions of a state monopoly, justified only in relation to sports events? Our response is negative. It is true that most bets are organized and carried out in connection with certain sports events. However, there is no objective and reasonable argument to prohibit betting on events of another nature likely to be manipulated within the meaning of Art. 242¹ PC RM. That is why we believe that the Moldovan legislator should rethink the concept of betting and organizing betting so as to make it unequivocally possible to bet not only on sporting events but also on other events, as well.

5. Is State a victim (passive subject) of the offense of the arranged bets?

Changing the vector of our investigation, we note that in the event of a betting offense, we attest the existence of a victim (the passive subject) only when, as a result of the offense, the participant in betting (in the case of mutual system as form of betting) or the betting organizer (in the case of bookmaker system as form of betting) suffers material damage⁶².

From this perspective, pursuant to Art. 43 para. (2) let. a) of Law no. 291/2016, the winnings are distributed to the players in proportion to the number of winning variants held by each of them, the organizer being involved only in the collection of bets and distribution of winnings according to the betting rules. The win, in case of mutual betting, depends on the total number of bets and the number of winning players. Correlative, Art. 43 para. (2) let. b) of the same law provides that bookmaker bets are those in which the organizer determines, on the basis of his own criteria, and informs players of the odds of multiplying the stake if the variants played are declared as winning in betting rules.

As noted above, in the Republic of Moldova, the activity of organizing and conducting betting for sports competitions/events is a state monopoly and is carried out by the National Lottery of Moldova. Eventually, any other entity could legally not claim the conduct and organization of bets on the territory of the Republic of Moldova. In relation to this finding, we cannot lose sight of the fact that, in the case of *Ladbrokes Worldwide Betting versus Sweden*, the European Court of Human Rights („ECtHR”) held that the applicant, a British company, had requested the Swedish Government to issue an authorization to allow him to organize betting and gambling services in Sweden. The Government rejected the request, pointing out that bets and gambling in Sweden are reserved for the state and that the profits resulting from these activities should be for the benefit of the public or for the public benefit. In the present case, the ECtHR considered it necessary to determine whether there was a right that could be said to be recognized by Swedish law. In this respect, it was noted that according to the Swedish legal framework, bets and other gambling are subject to the grant of a license granted to Swedish non-profit associations meeting certain conditions. Moreover, it was noted that Sweden’s legislation confers the power of the government to issue an authorization to organize gambling in situations where it considers it to be the case, without specifying the conditions for the exercise of that power. Given this discretionary power of a public authority, the ECtHR decided that the applicant could not claim to have a current right recognized by domestic law and therefore rejected the application as incompatible *ratione materiae*⁶³.

⁶² Sergiu Brînză, Vitalie Stati, *op. cit. (Tratat de drept penal. Partea Specială)*, Vol. II, p. 115; Vitalie Stati, *Răspunderea penală pentru pariurile aranjate (art.242² CP RM). Partea I*, p. 10; Vitalie Stati, *Infrațiuni economice: Note de curs*, p. 193; Vitalie Stati, *op. cit. (Infrațiuni economice: Note de curs)*, pp. 234-235.

⁶³ ECtHR, Decision as to the admissibility of Application no. 27968/05 by *Ladbrokes Worldwide Betting against Sweden*, 6 May 2008, available online on: <https://goo.gl/Fafdic> (consulted on 20.03.2018).

Therefore, in the Republic of Moldova, betting organizer, regarded as the victim (the passive subject) of the betting offense, may be only the Joint Stock Company „National Lottery of Moldova”. No other person can have this quality⁶⁴. The National Lottery of Moldova can be subjected to material damages as a result of the payment of some fabulous winnings to „players” who have bet on a sporting event they know for certain will be manipulated. However, we cannot ignore the fact that the „National Lottery of Moldova” is created by the Government of the Republic of Moldova (the role of founder of this entity being exercised by the Ministry of Finance of the Republic of Moldova)⁶⁵ and belongs entirely to the state. That is why we have to determine if the state can be a victim (passive subject) of the offence of the arranged bets.

In this respect, we generally support the opinion expressed in the legal doctrine that: „Only in the context of international criminal law a state may evolve as a victim of the offense (for example, as a victim of aggression from another state). In contrast, in the context of national criminal law, a legal entity representing the state, not the state itself, may appear as a victim. It is the state that defends the rule of law against crimes. This conclusion derives from Art. 2 para. (1) PC RM. It would be inappropriate for the State to act as a defender of the rule of law as a victim of the offense. A state evolving into this posture is a state declaring itself incapable of defending its citizens against offences. It is a state as if it did not exist”⁶⁶. In particular, we believe that a state-funded company, irrespective of the proportion of state participation, has a separate individuality and is not legally confused with the state. Moreover, the state is exclusively endowed with coercive force (*ius puniendi*). That attribute is incompatible with the notion of victim (passive subject) of the offense (except for the aggression crime)⁶⁷.

As it stands, we conclude that the state cannot act as a victim (passive subject) of the offence of arranged bets, even though in the Republic of Moldova the activity of organizing and conducting betting is the monopoly of the state.

6. Conclusions

Having summarized the aforementioned arguments, we can draw the following conclusions:

1) the gambling sector is not subject to uniform EU regulation and there are significant differences between national legislations dictated by specific cultural, social and historical peculiarities of each country. In the absence of consensus, the States have a wide margin of appreciation and are therefore free to set their own gaming policy objectives according to their own scale of values and

⁶⁴ Vitalie Stati, Gheorghe Reniță, *op. cit.* (*Efectele adoptării Legii Republicii Moldova nr. 291/2016...*), p. 101.

⁶⁵ Decision of the Government of the Republic of Moldova no. 371 of 24 May 2011 on the establishment of the Joint Stock Company „National Lottery of Moldova”, published in the Official Gazette of the Republic of Moldova, 2011, no. 87-90.

⁶⁶ Irina Selevestru, *Victima infracțiunilor prevăzute la art.191 CP RM*, in „Studia Universitatis Moldaviae”, The "Social Sciences" series, 2015, no. 3(83), p. 195.

⁶⁷ Vitalie Stati, Gheorghe Reniță, *op. cit.* (*Efectele adoptării Legii Republicii Moldova nr. 291/2016...*), p. 101.

to adopt the most appropriate regulatory model for the national market of gambling. The Republic of Moldova has recently chosen to establish a state monopoly on the gambling sector, except for the maintenance of casinos;

2) the establishment of monopoly in the gambling sector negatively influences the freedom to provide services. At the same time, monopoly in the field of gambling could only be justified if the aim of combating the dangers of gambling is pursued in a coherent and systematic manner. Correlatively, the monopoly on gambling could not lead to the eradication of the offense of manipulating an event (Art. 242¹ PC RM) and arranged bets (Art. 242² PC RM);

3) the Parliament of the Republic of Moldova adopted the Law no. 291/2016 in a hurry without a broad public debate and without providing „relevant and sufficient” grounds to outline a „pressing social need” to monopolize the gambling sector;

4) with the monopolization of the gambling sector, the circle of potential victims (passive subjects) of the offense referred to in Art. 242² PC RM, namely: in the case of fixed quotas betting (bookmaker) the victim (the passive subject) of the betting offense can be only the Joint Stock Company „National Lottery of Moldova”. In turn, the state cannot be a victim (passive subject) of the offence of organized betting, even if the „National Lottery of Moldova” is established by the Government of the Republic of Moldova and is held by the state in its entirety;

5) on the occasion of the establishment of state monopoly on gambling, the Moldovan legislator admitted legislative inconsistencies with an evil impact on the correct interpretation and application of Art. 242¹ and 242² PC RM: while an isolated article of Law no. 291/2016 would seem to allow the conduct and organization of bets on sports or other events, on the contrary, from the other provisions of the aforementioned law we can deduce that bets are allowed only for sports competitions/events. This situation generates lack of security and legal certainty;

6) and a final conclusion: there is no objective and reasonable argument to support banning in the Republic of Moldova bets on events that are not of sporting nature (*i.e.* Oscar and other film awards, Miss World, Eurovision, TV competitions and shows music, TV reality shows, political events, financial events, etc.). However, these events are also likely to be manipulated within the meaning of Art. 242¹ PC RM.

Based on the theoretical conclusions and generalizations presented, we propose by *lege ferenda* to amend the Law no. 291/2016, so as to allow unequivocally the placement of bets not only on sporting events but also on events of another nature.

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