

VICTIM OF BET-FIXING OFFENSE: UNDER THE CRIMINAL CODE OF THE REPUBLIC OF MOLDOVA

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The criminal liability is aggravated as per Article 242²(2) of the Criminal Code of the Republic of Moldova, if the bet-fixing offense: (1) is committed by an organized criminal group/criminal organization or (2) has caused severe damages. In this case, the natural person is punishable by a fine varying in the range of 3,350 to 5,350 conventional units (approximately US\$9,750 to \$15,550) or by a term of imprisonment of up to three years, while the legal person is punishable by a fine varying in the range of 9,000 to 11,000 conventional units (approximately US\$26,050 to \$31,850), having deprived that person of the right to exercise certain types of activity.

The Criminal Code of the Republic of Moldova also criminalizes the manipulation of sports events or other events¹ (so-called “match-fixing” offense).

In this article, we would aim at reviewing the peculiarities of the victim of bet-fixing offenses, taking into account the legal provisions, judicial practice, and doctrinal approaches.

1. INTRODUCTION

Under Article 242² of the Criminal Code of the Republic of Moldova titled “Bet-Fixing,” betting on manipulated sporting or other events represents an offense. The same applies to the case when a person who knows about an existing agreement to rig an event notifies other people about that agreement in order to persuade them to bet. Such offense is punishable by a fine varying in the range of 2,350 to 4,350 conventional units (approximately US\$6,790 to \$12,600), while a legal person is punishable by a fine varying in the range of 6,000 to 8,000 conventional units (approximately US\$17,320 to \$23,150), having deprived that person of the right to exercise certain types of activity.

2. THE NOTION OF THE VICTIM OF OFFENSE

Under Article 58(1) of the Criminal Procedure Code of the Republic of Moldova, “a victim is defined as a natural or legal person who has suffered non-material, material or physical harm/damage as a result of an offense.”

In respect of victims of bet-fixing offenses, one should bear in mind that when a person notifies other people about an existing agreement to rig an event with the purpose to persuade those people to bet and that person knows with certainty about such an agreement, it does not imply causing any damage. Conversely, betting on a sporting or other event by a person who knows with certainty about an existing agreement to rig that event leads to obtaining an

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¹Under Article 242¹ of the Criminal Code of the Republic of Moldova titled “Manipulation of an Event,” encouraging, influencing or advising a participant in a sporting/betting event to undertake actions, which would produce a manipulated effect on the event concerned, with a view to obtaining undue goods, services, privileges, or advantages of any kind for oneself or for others represents an offense. The latter is punishable by a fine varying in the range of 2,350 to 4,350 conventional units (approximately US\$6,900 to \$13,000) or by a term of imprisonment of one to three years, in both cases depriving the person of the right to hold certain

positions or exercise a certain type of activity for a period of up to three years; while the legal person is punishable by a fine varying in the range of 6,000 to 9,000 conventional units (approximately US\$18,000 to \$27,200), depriving that person of the right to exercise a certain type of activity. The criminal liability is aggravated as per Article 242¹(2) of the Criminal Code of the Republic of Moldova, if the same actions are committed by a trainer, an athlete’s agent, a member of the jury, an owner of the sports club or by a person who is a member of the sports organization leadership. In this case, the natural person is punishable by a fine varying in the range of 3,350 to 5,350 conventional units (approximately US\$10,000 to \$16,000) or by a term of imprisonment of two to six years, in both cases depriving the person of the right to hold certain positions or exercise a certain type of activity for a period varying from four to seven years.

unlawful gain. By quashing that gain, the perpetrator causes material damage to the organizer of betting-related activities and to other betting participants.

Material damage can be caused to bettors (when the perpetrator collects illicit profits) in the assumption of mutual betting (totalizer), as for this type of betting the profits shall be divided among the players proportionally to the number of winning versions held by each of them. The organizer is involved only in the process of collecting the stakes and dividing the profits pursuant to the betting rules. The profits, in the case of mutual betting, depend on the total amount of stakes, as well as on the number of winning players. In this situation material damage is caused to the betting participant in the amount of the stake he or she has placed.

Material damage is caused also to the betting organizer (by means of paid illicit profits) in case of bets at fixed odds (bookmaker). For such types of betting the organizer is the one to establish, based on its own criteria, and to bring to the knowledge of players the stake multiplying rates when the played variants are successful in compliance with the betting rules. Under this assumption, the organizer's wealth is diminished by the paid profits to the same extent as the perpetrator's wealth goes up.

Hence, under the assumption of bet-fixing offenses, we acknowledge the existence of a victim only when the bettor (in the case of mutual betting) or the betting organizer (in the case of bets at fixed odds) suffers material damage resulting from the committed offense.²

If the bettor or betting organizer suffers no material damage resulting from the committed offense then there is no victim of crime as per Article 242² of the Criminal Code of the Republic of Moldova. For example, such a situation is possible when the perpetrator himself or the person helped by him (by informing about the existing agreement to rig

sporting or other betting events) suffers material damage as a result of misplaced stakes.³

Who can be a bettor and, respectively, who can be a betting organizer? Further, we will focus our attention on these matters.

3. BETTORS AS VICTIMS OF BET-FIXING OFFENSES

In the light of Law No. 291 dated December 16, 2016 on the Organization and Operation of Gambling (hereinafter referred to as "Law No. 291/2016"), Article 2, "bettor" (player) shall mean a natural person who concluded an agreement with the gambling organizer or with other players to participate in gambling by having settled the fee (stake) therefor.

As per the professional rules of some betting operators, the "bettor" is named "player" (i.e., the natural person who reached the age of 18 years and has got full right to take action, has no restriction to get involved in gambling, is not an employee, shareholder, or member of the organizer's management board, who placed a stake and/or bought a ticket;⁴ the adult natural person who concluded an agreement with the organizer, according to which he or she holds a receipt for the amount paid⁵) or "client" (i.e., the natural person who reached the age of 18 years and concluded a gambling contract with the organizer, a fact that is proved by the ticket held;⁶ a person betting on an event outcome).⁷

In compliance with the original wording of Law No. 291/2016, people who reached the age of 21 years were allowed to bet (and, in general, to get involved in all gambling-related activities permitted by that law). In less than one year after enacting Law No. 291/2016, the latter was amended by Law No. 197 dated July 21, 2017.⁸

²Vitalie Stati, *Criminal Liability for Bet-Fixing (Article 242² of the Criminal Code of the Republic of Moldova). Part I*, 1 NAT'L L. J. 10 (2014); VITALIE STATI, ECONOMIC OFFENCES: COURSE NOTES 193 (CEP USM, Chisinau, 2014); VITALIE STATI, ECONOMIC OFFENCES: COURSE NOTES, THE SECOND EDITION 235 (CEP USM, Chisinau, 2016); VITALIE STATI, ECONOMIC OFFENCES: COURSE NOTES, THE THIRD EDITION 230 (CEP USM, Chisinau, 2019).

³*Id.*

⁴Regulation dated June 25, 2019, on the Organization of Gambling via Electronic Communications Networks by the Joint Stock Company (JSC) National Lottery of Moldova, available at: <https://s1.7777.md/media/mediabank/pdf/2019/6/26/b637141941ecb13a9ac457c9e6d06b277156a694/file.pdf>.

⁵Gaming rules for betting with Get's Bet SRL, available at: <https://m.getsbet.ro/information/regulament/> (last visited September 9, 2020).

⁶Rules for betting at fixed odds of SRL Fly Point, available at: <https://ro.scribd.com/doc/231098771/Regulament-de-Joc-Nou> (last visited September 9, 2020).

⁷Rules of the Betting Shop/Bookmaker's Office "1xBet," available at: <https://1xbet.com/ro/information/rules/> (last visited September 9, 2020).

⁸Law No. 197 dated July 21, 2017 on the amendments and addenda to Law No. 291/2016 on the Organisation and Operation of Gambling, published in the OFFICIAL GAZETTE OF THE REPUBLIC OF MOLDOVA, 2017, No. 277-288.

Following the approved amendments to Law No. 291/2016, people who did not reach the age of 21 years were not allowed to participate in gambling-related activities with high social risk (i.e., gambling carried out in casinos, slot machines with cash prize, regardless of their type of organization) and people who had not reached the age of 18 years were not allowed to participate in gambling-related activities with low social risk (i.e., lotteries and sports betting).

Hence, people who have not reached the age of 18 years are not allowed to bet. Minors may not act as bettors and, therefore, cannot be victims of bet-fixing offenses.

4. BETTING ORGANIZER AS A VICTIM OF BET-FIXING OFFENSES

Further, “betting organizer” shall mean a legal person registered in the Republic of Moldova in the established manner, who is authorized to organize and to operate games of chance as per Law No. 291/2016. We shall reiterate that the organization and operation of betting is an activity monopolized by the state.

For this purpose, Article 2 of Law No. 291/2016 also defines the term “gambling organizer, which represents the state monopoly,” namely, the Joint Stock Company National Lottery of Moldova (hereinafter referred to as the JSC National Lottery of Moldova)—an economic operator owned in full by the state, which is empowered to carry out gambling-related activities constituting the state monopoly.

According to the Regulation on the Organization of Gambling via Electronic Communications Networks by the National Lottery of Moldova, “organizer” shall mean the National Lottery of Moldova, in partnership with the limited liability company NGM Company, assigned with the right to organize and op-

erate gambling-related activities constituting the state monopoly.⁹

The JSC National Lottery of Moldova was established in 2011 pursuant to Government Decision No. 371 dated May 24, 2011. Its statutory capital amounted to MDL 250,000, divided into 2,500 ordinary registered shares (state’s shares) with the par value of MDL 100 each, the only shareholder being the state, represented by the Ministry of Finance.¹⁰

Later, as per Government Decision No. 126 of March 6, 2017,¹¹ the state’s shares were transferred (free of charge) to the Public Property Agency (an entity subordinated to the Ministry of Economy), given that it was the only body empowered to administer and transfer the public property into private property, while one of its duties was to exercise the shareholder’s functions within commercial companies with state capital in its entirety or in part.¹²

Under such circumstances, we need to establish whether the state can be the victim of bet-fixing offenses. There were cases in the judicial practice when it was acknowledged, in a different context, that the state could be the victim of crime.¹³

In this regard, we support the opinion according to which:

[o]nly under the international criminal law it is possible for a state to be a victim of crime (for example, the victim of another state’s aggression). In contrast, under the national criminal law, the legal person representing the state can be the victim, not the state itself. The state shall protect the legal order against offenses. This conclusion stems from Article 2(1) of the Criminal Code of the Republic of Moldova. It would be inappropriate for the state, as a victim of crime, to exercise the protection of legal order. A state acting in such a position is a state, which

⁹Regulation on the Organization of Gambling via Electronic Communications Networks by the JSC National Lottery of Moldova, *supra* note 4.

¹⁰Government Decision No. 371 dated May 24, 2011 on the establishment of the JSC National Lottery of Moldova, published in the OFFICIAL GAZETTE OF THE REPUBLIC OF MOLDOVA, 2011, No. 87-90.

¹¹Government Decision No. 126 dated March 6, 2017 on the transfer of some state shares, published in the OFFICIAL GAZETTE OF THE REPUBLIC OF MOLDOVA, 2017, No. 73-77.

¹²Information Note to the draft Government Decision on the transfer of some state shares, available at: https://www.scribd.com/document/339214666/intr05-108#fullscreen&from_embed.

¹³For example, see the judgment of the Supreme Court of Justice of the Republic of Moldova dated October 5, 2016. Case No. 1ra-1775/2016, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=7296; the judgement of the Supreme Court of Justice of the Republic of Moldova dated June 5, 2018. Case No. 1ra-768/2018, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=11341.

declares itself incapable to protect its citizens against offenses. This is kind of a non-existent state.¹⁴

A company with statutory capital fed by the state, as it is the case of the National Lottery of Moldova, regardless of the number of shares held by the state, has separate individuality and, from the legal standpoint, does not intermix with the state. Furthermore, namely, the state shall exercise exclusively the coercive force. This duty is incompatible with the notion of “a victim of crime” (except for the crime of aggression).¹⁵ Hence, the state cannot appear as a victim of bet-fixing offenses, even if the betting-related activities represent the state monopoly in the Republic of Moldova.¹⁶

Pursuant to Law No. 291/2016, the National Lottery of Moldova is empowered solely to organize and operate betting activities. Any other entity, from the legal standpoint, would not be allowed to accept bets. In relation to this acknowledgment, it should be noted that during the 2018 FIFA World Cup organized in Russia, a Moldovan mobile phone company launched the competition “Guess the Score and Win” during June 6–July 15, 2018 (the period when the FIFA World Cup was unrolled). In order to send the forecasts for the played football matches, the users of the organizer’s mobile phone services needed to buy “Mobile Internet 10MB” or “three minutes in the network” and send an SMS for consideration. Those participants who accumulated a certain number of points could win smartphones and even the first prize—a car.¹⁷

Without accusing anyone, but, from the legal standpoint, we deal here with betting, which, in fact, had to be organized and operated by only the National Lottery of Moldova. The payment for the purchase of those options and for sending the score of the sporting event via SMS is the stake (fee for participation), while the offered prizes are the profits. No matter how we call such stuff, the substance remains un-

changed. One more remark should be added to this: in the aforementioned context, the parties may not avail themselves of the provisions of Article 993(8) of the Civil Code of the Republic of Moldova, by virtue of which it is allowed to conclude contracts that are not provided by law (unnamed contracts). Law No. 291/2016 provides, unequivocally, that the organization and operation of betting-related activities pertains exclusively to the National Lottery of Moldova. It is not about a contract not covered by law and there is no doubt regarding the circle of subjects that can offer betting-related occasions. Hence, the mobile phone company in question, which brought opportunities to bet, should not be considered to be a victim of bet-fixing offenses under the assumption that material damage was caused to it as a result of event-rigging.

We shall not lose sight of the fact that in *Ladbrokes Worldwide Betting v. Sweden*,¹⁸ the European Court of Human Rights (hereinafter referred to as the ECtHR or the Strasbourg Court) found that the applicant, a betting and gaming company based in the United Kingdom, applied to the Swedish government for a permit to provide betting and gaming services in Sweden. The Swedish government rejected the application, having noted that betting and gaming in Sweden was essentially reserved for the state, while the profits should be to the benefit of the public or for public utility purposes.

In this case, the Strasbourg Court considered necessary to establish, first of all, if there was a right about which it could be said it was recognized by the internal law of the complainant state. In other words, the ECtHR needed to investigate if the issue brought by the applicant fell under the scope of any of the rights guaranteed by the European Convention for Human Rights (hereinafter referred to as the ECHR). “If there is no right in place, we cannot plead for the proportionality test”¹⁹ called upon by the Strasbourg

¹⁴Irina Selevestru, *Victims of Offences Referred to in Article 191 of the Criminal Code of the Republic of Moldova*, 3(83) STUDIA UNIVERSITATIS MOLDAVIAE, THE SERIES OF “SOCIAL SCIENCES” 195 (2015).

¹⁵Vitalie Stati and Gheorghe Reniță, *The Effects of Adopting Law No. 291/2016 on Criminal Liability for Manipulation of an Event and Bet-Fixing*, JURIDICE MOLDOVA (Apr. 7, 2020), available at: <https://bit.ly/2z8kbaa>.

¹⁶Gheorghe Reniță, *The Impact of Monopolization of the Gambling Sector in the Republic of Moldova on Criminal Liability for Manipulation of an Event and Arranged Bets*, 8 JURIDICAL TRIBUNE 94 (Special Issue 2018).

¹⁷Rules of the competition “Guess the Score and Win” of Orange Moldova S.A., available at: <https://www.orange.md/images/guess2018/regulament-ghiceste-scorul-si-castiga-ro.pdf>.

¹⁸*Ladbrokes Worldwide Betting v. Sweden* (dec.), No. 27968/05, May 6, 2008, ECtHR, available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-86572%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-86572%22]}).

¹⁹TEODOR PAPUC, PRINCIPLE OF PROPORTIONALITY. STRASBOURG COURT THEORY AND LAW 48 (Solomon, Bucharest, 2019).

Court. In this regard, it was mentioned that, pursuant to the Swedish legislation, betting and gaming were subject to authorization reserved to non-profit-making Swedish organizations, which fulfilled certain requirements. This being the case, the Strasbourg Court decided that the applicant could not pretend to have a current right recognized by the domestic law and therefore rejected the application.²⁰

Hence, the absence of the right to obtain (by the entities other than those covered by law) a permit to provide betting and gaming services in the domestic law did not raise an issue from the ECtHR perspective.

Building on these findings, we can state that, under the Republic of Moldova law, any other entity, save the National Lottery of Moldova, would not be entitled to register and, accordingly, to organize and operate betting-related activities on the territory of the Republic of Moldova.

Prior to the establishment of the state monopoly on betting activities, there were 65 private organizers (commercial companies) of betting and gaming in the Republic of Moldova,²¹ of which 14 held licenses on stakes setting for sporting events, 47 held licenses for the operation of slot machines with cash prize, while four companies held licenses for casino maintenance. Hence, prior to the adoption of Law No. 291/2016, there were 14 betting organizers—potential victims of bet-fixing offenses.

According to Article 55(4) of Law No. 291/2016, all licenses issued to carry out the types of activity monopolized by the state were declared null and void. Hence, on January 6, 2017 (the date of enactment of Law No. 291/2016), by operation of law, the licenses issued to gambling operators for certain types

of activity, namely, organizing and operating lotteries, organizing the operation of gaming rooms with slot machines with cash prize, organizing and operating the bets, were cancelled.

Incidentally or not, but prior to the enactment of Law No. 291/2016 (i.e., on January 6, 2017), Centru District Court of Chisinau Municipality, by means of a binding Judgment of 17 November 2016, ordered the suspension of 61 licenses issued to carry out gambling-related activities due to a series of infringements, including: the admission of people under the age of 18 to participate in gambling; failure to pay or late payment of license fees; failure of the license holder to submit in due terms the request to be issued the duplicate of the lost or deteriorated license; carrying out the licensed activity by a branch or other subdivision of the license holder with no authorized copy of the license; organizing the gambling within premises not provided for by the terms and conditions of the issued license; failure of the venue chosen to operate the games to meet the requirements stated in the authorization for their organization, etc.²² The same conclusion was upheld by the Appeal Court,²³ as well as by the Review Court.²⁴ Probably, the foundation to monopolize the gambling-related activities by the state was prepared in this manner.

A short periphrasis through the case law of the ECtHR would enable us to find that the license issued to carry out a certain activity was always considered to be an “asset” for the purpose of Article 1 of Protocol No. 1 to the ECHR,²⁵ which guarantees the right to possessions. The suspension or cancellation of a license entitling the holder to carry out certain commercial activities, including the ones in the area of gambling,²⁶ represents an unwarrantable interference in

²⁰Ladbrokes Worldwide Betting v. Sweden (dec.), No. 27968/05, May 6, 2008, ECtHR, available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%222001-86572%22%7D>.

²¹Judgment of Centru District Court of November 17, 2016, Case No. 2c-934/16, available at: <https://jc.instante.justice.md>; Judgment of Chisinau Appeal Court of November 7, 2017, Case No. 2ac-1153/16, available at: <https://cac.instante.justice.md>.

²²Judgment of Centru District Court, Chisinau Municipality, dated November 17, 2016, Case No. 2c-934/16, available at: <https://jc.instante.justice.md>.

²³Judgment of Chisinau Appeal Court dated November 7, 2017, Case No. 2ac-1153/16, available at: <https://cac.instante.justice.md>.

²⁴Judgment of the Supreme Court of Justice of the Republic of Moldova dated June 13, 2018, Case No. 2rac-184/18, available at: http://jurisprudenta.csj.md/search_col_civil.php?id=44619.

²⁵Bimer S.A. v. Moldova, No. 15084/03, July 10, 2007, § 49, ECtHR, available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%222001-81505%22%7D>; Megadat. com S.R.L. v. Moldova, No. 21151/04, April 8, 2008, §§ 62-63, ECtHR, available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%222001-85732%22%7D>; Pecotox Air S.R.L. v. Moldova, No. 45506/09, January 15, 2019, § 23, ECtHR, available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%222001-189152%22%7D>; Gospodăria țărănească Chiper Terenti Grigore v. the Republic of Moldova, No. 71130/13, 2 June 2020, § 27, ECtHR, available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%222001-202703%22%7D>.

²⁶Laurus Invest Hungary KFT and Continental Holding Corporation (and five other applications) v. Hungary (dec.), No. 23265/13, September 8, 2015, § 29, ECtHR, available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%222001-157683%22%7D>.

the peaceful enjoyment of one's possessions.²⁷ The measure in question could deprive the gambling organizers of a "legitimate hope" to carry out an activity and subsequently derive some profit. However, the enjoyment of possessions is a relative right, not an absolute one. This could be the subject matter of some limitations (restraints), which needed to be provided by law, to be lawful and proportionate.

In *Laurus Invest Hungary KFT and Others v. Hungary*, the applicant companies complained in front of the Strasbourg Court that the revocation of their licenses to operate amusement arcades with slot machines amounted to an unjustified interference in their rights. The ECtHR reminded that interference in the ownership right must strike a "fair balance" between the community's demands of general interest and the requirements of the protection of the individual's fundamental rights. The requisite fair balance between the general interest of the community and of the individual would not be struck where the person bears an individual and excessive burden. The availability or lack of a legal avenue capable of providing adequate redress in the relevant legislation may be a crucial factor in assessing whether the challenged measure meets the right balance and, in particular, if it imposes a disproportionate burden on an individual.²⁸ In this case, the question was raised whether the interference was lawful. The ECtHR did not get to carry out a proportionate test from the perspective of Article 1 of Protocol No. 1 to the ECHR. The Court declared the applications inadmissible as the applicant companies had failed to exhaust all domestic remedies. The applicant companies brought litigation in the Hungarian court, which subject matter was the lawfulness of cancelling the licenses for organizing and operating gambling-related activities.

Unlike the aforementioned case, in *Tipp 24 AG v. Germany*, the applicant did exhaust the domestic remedies, but without success. In its complaint submitted to the ECtHR, the applicant alleged that the cancelation of licenses for professional intermedia-

tion of online games following the introduction of the state monopoly in that sector infringed Article 1 of Protocol No. 1 to the ECHR. The Strasbourg Court found that the measure constituted interference with the use of the applicant's acquired property. That interference had legal foundation and pursued the goal to prevent dependency on games and ensure minors' protection from gambling-related crimes.²⁹ The ECtHR did not consider it unreasonable to impose a prohibition on online intermediation of games of chance. Online gambling generates threats, and the state may interfere in this area by imposing certain restrictions. Under such circumstances, the ECtHR did not find sufficient reasons to uphold the applicant's presumed expectation to continue its activity (i.e., intermediation of online gambling) forever. The cancelled license was preceded by a transition period of one year. Taking into account the large margin of appreciation given to the state in this area and the importance of interests to be protected, the ECtHR held that there was no indication that the applicant suffered from an excessive burden. There was no appearance of impropriety of the enjoyment of possessions. Hence, ECtHR rejected the application, declaring it inadmissible.³⁰ From the methodological standpoint, in this case the ECtHR compared (1) the social importance of avoiding the breach of individual's right with (2) the social importance of the benefit gained by fulfilling the legal goal pursued by the state.³¹ The latter had a higher weight and, consequently, tipped the balance towards no infringement of the property right.

The cancelled licenses issued to carry out gambling-related activities constituted a natural consequence of monopolization by the Moldovan state of the area under consideration. This measure was enforced hastily, with no long debates, no studies carried out, no transition period, and no appropriate compensation system. Such fact could have raised the issue of observing the ownership right, which was tackled in a separate study.³²

²⁷S.C. Antares Transport S.A. and S.C. Transroby S.R.L. v. Romania, No. 27227/08, December 15, 2015, § 39. ECtHR, available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-159198%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-159198%22]}).

²⁸Gheorghe Reniță, *Annulment of Licenses for Gambling Activities: Experience of the Republic of Moldova*, 22(10) GAMING L. REV. 649 (2018).

²⁹Tipp 24 AG v. Germany (dec.), No. 21252/09, November 27, 2012, § 33, ECHR, available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-115478%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-115478%22]}).

³⁰*Id.* at §§ 34–36.

³¹AHARON BARAK, *PROPORTIONALITY CONSTITUTIONAL RIGHTS AND THEIR LIMITATIONS* 350 (New York, Cambridge University Press, 2012).

³²See Reniță, *supra* note 28, at 649.

After this digression, we question what would happen if the bet-fixing offense was committed against a private gambling organizer prior to state monopolization of betting-related activities, while during the criminal proceedings the organizer's license was cancelled. Would the betting organizer be a victim of the offense referred to in Article 242² of the Criminal Code of the Republic of Moldova or not? The cancelled license held by a legal person due to the monopolization by the state of the activity in question (or due to another reason) does not lead itself to the disappearance of that entity. The latter continues its existence even if its activity was "paralyzed" and, therefore, it would preserve the status of a victim of crime. If the legal person is reorganized or wound up, its successor (eventually, the newly established entity) should be recognized as a victim of the offense.

Against a different background, it seems that the National Lottery of Moldova does not represent a viable option in terms of organizing the games of chance, the latter representing the state monopoly. The company was not ready nor had it the resources necessary to manage the gambling-related activity subject to state monopoly. This assumption can be derived from Government Decision No. 639 of August 14, 2017, which provided for the goals and conditions of a public-private partnership to be established aiming to develop the JSC National Lottery of Moldova activity, as well as for the general requirements regarding the selection of a private partner.³³

Pursuant to paragraph 5 of the aforementioned Decision, the validity term of public-private partnership contracts (civil society contracts) shall be established by the parties, but it should last at least 15 years.

Under paragraph 7 of the same regulatory act, the proceeds resulting from the implementation of the public-private partnership project shall be apportioned as percentage shares. The National Lottery of Moldova holds

75% of the overall amount of lottery generated proceeds, while the private partner holds 25%. As for the proceeds generated by betting-related activities on sporting competitions or events, the National Lottery of Moldova holds 90% and, respectively, the private partner to be selected holds 10%. Out of the gross amount of proceeds generated by slot machines, the National Lottery of Moldova holds 51%, while the private partner holds 49%.

It has been estimated that following the implementation of the public-private partnership in the area of gambling the state would collect budget revenues in the amount of US\$47,000,000 to be paid as dividends by the National Lottery of Moldova over the period of contract performance in the area of digital lottery, instant/momentary lottery and sports betting, and in the amount of circa US\$100,000,000 to be generated by slot machines.³⁴

Furthermore, it is expected to collect budget revenues as taxes and fees to be paid by project partners in the amount of US\$11,000,000 over the period of contract performance, in the area of digital lottery, instant/momentary lottery and sports betting, and in the amount of US\$25,000,000 to be generated by slot machines.

Following several extensions of the deadline³⁵ for submitting the offers by private investors in order to conclude public-private partnership contracts aimed to develop the National Lottery of Moldova activities, ultimately, public-private partnership contracts were signed on April 23, 2018 with: (1) Novo Gaming M Technologies GmbH (on behalf of associated economic operators Novo Gaming M Technologies GmbH, Novomatic Gaming Industries GmbH and Novomatic AG) for developing the National Lottery of Moldova activity relating to slot machines with cash prize, including via electronic communications networks; and (2) NGM SPC Limited (on behalf of associated economic operators

³³Government Decision No. 639 dated August 14, 2017 on the approval of goals and conditions of public-private partnership for developing the JSC National Lottery of Moldova activity, as well as of general requirements for selecting a private partner, published in the OFFICIAL GAZETTE OF THE REPUBLIC OF MOLDOVA, 2017, No. 301-315.

³⁴Editorial, *A Private Partner Is Sought for the Development of the National Lottery of Moldova* (in Romanian), FISC.md (Aug. 14, 2017), available at: <https://monitorul.fisc.md/editorial/se-cauta-un-partener-privat-pentru-dezvoltarea-loteriei-moldovei.html>.

³⁵The Public Property Agency announces a public tender to select partners for the implementation of the PPP Project "Services rendered in the areas representing the state monopoly, managed by the JSC National Lottery of Moldova, available at: http://www.app.gov.md/agentia-proprietatii-publice-anunta-concursul-public-de-selectare-a-partenerilor-privati-pentru-implementarea-proiectului-de-ppp-serviciile-din-domeniile-ce-constituie-monopol-de-stat-gestionate-de-sa-loteria-nationala-a-moldov-3-1417?mass_media=367 (last visited September 9, 2020). The Public Property Agency announces the prolongation of the deadline till 22 February 2018, available at: http://www.app.gov.md/agentia-proprietatii-publice-anunta-prelungirea-pana-la-data-de-22-februarie-2018-3-1434?mass_media=367 (last visited September 9, 2020).

New Games AD, National Lottery AD and NGM SPC Limited) for developing the National Lottery of Moldova activity relating to lotteries and bets on sporting competitions/events, including via electronic communications networks.³⁶ Subsequently, NGM SPC Limited founded NGM Company (a limited liability company) in the Republic of Moldova, which jointly with the National Lottery of Moldova are entitled to organize and operate betting-related activities.

Under the Republic of Moldova law, the National Lottery of Moldova, jointly with its private partner, is solely entitled to organize and operate lotteries, bets for sporting competitions, games of chance through electronic communications networks, as well as to organize the operation of gaming halls equipped with slot machines with cash prize.

However, in fact, for quite a long time, the National Lottery of Moldova was confined to provide the players with the possibility to participate in lotteries only. In particular, since the suspension of licenses issued to private gambling operators (i.e., November 17, 2016) and up until the middle of 2019, the National Lottery of Moldova organized and operated only lotteries. Therefore, it means that during that period no bet-fixing offense could be committed on the territory of the Republic of Moldova (in relation to the National Lottery of Moldova) in terms of betting on a sporting event in relation to which it was certainly known to be manipulated.

It was only in summer 2019 when the National Lottery of Moldova (jointly with its private partner) started to provide the Moldovan players with the opportunity to bet online.³⁷ That activity did not last for long. Let us add more light on this. On August 15, 2019, the Parliament of the Republic of Moldova passed a law³⁸ by which profits derived from lotteries and/or sports betting were subject to taxation if the

value of each profit exceeded one percent of the personal exempt amount referred to in Article 33(1) of the Moldovan Tax Code. In other words, the profits derived from lotteries and/or sports betting in the amount exceeding EUR 13 has to be taxed at 12 percent. For example, in case of a bet in the amount of \$100 per event, at a coefficient of 1.08 per victory, the bettor would derive \$108. But the state would subject to tax the whole amount (\$108), not just the net gain (\$8). For a successful bet of \$108, the person will keep \$95,³⁹ an amount that is smaller than the stake.

This amendment entered into force on January 1, 2020. Before that date, proceeds derived from lotteries and/or sports betting were not taxed. This legal casting dissatisfied NGM Company—the private partner of the National Lottery of Moldova. It warned that the

market of sporting bets in the Republic of Moldova values circa \$11,600,000 per year and that taxation of proceeds derived from bets would place this sector into a gray area. The state would lose \$1,160,000 per annum, while, if renouncing to taxation, it would gain an amount that is five times larger. The introduction of fees levied on proceeds derived from lotteries or bets will hit the state first.”⁴⁰

These data seem to be exaggerated. However, the Parliament of the Republic of Moldova chose not to be sweetened by those statements and passed the law in question in the final reading. In response, on December 23, 2019, the Monitoring Committee of the public-private partnership contract decided to suspend the receipt of stakes from the users of the website as of December 31, 2019, 00:00. At the time of writing this article (June 2020), the site in question was still suspended.

³⁶Press release regarding the actions undertaken to implement the public-private partnership project “Services in the areas, which represent the state monopoly managed by the JSC National Lottery of Moldova, available at: http://www.app.gov.md/comunicat-privind-actiunile-intreprinse-in-vederea-implementarii-proiectului-ppp-serviciile-din-domeniile-ce-constituie-monopol-de-stat-gestionate-de-saloteria-nationala-a-moldovei-3-1473?mass_media=367 (last visited September 9, 2020).

³⁷Regulation dated June 25, 2019 on the organization of gambling via electronic communications networks by the JSC National Lottery of Moldova, *supra* note 4. This regulation was approved by the Public Property Agency on June 25, 2019. Hence, we deduce that as of that date (i.e., June 25, 2019) the National Lottery of Moldova started to offer the possibility to bet on www.7777.md. Hence, the National Lottery of Moldova began to assert with delay its right conferred by law.

³⁸Law No. 115 dated August 15, 2019 amending the Tax Code No. 1163/1997, published in the OFFICIAL GAZETTE OF THE REPUBLIC OF MOLDOVA, 2019, No. 274-278.

³⁹*The Solely Authorized Site for Sports Betting in Moldova, 7777.md, Could Be Closed* (in Romanian), PUBLIKA.MD (Dec. 17, 2019), available at: https://www.publika.md/singurul-site-autorizat-de-pariuri-sportive-din-moldova-7777md-ar-putea-fi-inchis_3062042.html.

⁴⁰*Id. See also Taxation of Proceeds Derived from Lottery or Sports Betting Will Position a Market Worth Two Billion Moldovan Lei into a Grey Area* (in Romanian), JURNAL.MD (Aug. 9, 2019), available at: <https://www.jurnal.md/ro/news/539772d3107948f5/impozitarea-castigurilor-de-loterie-sau-pariuri-sportive-valasa-in-zona-gri-o-piata-de-2-miliarde-lei.html> (last visited September 9, 2020).

Therefore, instead of becoming effective and practical, the exclusive right to organize and operate bets assigned to the National Lottery of Moldova has simply remained on paper. The public-private partnership had not started to work yet. This state of affairs may channel the Moldovan citizens to play unauthorized and clandestine games of chance or to betting shops/bookmakers from abroad.

Hence, following the establishment of the state monopoly on betting-related activities in the Republic of Moldova, both the National Lottery of Moldova and NGM Company, acting as betting organizers, could be regarded as victims of bet-fixing offenses.

5. COULD FOREIGN BETTING SHOPS BE REGARDED AS VICTIMS OF BET-FIXING OFFENSE?

The study of the case law⁴¹ reveals that those who are aware of an existing agreement to rig sports or other events usually bet on it in the digital environment at foreign betting offices. To this end, a typical question arises: could the foreign operators offering the opportunity to bet online be regarded as victims of bet-fixing offense?

As a matter of principle, for a betting organizer to be regarded as a victim of offense referred to in Article 242² of the Criminal Code of the Republic of Moldova, the former shall accept the stakes under lawful conditions. Otherwise, it cannot rely on the protection conferred by that Article. The criminal law shall not protect the illegal activity of betting operators, it shall penalize them instead.

Regarding the member states of the European Union (hereinafter referred to as the EU), it was stated that “an undertaking may establish itself in Member State A, which has less rigorous company-law provisions, and conduct the entirety of its business in another Mem-

ber State B. From the point of view of the freedom to provide services, however, [...] the undertaking in question may not operate on the market of Member State B without a duly issued authorization by the latter on the sole ground that it has an authorization issued by Member State A.”⁴² It was argued that the “mutual recognition of authorizations issued to carry out games of chance was not possible at that stage of the EU law, because:

1. First of all, the uniform functioning of a system for the mutual recognition of gambling licenses proves to be irreconcilable with the case law of the Court of Justice of the European Union⁴³ (hereinafter referred to as the CJEU or the Luxembourg Court), which clearly and firmly recognizes monopolies and other restrictions in terms of the number of operators in the gambling industry, as long as certain requirements are being met. If a member state in which a gambling monopoly compliant with the requirements of Treaty on the Functioning of the EU has been established were under an obligation to take into consideration licenses issued by the other EU member states, then the CJEU's relevant case law would be inapplicable and would be rendered meaningless;
2. Secondly, mutual recognition seems to be difficult in the absence of harmonization of the gambling sector, of which there is no immediate prospect. Without harmonization, application of the freedom of movement would continue to be limited, and the task of the Courts of the Union is specifically to define the restrictions which are compatible with the provisions of the Treaty in that non-harmonized sphere;
3. Thirdly, the non-existence of a sufficiently well-organized system of administrative cooperation makes it difficult to establish a system of mutual recognition in the sector.⁴⁴

⁴¹See, for example, Judgment of the Buiucani District Court of 26 January 2016, Case No. 10-731/2015, available at: <https://jc.instante.justice.md/> (last visited September 9, 2020); 2012 ACTIVITY REPORT OF THE NATIONAL ANTI-CORRUPTION CENTRE OF THE REPUBLIC OF MOLDOVA (2013), at 27, available at: https://www.rise.md/wp-content/uploads/2015/03/%D0%A7%D0%B5%D0%B1%D0%B0%D0%BD%D1%83_CNA.pdf; Judgment of the Chisinau District Court of 10 December 2018, Case No. 1-163/18, available at: <https://jc.instante.justice.md/> (last visited September 9, 2020), Judgment of the Chisinau District Court of 1 March 2019, Case No. 1-163/18, available at: <https://jc.instante.justice.md/> (last visited September 9, 2020).

⁴²Opinion of Advocate General Mengozzi delivered on March 3, 2010 in Case C-46/08, *Carmen Media Group Ltd v. Land Schleswig-Holstein*, § 41, available at: <https://bit.ly/2YaegIZ>.

⁴³See, e.g., Court of Justice of the European Union, Judgment of 8 September 2009, *Liga Portuguesa de Futebol Profissional, Case C-42/07*, EU:C:2009:519, §§ 25–26, 58, 63, 73, available at: <https://bit.ly/2BCrJTX>; Judgment of 24 January 2013, *Stanleybet International Ltd and Others, Joined Cases C186/11 and C-209/11*, EU:C:2013:33, § 36, available at: <https://bit.ly/3eETUjC>; Judgment of 30 April 2014, *Pfleger and Others, Joined Cases C-186/11 and C-209/11*, EU:C:2014:281, §§ 54–56, available at: <https://bit.ly/2Vo0ByW>; Judgment of 28 February 2018, *Sporting Odds Ltd, Case C-3/17*, EU:C:2018:130, § 20, available at: <https://bit.ly/3i8h4B5>.

⁴⁴Opinion of Advocate General Mengozzi delivered on 3 March 2010 in Case C-46/08, *Carmen Media Group Ltd v. Land Schleswig-Holstein*, §§ 48–51, available at: <https://bit.ly/2YaegIZ>.

For the same purpose, the Resolution of the European Parliament of September 10, 2013 on online gambling in the internal market⁴⁵ stresses the importance of defining the notion “legal gambling operator,” so that the EU member states, in compliance with the EU law, authorize only those operators who fulfil at least the following requirements and are thus considered to be legal: (a) the operator must have a license which gives it a right to operate in the member state of the player; and (b) the operator is not considered to be illegal under the law applicable in any other member state. It appears that those who fail to fulfill at least one the aforementioned requirements must be considered as illegal operators.

The European Parliament called for “more cooperation at the European level, under the coordination of the European Commission, to identify and prohibit online betting operators engaged in illegal activities such as, among others, match-fixing or betting on junior competitions involving minors and expects the online gambling industry to respect this ban through self-regulation.”⁴⁶

In this regard, the European Commission indicated (back in 2011) that:

The advent of the Internet and the rapid growth of online gambling opportunities combined with the considerably differing national regulations have resulted not only in an increasing legal offer of gambling services in certain Member States but also in the development of a significant unauthorized cross-border market. This consists of both a black market (with unlicensed clandestine betting and gaming, including from third countries) and a so-called “grey” market (operators duly licensed in one or more Member States promoting and/or providing gambling services to citizens in other Member States without having obtained a specific authorization in those countries). This unauthorised cross-border market remains accessible to consumers, due either to *de facto* tolerance or lack of effective en-

forcement, and adds to the legal national offers that are available to consumers depending on the legal situation prevailing in the Member States where they are located. [. . .] Furthermore, out of 14,823 active gambling sites in Europe more than 85% operated without any licence.⁴⁷

According to Wladimir Andreff,

Gross win (or gross gaming revenue) on the global market for sporting bets was assessed in the range of EUR 16,000 million in 2011, of which about EUR 10,500 million was in the legal market and about EUR 5500 million in the illegal market. Placed bets were assessed overall at EUR 322,700 million of which EUR 47,700 (15%) was in the legal and EUR 275,000 (85%) in the illegal market. From 2000 to 2010, gross gaming revenue of sporting bets evolved in the EU 28 countries from EUR 2.2 billion to EUR 11.2 billion, growing at an average 15% annual rate. Such swift growth was triggered by much higher odds and returns on newly offered varieties of on-line sporting bets compared to former betting on final game outcomes known as 1 × 2 (for win-draw-loss) (Average return rates on on-line sporting bets are usually over 95% and often close to 98%). The top ten gross wins realised on the illegal online market have been achieved in fourteen countries: China, the US, South Korea, Germany, India, the Czech Republic, Greece, Vietnam, Argentina, Brazil, Canada, Hong Kong, Pakistan, and Turkey.⁴⁸

Andreff adds:

Match and spot fixing have become the most widespread form of corrupt sport in recent years. Fraudulent networks of punters and criminals rig matches through bribing players or referees whereas bets are placed on the fix through the Internet. Despite the surveillance of 30,000 games per season in 43 European football leagues, this corrupt business is skyrocketing; in

⁴⁵European Parliament Resolution of September 10, 2013 on online gambling in the internal market (2012/2322(INI)), available at: <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0348+0+DOC+XML+V0//EN>.

⁴⁶*Id.*

⁴⁷European Commission, Green Paper on Online Gambling in the Internal Market (COM(2011) 128 final), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52011DC0128&from=RO>.

⁴⁸Wladimir Andreff, *Complexity Triggered by Economic Globalisation—The Issue of On-Line Betting-Related Match Fixing*, 5(1) SYSTEMS 4 (2017), available at: <https://www.mdpi.com/2079-8954/5/1/12/htm>.

2011, about 10% of matches were felt suspicious, in 2012 about 700 games were found to be fixed, primarily in lower professional divisions. Many of these fraudulent networks are based in Asia, namely China, Malaysia, Singapore, the Philippines where betting outlays are not limited, and in some Central Eastern European countries. Interpol dismantled 272 such irregular bookmakers in 2007, arrested 1300 people suspected of organizing bets on fixed matches from Asia and seized \$16 million in cash in 2008. Before cracking down on these networks, Interpol assessed the volume of their irregular bets at \$1,5 billion. Talking about corrupt sport in 2016 cannot avoid focusing on match fixing connected to irregular betting.⁴⁹

Exemplary of the complexity and globalization of betting-related match fixing is the *Bochum* case which encompassed 50 corrupts and corruptors, and 320 fixed football matches in 13 countries of which nine were European countries, including Turkey, Germany, Switzerland, and Belgium. Rigged bets in dozens of millions of Euros were placed on fixes of which EUR 32,4 million was with a single Asian operator Samvo, licensed in the United Kingdom. The major instigator of this betting scandal eventually was sentenced to five years jail in 2011 by a German court. A large number of other football cases came to light in just a few years. More than EUR 12 million was injected in these rigged bets by mafia-type networks located in Asia and Eastern Europe to corrupt players, referees and managers of football federations; the gains of this gang were assessed to be EUR 7.5 million. Since 2012, the media has been flooded with revelations about large numbers of football players and administrators being arrested in countries such as China, Greece, Hungary, Italy, Turkey, and Zimbabwe. Problems of betting-related fixes have extended beyond football to handball, volleyball, snooker, sumo wrestling, cricket, and tennis. Apparently, those proven cases are only the tip of an iceberg. The most

recent and comprehensive coverage of rigged sports betting is going to be published in.⁵⁰

The figures are alarming. To address this issue some states block the websites offering the opportunities to bet online without having a license (e.g., the Czech Republic, Denmark,⁵¹ and the Netherlands⁵²).

The Constitutional Court of the Czech Republic considers as constitutional the provisions, which regulate the blocking of websites offering the opportunities to bet online. To decide this way, it stressed that there was court control, which could censor any alleged abuse of the authority that blocked any website. In particular, the Constitutional Court of the Czech Republic:

does not see as contrary to the constitutional order the fact that the power to decide on the inclusion of a specific Internet site in the list of illegal games of chance [the so-called “black-list”] is conferred to the administrative authorities; this is done in the administrative proceedings—the final decision is subject to a standard review in the administrative court proceedings. The form of proper and two-stage administrative proceedings, with the subsequent judicial review, is constitutional in terms of both the procedural rights of the concerned entities and the ensuring of proper interpretation and application of the act. A similar procedural step—administrative proceedings with judicial review—applies in relation to the game of chance operator or a domain holder and inclusion of an Internet site in the list (“normal” administrative proceedings), and subsequently against the Internet service provider and its responsibility for any breach of duty while preventing access to the sites on the list (administrative offense procedure which is characterised by partially different procedural standards). The judicial review is an adequate safeguard of the legality of the practice of administrative authorities in the implementation of the act.

⁴⁹*Id.*

⁵⁰*Id.* at 4–5.

⁵¹TROELS G. HANSEN, BLOCKING ILLEGAL ON-LINE GAMBLING IN A DEREGULATED MARKET. EXPERIENCES FROM DENMARK, (Deloitte 2016), available at: <https://bit.ly/30oXBm7>.

⁵²Judgment of 3 June 2010, Ladbroke's Betting & Gaming Ltd, Case C-258/08, EU: C:2010:308, § 11, available at: <https://bit.ly/387PVKe>.

The contested legislation does not show such degree of ambiguity or uncertainty that it would not fulfil the basic requirements of legal certainty and predictability as required by the case-law of the Constitutional Court [of the Czech Republic]. The task of the Constitutional Court [of the Czech Republic] is not to substitute the work of the competent public authorities and interpret authoritatively the legal terms of the Internet service provider and the Internet site or even to anticipate partial aspects of application, such as at what level of a domain name the Internet site should be blocked or how the list of illegal games should work, what cooperation can be required from the Internet service providers or what method of blocking should be chosen by them.⁵³

At the EU level, in Case C-258/08, the CJEU concluded that the authority from the Netherlands required two companies—Ladbrokes Betting & Gaming Ltd and Ladbrokes International Ltd, holders of a gambling license issued by the authorities of the United Kingdom—to block access to their Internet site for people residing in the Netherlands and to make it impossible for them to participate in telephone betting. The Luxembourg Court stressed that the measure was an indispensable element of the protection in respect of games of chance an EU member state intends to provide on its territory.⁵⁴ Due to the lack of direct contact between consumers and operators, the games of chance accessible via the Internet involve different and more substantial risks of fraud by operators against consumers compared with the traditional markets for such games.⁵⁵

In another case (C-46/08), the CJEU added that the particular ease and the permanence of access to games offered over the Internet and the potentially high volume and frequency of such an international offer, in an environment which is moreover charac-

terized by isolation of the player, anonymity and absence of social control, constituted so many factors likely to foster the development of gambling addiction and the related squandering of money, and thus likely to increase the negative social and moral consequences attaching thereto.⁵⁶ The CJEU held that prohibiting the offers of games of chance on the Internet may, in principle, be regarded as suitable for achieving the objectives of preventing incitement to squander money on gambling, combating gambling addiction, and protecting young people, even though the offer of such games remains authorized through more traditional channels⁵⁷ (i.e., off-line).

Thus, the Luxembourg Court confirmed that blocking the websites offering improperly opportunities to bet online was a justified measure and proportionate with the aim pursued.

The Republic of Moldova is not responsive to this message. A trivial typing of the text “bets.md” on Internet browsers offered us the possibility to bet on sports events at several online betting offices, which were not given any right to this end. The sports betting industry is dominated by nonauthorized portals, which take advantage of the failure or lack of desire of state authorities to liquidate the black market. The capital of the Republic of Moldova was flooded with ads of sports betting portals, which use the image of famous athletes to instigate people to bet.⁵⁸ Furthermore, sporting stakes can be placed through “Bpay” or “Qiwii” terminals, which could be found at any corner in Chisinau, at several foreign betting operators, such as Pari-Match and 1xBet. However, these operators have no document enabling them to organize and operate bets on the territory of the Republic of Moldova.

Article 3(5) of the Council of Europe Convention on the Manipulation of Sports Competitions⁵⁹ distinguishes between: (a) “illegal sports betting”—any sports betting activity whose type or operator is

⁵³Judgment of Constitutional Court of Czech Republic of 14 February 2017, available at: https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Decisions/pdf/PI-28-16.pdf.

⁵⁴Judgment of 3 June 2010, Ladbrokes Betting & Gaming Ltd, Case C-258/08, EU:C:2010:308, § 11, § 43, available at: <http://curia.europa.eu/juris/document/document.js?text&docid=81086&pageIndex=0&doclang=EN&mode=lst&dir&occ=first&part=1&cid=305478>.

⁵⁵*Id.* at § 55.

⁵⁶Judgment of 8 September 2010, Carmen Media Group Ltd and Others, Case C-46/08, EU:C:2010:505, § 103, available at: <https://bit.ly/3dC3cMf>.

⁵⁷*Id.* at § 105, § 111.

⁵⁸See *The Haven from Sports Betting* (in Romanian), UNIMEDIA (Dec. 19, 2019), available at: <https://bit.ly/2XGWbp6>.

⁵⁹Council of Europe Convention on the Manipulation of Sports Competitions, Magglingen/Macolin, Sept. 18, 2014 (Treaty Series No. 2015), available at: <https://rm.coe.int/16801cdd7e/>.

not allowed under the applicable law of the jurisdiction where the consumer is located; (b) “irregular sports betting”—any sports betting activity inconsistent with usual or anticipated patterns of the market in question or related to betting on a sports competition whose course has unusual features; and (c) “suspicious sports betting”—any sports betting activity which, according to reliable and consistent evidence, appears to be linked to a manipulation of the sports competition on which it is offered. With relevant adjustments, the notions “illegal,” “irregular,” or “suspicious” used in this Convention in the context of bets could be applicable to gambling operators as well.

Some EU member states had doubted the correspondence of the notion “illegal sports betting” referred to in the Convention with Article 18 (which guarantees the principle of non-discrimination), Article 49 (which guarantees the freedom of establishment of services) and with Article 56 (which guarantees the freedom of providing services) of the Treaty on the Functioning of the EU. This is true for Malta, which did not sign the Convention in question and brought the case before the CJEU.⁶⁰ One could understand the reluctance of that state. Malta promotes an open market for games of chance, online gambling inclusive. Nevertheless, based on the provisions referred to in Article 3(5)(a) of the Convention on the Manipulation of Sports Competitions, it results that any online bet made in country “X” for a gambling operator from Malta, where the operator in question (i.e., from Malta) does not hold a permit to offer opportunities for betting (due to different reasons, including the one that the gambling industry represents the state monopoly in that country) is considered illegal. The Luxembourg Court has not expressed its opinion in this regard yet.

Hence, stakes acceptance shall be considered as lawful if the betting organizer is entitled to carry out this activity in the state where the bettor is located. This is the Council of Europe approach.

In the Republic of Moldova, games of chance organized through electronic communications networks represent the state monopoly and are operated by

the National Lottery of Moldova jointly with NGM Company through its website.

Pursuant to Article 47(4) of Law No. 291/2016, it is prohibited to “operate games of chance through electronic communications networks, as well as their import by unauthorized people.”

Furthermore, paragraph (5) of the same Article provides that “the IT equipment and software used for organizing games of chance through electronic communications networks must be located on the Moldovan territory. The web page must hold a domain on the Moldovan territory. The control system (server) of the organizer of games of chance shall be located on the Moldovan territory.”

Therefore, if a person located in the Republic of Moldova places stakes at a gambling operator from abroad on a sports event unrolled either in that state where the gambling operator is located or in a third country, the bet will be considered illegal as per Article 3(5)(a) of the Council of Europe Convention on the Manipulation of Sports Competitions and Article 47 of Law No. 291/2016, due to the simple reason that the gambling operator from abroad is not entitled to offer betting opportunities to Moldovan citizens. This is true even if the betting operator has the right to organize and operate online games of chance in the state where its head office is located.

Some betting organizers acknowledged this fact and adopted precautionary measures. For example, pursuant to the Regulation of 1xBet (this gambling operator offers opportunities to bet online and holds a license issued by Curaçao), prior to using the 1xBet website, the player has to make sure that he or she does not infringe the laws and other bylaws on gambling on its territory of residence. The online games of chance are prohibited in some countries and, therefore, the gambling-related payments and transfers may be banned as well. The player is recommended to get the advice of a lawyer prior to getting registered on that website. According to the company policy, the registration of users residing in the countries listed further shall not be accepted: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany,

⁶⁰Request for an opinion submitted by the Republic of Malta pursuant to Article 218(11) of the Treaty on the Functioning of the EU (Opinion 1/14) 2014/C 315/37

(Sept. 15, 2014), available at: <https://op.europa.eu/en/publication-detail/-/publication/1160e566-3cb4-11e4-8c3c-01aa75ed71a1>.

Greece, Hungary, Iran, Italia, United Kingdom, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, the United States of America, and Sweden. The Republic of Moldova is not part of that list. The same Regulation admits that the legislation of those countries could be amended, while the bettors shall get acquainted with those amendments independently. If the betting operator finds out that the bettors reside in a country where gambling is banned by law, the betting operator shall reserve the right to stop the account activities via: (a) cancellation of bets, and (b) closure of participant's account and reimbursement of money deposited on that account.⁶¹

Company 1xBet (as well as other companies, e.g., Pari-Match) works in the Republic of Moldova as well, although it does not hold any authorization for organizing and operating sports betting, which is the state monopoly. The company in question does not pay any tax to the state budget. According to some estimates, based on the information from online payment systems in the Republic of Moldova, the size of payments reached by unauthorized sports betting operators in the Republic of Moldova exceeded MDL 2 billion per year.⁶² Are those figures real? We have doubts that the betting industry is so developed in the Republic of Moldova. Could this be related to money laundering?

Without waiting for an answer to those questions, we draw the conclusion that as long as operating bets represents the state monopoly in the Republic of Moldova, gambling organizers from abroad who offer opportunities to bet online (available to Moldovan citizens as well) cannot be victims of bet-fixing offenses referred to in Article 242² of the Criminal Code of the Republic of Moldova. If an offender located in the Republic of Moldova causes material damage to a betting organizer from another country, as a result of online betting on an event which was known to be manipulated, then that betting organizer could be regarded as a victim of fraud. This is the case only when the caused damage is substantial, large, or particularly large.

6. CONCLUSIONS

As a result of the conducted study, we can draw the following conclusions:

1. Victims of bet-fixing offenses could be: (1) the bettor (in case of mutual betting) or (2) the betting organizer (in case of bets at fixed odds).
2. The betting participant (player) is an adult natural person who concluded an agreement with the gambling organizer to participate in gambling or with other players by having settled the fee (stake) for the participation in gambling.
3. In the Republic of Moldova, organizing and operating bets represents the state monopoly. Only the National Lottery of Moldova, jointly with its private partner (NGM Company), may organize and operate bets. Therefore, only these two entities can be regarded as victims of bet-fixing offenses (in case of bets at fixed odds).
4. To enjoy the protection conferred by Article 242² of the Criminal Code of the Republic of Moldova, the betting organizer shall accept the stakes under lawful conditions. In this regard, stakes are accepted under lawful conditions when the betting organizer is entitled to carry out that activity in the state where the bettor is located. This is the Council of Europe approach, which has been transposed into the Moldovan legislation.
5. The betting shops/bookmakers from abroad may be regarded as victims of fraud under the assumption that the perpetrator, located in the Republic of Moldova, would cause material damage as a result of online betting on an event that was certainly known to be manipulated.
6. Blocking the websites that offer opportunities to bet online without being entitled to do so is a justified measure and proportionate with the aim pursued.

⁶¹Regulation of the Betting Office "1xBet," available at: <https://1xbet.com/ro/information/rules/> (last visited September 9, 2020).

⁶²See *Sports Betting Website 1xBet Banned in Great Britain*, available at: [https://www.bizlaw.md/site-ul-de-pariuri-sportive-1xbet-interzis-in-marea-britanie-](https://www.bizlaw.md/site-ul-de-pariuri-sportive-1xbet-interzis-in-marea-britanie-pentru-pariuri-ilegale-si-organizarea-de-cazino-porno)

[pentru-pariuri-ilegale-si-organizarea-de-cazino-porno](https://www.bizlaw.md/site-ul-de-pariuri-sportive-1xbet-interzis-in-marea-britanie-pentru-pariuri-ilegale-si-organizarea-de-cazino-porno) (last visited September 9, 2020).