

LEGALIZATION OF GAMBLING IN UKRAINE

Assistant professor **Nadiia SHULZHENKO**¹
PhD. student **Snizhana ROMASHKIN**²

Abstract

The present research paper analyzes national legislation of Ukraine regarding legalization of Gambling, compare the Laws of foreign countries regarding main mechanism of regulations: UK, Italy, Spain, Austria, Australia. The authors investigate the problems of legal regulation of gambling, as well as analyze the main reasons for the rapid development of the illegal gambling sector. The systematic analysis of the national and international legislation is carried out, the statistical report on a condition is analyzed of art. 203-2 of the Criminal Code of Ukraine, which provides for criminal liability for gambling. The authors conducted the generalization of the practice of regulating gambling in foreign countries, the expediency of legalization with detailed regulation and control over the activities of gambling organizers. In this article, we review some principles of qualitative data collection, analysis, and strategic planning to help scientists, lawyers, and law students interested in conducting research in their practice to continue their learning in this area.

Keywords: international gambling, gambling regulations in Ukraine, online games, Criminal Code of Ukraine.

JEL Classifications: K10, K20

1. Introduction

Gambling in Ukraine has always been a lucrative source of organized crime. But this phenomenon not only causes economic damage but leads to mental dependence of citizens and affects the mental and moral condition of man and as a result causes a desire to continue the game.

The issue of banning or legalizing gambling in Ukraine is extremely controversial. The Law of Ukraine "On the Prohibition of Gambling in Ukraine" of 15.05.2009, № 1334-VI, gambling in Ukraine was completely prohibited. However, in practice, gambling activities were completely disguised as lotteries.

On July 14, 2020, a new Law of Ukraine (hereinafter - the Law) "on state regulation of activities related to the organization and conduct of gambling" № 768-IX was adopted, so this issue becomes especially relevant. This Law introduces an innovation, according to which in Ukraine "with the appropriate license is allowed to organize and conduct gambling casinos, the Internet, bookmaking in bookmakers and the Internet, in the halls of slot machines, poker on the Internet."

Such Ukrainian and foreign scientists as D. Hetmantsev, V. Honcharenko, Y. Groshevy, V. Bernaza, O. Dudorov, G. Dyuba, I. Meditsky, D. Sergeeva, M. Paliy dealt with the problem of combating crime in the field of gambling. A. Politova, A. Savchenko, Z. Toporetska, V. Topchiy and others.

Law "on State Regulation of Activities Concerning the Organization and Conduct of Gambling" № 768-IX changed the established procedure for engaging in gambling, which existed for 10 years, so the aim of the article is to cover the historical stage of combating illegal organization and conduct of gambling and international regulatory experience gambling business activities in different countries.

1.1. Main part of the article

Let's start our study with an analysis of the historical stages of preventing and combating gambling in Ukraine. Thus, the Law of Ukraine "on the Prohibition of Gambling in Ukraine" of 15.05.2009, № 1334-VI, gambling in Ukraine was completely prohibited. However, in practice, the

¹ Nadiia Shulzhenko - PhD in Law, assistant of the Department of Criminal Law, Yaroslav Mudryi National Law University; senior research officer of Academician V.V. Stashis Scientific Research Institute for the Study of Crime Problems, National Ukrainian Academy of Law Sciences, n.v.shulzhenko@nlu.edu.ua.

² Snizhana Romashkin - PhD student of Academician Stashis Scientific Research Institute for the Study of Crime Problems, National Academy of Law Sciences of Ukraine, snizhana.romashkin@gmail.com.

activities of gambling were completely disguised as lotteries³.

Firstly, let's consider what exactly preceded the adoption of the Law of Ukraine "on state regulation of activities related to the organization and conduct of gambling" № 768-IX, adopted on 14.07.2020.

In accordance with the Law of Ukraine "on Amendments to Certain Legislative Acts of Ukraine regarding the Improvement of Legislation Prohibiting Gambling Business in Ukraine" of December 22, 2010 № 2852-VI, Criminal Code of Ukraine 2001, No. 25-26 was supplemented by Article 203-2 (Gambling)⁴, which provides the responsibility for gambling.

In the period from June 25, 2009 to January 13, 2011, persons engaged in gambling were liable under Art. 203 of the Criminal Code of Ukraine ("Engaged in prohibited economic activities")⁵, and participation in organized gambling without permission (cards, roulette, "thimble" and others) was an objective side of the administrative offense under part 1 Art. 181 of the Code of Ukraine on Administrative Offenses № 8073-X (Gambling, divination in public places (Participation in organized without permission gambling (cards, roulette, "thimble" and others) for money, things and other valuables)⁶.

It should be noted that despite the complete ban on gambling since 2009, both in accordance with the Criminal Code of Ukraine and the Code of Ukraine on Administrative Offenses - gambling continued to exist in Ukraine.

According to the Law of Ukraine "on Amendments to Certain Laws of Ukraine on Improving the Legislation on Prohibition of Gambling Business in Ukraine" dated 19.05.2011 № 3383-VI, Article 1 of the Law of Ukraine "on Prohibition of Gambling Business in Ukraine" (1334-17) (Vidomosti Verkhovnoi Rady Ukrainy, 2009, No. 38, p. 536) was changed as follows:

"1) gambling business - activities related to the organization, conduct and provision of access to gambling in casinos, slot machines, computer simulators, bookmakers, interactive establishments, electronic (virtual) casinos, regardless of server locations;

2) gambling - any game in which the obligatory condition of participation is the payment of money by the player, including through the system of electronic payments, which allows the participant to receive a prize in any form and not to receive it depends on chance"⁷.

According to the data of the State Judicial Administration of Ukraine⁸, information on convicted persons under Art. 203² of the Criminal Code for 2013 - 2014 - the total number of persons whose decisions have entered into force:

- Part 1 of Art. 203² - 209 people (2013) and 120 people (2014);
- Part 2 of Art. 203² - 12 people (2013) and 8 people (2014).

As noted in the Explanatory Note to the draft Law of Ukraine "on state regulation of gambling activities" prepared from 06.11.2019 № 2285-2, during 2009 -2014, the gambling business - was completely disguised as lotteries⁹. Also, as noted in the Note, according to analytical materials prepared by the Ministry of Finance of Ukraine, in 2013, 80.7% of all bets in state lotteries accounted for lotteries similar to games prohibited by law¹⁰.

According to the official statistics specified in the Letter of the Department of information and

³ Explanatory note to the draft Law of Ukraine "On state regulation of activities in the field of gambling" prepared on 06.11.2019 № 2285-2, Available at: http://search.ligazakon.ua/l_doc2.nsf/link1/GI00747A.html, consulted on 1.10.2020.

⁴ Criminal Code of Ukraine, document 2341-III, Edition of 13.01.2011, grounds - 2852-VI. Available at <https://zakon.rada.gov.ua/laws/show/2341-14/ed20110113#Text>, consulted on 1.10.2020.

⁵ Gladun O., *Counteraction to gambling in Ukraine*, „Bulletin of the National Academy of Prosecutors of Ukraine”, 2014, no. 3, p. 78-85.

⁶ Code of Ukraine on Administrative Offenses (Articles 1 - 212-24), № 8073-X. Available at <https://zakon.rada.gov.ua/laws/show/80731-10#Text>, consulted on 1.10.2020.

⁷ Law of Ukraine "on Amendments to Certain Laws of Ukraine on Improving the Legislation on the Prohibition of Gambling Business in Ukraine" of May 19, 2011 .05 3383-VI, Available at <https://zakon.rada.gov.ua/laws/show/3383-17#Text>, consulted on 1.10.2020.

⁸ Supreme Specialized Court of Ukraine for Civil and Criminal Cases - Analysis of Judicial Practice of Criminal Cases (Proceedings) for Gambling Business for 2013-2014 (<https://ips.ligazakon.net/document/VRR00185>, consulted on 1.10.2020).

⁹ Explanatory note to the draft Law of Ukraine "on state regulation of activities in the field of gambling" prepared from 11/06/2019 № 2285-2, Available at http://search.ligazakon.ua/l_doc2.nsf/link1/GI00747A.html, consulted on 1.10.2020.

¹⁰ Mazuruk V., Pirykoza P., *Economic aspects of legalization of gambling business in Ukraine*, Office of Financial and Economic Analysis in the Verkhovna Rada of Ukraine, 2016, p. 8, https://feao.org.ua/wp-content/uploads/2016/09/FEAO_Gambling_A5_04_print.pdf, consulted on 1.10.2020.

analytical support of the National Police of Ukraine dated 30.10.2017 N 6320-27/01/2-2017 for 2015, 2016 and 9 months of 2017: "in 2015-2016, 1,295 gambling offices were closed down, including slot machines, interactive clubs, bookmakers, casinos and poker rooms, and 1,495 gambling equipment and about 4 million hryvnias were withdrawn as a result of the measures taken. In 2017, 1,124 gambling establishments were closed down, 15,496 units of gambling equipment worth a total of UAH 35.9 million were confiscated from offenders, including 14,368 units of computer equipment, 660 slot machines, and 103 poker tables, 12 roulettes, 142 payment terminals and 3.7 million hryvnia obtained by criminal means"¹¹.

The order of the Prosecutor General's Office "on the establishment of an interagency working group in the field of combating illegal gambling, illegal activities of illegal gas stations, illegal use of forest resources" from 06.02.2020 № 76 to increase the effectiveness of cooperation on combating illegal gambling in the field of combating illegal gambling¹².

It is worth noting that in recent years, many bills on the legalization of gambling have been submitted to the Verkhovna Rada, but none of these attempts have been implemented.

On August 13, 2020, the Law of Ukraine "on State Regulation of Activities Concerning the Organization and Conduct of Gambling" came into force, which legalizes the activities of all major types of gambling (except lotteries), subject to a license, namely: land casino, online casino, bookmaking, slot machines and online poker.¹³

In addition, in order to prevent the emergence of illegal gambling, criminal liability is provided for the organization and conduct of gambling without a license.

To bring the regulations in line with the Law of Ukraine "on state regulation of activities related to the organization and conduct of gambling", part 1 of Article 203-2 of the Criminal Code of Ukraine was worded as follows: "1. Organization or conduct of gambling without a license to conduct the relevant activity of organizing and conducting gambling, issued in accordance with the law or issuing or conducting lotteries by a person who does not have the status of lottery operator, or organization or operation of establishments to provide access to gambling or lotteries held on the Internet".¹⁴

We agree that it is the prohibition of gambling in a given country that inevitably leads to an outflow of funds from such a country to countries where gambling is legal, as players meet their needs in those countries directly or, most often, via the Internet. Understanding this, it becomes clear why the gambling business must be regulated and legalized in a country that has proclaimed a course to build democracy in the best European traditions, aims to combat corruption and develop harmoniously in the light of civil society trends.

2. International experience in regulating gambling

It is important to understand that in almost all countries of the European continent, gambling is a legal and budget-generating sector of the economy and the relevant activities are regulated at the legislative level. As a result, the question arises - what prevails in the legalization of the gambling business: the positive or negative sides.

To determine the positive and negative features of counteracting the activities of the gambling business without licenses and with obtaining such licenses - it is important to study foreign experience. Therefore, we propose to consider the regulation of gambling in different countries.

Analyzing the experience of foreign countries, we can identify three main models of public policy to regulate gambling:

1. Countries with a total restriction on any gambling activities, as well as advertising such

¹¹ Report of the AMCU "on the results of the study of the market of issuing and conducting lotteries" dated 22.02.2018 N 13, p. 77, <http://www.amc.gov.ua/amku/control/main/uk/publish/article/140282>, consulted on 1.10.2020.

¹² Order of the Office of the Prosecutor General "On the establishment of an interagency working group in the field of combating illegal gambling, illegal activities of illegal gas stations, illegal use of forest resources", from 06.02.2020 № 76, available at: <https://zakon.rada.gov.ua/laws/show/v0076905-20#Text>, consulted on 1.10.2020.

¹³ Law of Ukraine "On state regulation of activities related to the organization and conduct of gambling" № 768-IX, dated 14.07.2020, available at <https://zakon.rada.gov.ua/laws/show/768-20#Text>, consulted on 1.10.2020.

¹⁴ Ibid.

activities. Usually, these are countries where the activity of the gambling business contradicts the religious beliefs of the population.

For example, Norway is a country with some of the strictest anti-gambling laws in Europe, and since the country is not a member of the EU, there is no pressure to weaken these laws. However, there are two state-owned companies in Norway with legal betting sites: Norsk Riskoto for horse racing and Norsk Tipping for lotteries, sports betting, poker, keno and scratch games. The government is also constantly working to stop foreign companies in Norway, and as a result, in June 2010, the Norwegian government passed a law that forced all Norwegian banks to deny customers the use of credit and debit cards at land-based and online casinos around the world. Norwegian citizens must also declare a tax benefit received in another country.¹⁵

The UAE has strict bans on gambling and gambling-related advertising. Given the religious element that underlies UAE law, there are a number of other prohibitions on actions that are contrary to public morality or contrary to Islamic beliefs. Thus, the Criminal Code defines gambling as "a game in which each of its parties agrees - if it wins - to pay the winner a certain amount of money or any other agreed thing." This makes gambling a crime punishable by imprisonment and/or a fine. The law also prohibits the opening and operation of a gambling ground, as well as the organization of gambling in a public place or in gambling.¹⁶

The Cybercrime Act provides for imprisonment and/or a fine for anyone detained for creating, operating, maintaining or transmitting a website, sending, publishing or republishing it via a computer gambling network, and anything else can harm public morals. It also prohibits the production, creation, preparation, transmission or storage for exploitation, distribution or display to others through a computer network, gambling and anything that may harm public morals¹⁷.

2. Countries with so-called game-zones. That is, on the territory of the state, there are special places where gambling is allowed, which is also clearly regulated by the state mechanism. In all other areas - gambling is strictly prohibited. The state allows only certain types of gambling and concentrates the entire gambling business at special points.

For example, Portugal¹⁸, where there are clear territorial restrictions on offline gambling, or France¹⁹, where national law²⁰ allows gambling in sparsely populated areas.

3. Countries in which gambling activities are permitted are regulated by law, and the permitting mechanism for organizing and conducting such activities is under the full control of the state.

For example, the state regulation of the gambling business in Austria is governed by the federal gambling law Glücksspielgesetz, the Law on Games of Chance, or GSpG for short, and the Austrian Ministry of Finance issues lottery and casino licenses. In Austrian law, there is a clear division into types of gambling (games, bets, lotteries) and as a result the governing body is defined. The Law on Games of Chance also determines which games are considered gambling. The few exceptions to this monopoly (some stakes, low stakes gambling and agility games) are partly regulated by the Austrian Länder and their various regional laws. There are two main conditions for obtaining an Austrian license for the gambling business: The actual physical location of the gaming company within the country, and it is only allowed to offer gambling to citizens in Austria. In fact, by these rules the government introduced a national gambling monopoly and completely blocked the involvement of international companies in the Austrian market.²¹

¹⁵ Norwegian Gambling Laws Overview, retrieved from: <https://www.gamblingsites.com/online-gambling-jurisdictions/norway/>, consulted on 1.10.2020.

¹⁶ Federal Law No. (3) of 1987 Promulgating the Penal Code UAE, retrieved from: <https://legaladvice.com/legislation/117/uae-federal-law-3-of-1987-promulgating-penal-code>, consulted on 1.10.2020.

¹⁷ Federal Law 5 of 2012 on Combatting Cybercrimes in UAE, retrieved from: http://ejustice.gov.ae/downloads/latest_laws/cybercrimes_5_2012_en.pdf, consulted on 1.10.2020.

¹⁸ Portugal Gambling Regulation Overview, retrieved from: https://uk.practicallaw.thomsonreuters.com/8-635-5321?__lrTS=20200903162001846&transitionType=Default&contextData=%28sc.Default%29, consulted on 1.10.2020.

¹⁹ French Gambling Regulations Overview, retrieved from: <https://thelawreviews.co.uk/edition/the-gambling-law-review-edition-5/1226796/france>, consulted on 1.10.2020.

²⁰ The French Internal Security Code (HSC) retrieved from: https://www.legislationline.org/download/id/6219/file/France_Internal%20Security%20Code_Dissolution%20of%20associations_as%20of%202012_fr.pdf, consulted on 1.10.2020.

²¹ Regulation of Games of Chance in Austria, retrieved from: <https://www.bmf.gv.at/en/topics/taxation/regulation-of-games-of-chance.html>, consulted on 1.10.2020.

The United Kingdom is the largest gaming market in Europe, with all types of gambling activities, offline and online, governed by the Gambling Act 2005²². It is also worth noting that in the UK, all commercial gambling activities, according to the Gambling Act, must also be governed by the license conditions and codes of practice (LCCP). Gambling in the UK is regulated by the Gambling Commission on behalf of the government's Department of Digital, Culture, Media and Sport (DCMS).

The Gambling Commission issues all types of gambling licenses to operators, controls gambling activities and fully regulates all technical gaming standards, promoting comprehensive protection of gamblers and gambling operators.²³

Canada is also one of the countries where gambling is a legalized and licensed activity. However, there is no single federal law in Canada that regulates gambling, and the types of gambling allowed vary by province or territory. Generally, any form of gambling is illegal in Canada if it is not licensed or operated by either the federal or provincial government (including online gambling that operates from offshore sites).

According to the Canadian Penal Code, illegal gambling is governed by the following rules: Article 201 - Gaming and Betting; Article 202 - Betting, pool-selling, book-making, etc; Article 206 - Offense in relation to lotteries and games of chance; Article 209 - Cheating at play.²⁴

As the online gambling market continues its meteoric rise (expected to reach 1\$ Trillion by 2021), operators become increasingly high targets. Today, we'll see what kind of challenges they face, and how to protect their business in the long run.²⁵

The gambling business in Spain is regulated at both the state and regional levels. The Gaming Act (Ley 13/2011, de 27 de mayo, de regulación del Juego), which entered into force on 29 May 2011, regulates the gaming process for both offline and online activities. However, the main purpose of the federal gaming law is still to harmonize the regulation of online gambling, and regional legislation controls offline activities. The regulatory body responsible for gambling control, which may issue gaming licenses, is the General Directorate for Gambling Regulation. The main forms of gambling include sports with fixed odds, mutual sports betting, horse racing, roulette, baccarat, blackjack, poker, bingo, slots and more.²⁶

In Australia, more than 80% of Australian adults gamble, the highest gambling rate in the world, and gambling revenue ranged from 5 to 10% of state and territory tax revenues. Regulation of gambling is regulated both at the state level by the Central Government and at the territorial level, with several regional authorities performing these functions. The Interactive Gambling Act 2001²⁷ has been in force in Australia since 2001, and the law fully regulates online gambling. It is also important to understand that player winnings in Australia are not taxed, as the Australian Government does not consider gambling winnings as income but as a result of luck, only gambling operators are taxed²⁸.

Italy has come a long way from banning all gambling completely to legalizing certain activities in 2006. By law, all gamblers and providers must purchase an Italian license from AAMS (Autonomous Authority of State Monopolies). The licenses cover such types of gambling as skill games, tournament and solitaire games, cash poker games, casino games, Fixed odds and adder bets on sports competitions, horses and other events, horse pools, bingo. And to qualify for an online gambling license, all operators must provide evidence that they meet certain requirements. This

²² UK Gambling Act 2005, Retrieved from: <https://www.legislation.gov.uk/ukpga/2005/19/contents>, consulted on 1.10.2020.

²³ Extracts of Licence conditions and codes of practice (LCCP) applicable to each type of license.

²⁴ Criminal Code of Canada (R.S.C., 1985, c. C-46), Retrieved from: <https://laws-lois.justice.gc.ca/eng/acts/c-46/index.html>, consulted on 1.10.2020.

²⁵ N. Shulzhenko, S. Romashkin, *Internet fraud and transnational organized crime*, „Juridical Tribune - Tribuna Juridica”, 2020, vol. 10, issue 1, 162-172.

²⁶ The Spanish Gaming Act (Ley 13/2011, de 27 de mayo, de regulación del Juego), which came into force on 29 May 2011, Ley 13/2011, de 27 de mayo, de regulación del juego. Retrieved from: <https://www.boe.es/buscar/act.php?id=BOE-A-2011-9280>, consulted on 1.10.2020.

²⁷ Australian Interactive Gambling Act 2001, Retrieved from: <https://www.legislation.gov.au/Details/C2020C00027>, consulted on 1.10.2020.

²⁸ Australian Gaming Regulations (List of Laws) retrieved from: <https://responsiblegambling.vic.gov.au/resources/legislation-and-regulation/>, consulted on 1.10.2020.

includes financial, technical, social and other aspects of business.²⁹

3. Conclusion

We believe that the gambling business has both positive (increasing the state budget, economic development, new jobs, attracting investment) and negative signs (bankruptcy, increasing economic crime, possible market monopoly).

However, as the European experience shows - with the right legal mechanism, negative risks are absent or minimized, and the entertainment industry becomes one of the priority sectors of the economy and as a result - hundreds of jobs, open budget revenues, business tourism development.

We hope that the adoption of the Law of Ukraine "On state regulation of activities for the organization and conduct of gambling" № 768-IX, from 14.07.2020, and the legalization of gambling:

1. significantly reduce the development of the "shadow" economy,
2. reduce the level of corruption,
3. strengthen control over the activities of organizing and conducting gambling,
4. contribute to the real protection of the social status of society from the possible negative consequences of gambling,
5. criminal liability for unlicensed activities will protect both existing operators from unfair competition and players who can play only licensed operators operating in accordance with the law.

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