INTERFERENCE OF THE LEGITIMATE PUBLIC AND PRIVATE INTEREST IN EXERCISING THE COMPETENCES OF THE NATIONAL OFFICE OF GAMBLING

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Abstract

I have chosen to address this issue, in the context of a regulation that is making its presence felt more and more, how much the pandemic situation has directed gambling players to the online environment. This study wishes to emphasize the importance of public authorities for monitoring and supervising gambling sites which are not licensed and authorized in Romania, as well as the identification of some mechanisms and instruments for pursuing some benefits from the determined circumstances of carrying out the activity of remote gambling in the absence of legal documents. In this paper, we propose a brief approach from a legal perspective on regarding the legitimate public and private interest, with the consequence that the restriction online gambling sites and do not hold the license of gambling organizer and authorization to operate the informatics platforms in Romania, occasion on which we will evaluate the effects of the restrictions of the sites produced until the present. However, we will try to show the intention of the legislator regarding the measure and the criteria of restriction within the regulated legal norm.

Keywords: *blacklist, gambling, gambling sites, legitimate private interest, legitimate public interest, National Office of Gambling, restriction.*

JEL Classification: K23

1. Introduction

At the end of 2014, in the context of the need to change the regulations in the field of gambling to the realities and active dynamics of this field, the Government Emergency Ordinance (GEO) no. 92/2014 for the regulation of some fiscal-budgetary measures and the modification of some normative acts[2], which legislate certain legitimate public interests for the exercise of the state monopoly in the field of gambling, being a normative act that includes legislative regulations, in the sense of complying with the provisions of the Treaty on the Functioning of the European Union[3].

Subsequently, by Law no. 124/2015 on the approval of the Government Emergency Ordinance no. 92/2014 for the regulation of some fiscal-budgetary measures and the amendment of some normative acts[4], obligations have been established for all providers of electronic communications networks and services - providers of internet services, fixed or mobile telephony services, providers of radio services or TV and cable services to ensure the prevention of gambling addiction, the protection of minors, the supervision and control of gambling activities on gambling sites.

The provision contained in art. 10 para. (7) of GEO no. 77/2009 on the organization and operation of gambling[5], with subsequent amendments and completions, states: "Providers of any type of gambling services, as well as payment processors are obliged to comply with the decisions of the Supervisory Committee of the National Office for Gambling (O.N.J.N.). The providers of electronic communications networks and services - providers of internet services, fixed or mobile telephony services, providers of radio or TV services and cable services - as defined in Government Emergency Ordinance no. 111/2011, approved with modifications and completions by Law no. 140/2012, with subsequent amendments and completions, are obliged to comply with the decisions of the Supervisory Committee of the O.N.J.N. regarding the restriction of access to unauthorized gambling sites in Romania, as well as those regarding the advertisement and publicity of those gambling organized by

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[2] Published in the Official Gazette of Romania, Part I no. 957 of December 30, 2014.
[3] Ratified on 4 February 2008 and entered into force on 1 December 2009.
[4] Published in the Official Gazette of Romania, Part I no. 407 of June 9, 2015.
[5] Published in the Official Gazette of Romania, Part I no. 439 of June 26, 2009, as subsequently amended and supplemented.

an unlicensed gambling operator in Romania". The second sentence of this article was the subject of the constitutionality review[6], the constitutional court holding: "The state, through its powers to adopt primary regulations, is best placed to assess the social and economic implications of certain practices such as gambling. In addition, the state has the appropriate levers to ensure effective protection of gambling consumers against fraud by operators" which, in my opinion, could be a driving force for carrying out activities and operations to establish legal rules applicable to the field.

It follows that any provider of electronic communications networks and services authorized by the National Authority for Administration and Regulation in Communications (ANCOM) has the obligation to comply with the decisions issued by the Supervisory Committee of the National Office of Gambling (ONJN), with regarding the restriction of the access of any Romanian citizen to the gambling sites that are not authorized in Romania, respectively, did not obtain the license for the remote gambling provided in art. 10 para. (1) letters h) - n) of GEO no. 77/2009, with subsequent amendments and completions, as well as advertising and publicity of those sites.

Failure to comply with the aforementioned legal provision is sanctioned according to art. 22 para. (5) of GEO no. 77/2009, with the subsequent amendments and completions, constituting a contravention, and the sanction provided by law for this contravention is the fine between 50,000 lei - 100,000 lei.

2. The validity of issuing decisions restricting access

In accordance with the provision contained in art. 15 para. (4) letter c) of GEO no. 77/2009, no license for the organization of gambling or authorization for the operation of gambling is granted, as the case may be, in the situation where the economic operators: "have operated remote gambling, as provided in art. 10 para. (1) letters h) - n), in Romania and did not declare and did not pay the amounts due according to this emergency ordinance. The gambling sites of the operators that operate the remote gambling provided in art. 10 para. (1) letters h) - n), who have not paid the license and authorization fees, as well as other amounts due will be entered on a "blacklist" of unauthorized gambling sites in Romania until the situation is clarified and will be removed from the "blacklist" only by the decision of the ONJN Supervisory Committee".

According to art. 17 para. (11) of the above-mentioned normative act, it is specified in the task of the ONJN Supervisory Committee to draw up a "black list" of unauthorized gambling sites in Romania, containing "gambling sites that carry out or have carried out unauthorized gambling activities", thus investing the deliberative and decisional body with this attribution, considering the provision of par. (12) of the same article: "The Supervisory Committee of the ONJN will take decisions in all cases and situations related to the field of gambling." From the point of view of the procedure for issuing the list, the specialized departments within the institution formulate proposals, following the deliberative and decision-making body to approve the introduction and elimination of those sites, in compliance with gambling legislation, by publishing on the website the institution of its decision.

The meaning of the phrase "blacklist" as defined in art. 2 letter k) of Annex 1 to Government Decision (GD) no. 111/2016[7] represents that "document prepared by ONJN, which includes the internet domains, as well as the natural or legal persons who have carried out or carry out related activities in the field of gambling, without a license in Romania." Also, art. 141 of the same normative act, reiterates in general the same content, but with additional clarifications, in the sense of including the platforms and applications of unauthorized gambling under the provisions of the normative acts in the field of gambling. From a procedural point of view, their inclusion in the "black list" takes place at the proposal of the specialized departments within the institution and the approval for introduction or elimination is made by the Supervisory Committee, as a deliberative and decision-

[6] Decision of the Constitutional Court no. 590 of September 13, 2016, published in the Official Gazette of Romania, Part I no. 1050 of December 27, 2016, rejecting the exception of unconstitutionality as unfounded.
[7] Published in the Official Gazette of Romania Part I no. 151 of February 26, 2016.

making structure.[8]

Order of the President of ONJN no. 147/23.06.2015 on establishing the conditions for the introduction of gambling sites of operators operating remote gambling, provided in art. 10 para. (1) letters h) - n) of GEO no. 77/2009 on the organization and operation of gambling, with subsequent amendments and completions in the "black list" of unauthorized gambling sites in Romania[9], with subsequent amendments and completions specifically establishes the fact that the introduction in the "black list" of gambling sites, refers to:

i) Lack of the organization license and the authorization to operate the holder of the computer platform, which carried out the activity of remote gambling;

ii) Promotion of gambling activities on gambling sites, for which the platform owner does not hold the organization license issued by the competent institution;

iii) Non-compliance with the technical and/or legal conditions contained in the licensing and authorization documents of the gambling sites and which were taken into account by the Supervisory Committee when issuing them.

Compared to the legal provisions presented above, we find that the administrative acts issued by the competent authority, imperatively stipulate that the providers of electronic communications networks and services authorized by the National Authority for Administration and Regulation in Communications (ANCOM) have the obligation to restrict access to blacklisted gambling sites.

Moreover, it is clearly and unequivocally stipulated the obligation of providers of electronic communications networks and services authorized by ANCOM to redirect access to sites to a certain IP address within 15 days from the date of communication of the administrative act. Under these conditions, redirection as a way of restriction, operates only on accessing sites that illegally organize remote gambling, classified according to art. 10 para. (1) letters h) - n) of GEO no. 77/2009, with subsequent amendments and completions, for players on the territory of the country, in a unitary manner by all providers of electronic communications networks and services authorized by ANCOM to a single website.

From the understood meaning, redirection represents a way of restriction, as provided in art. 10 para. (7) of GEO no. 77/2009, with subsequent amendments and completions, a phrase used for the purpose of correctly informing internet users who are trying to access sites that offer online gambling in Romania and are not authorized by ONJN.

The redirection, as a form of informative and preventive character for the removal of an unlicensed and unauthorized gambling activity on the Romanian territory, as well as for the prevention of crime is supported by the provision contained in art. 22 para. (6) of GEO no. 77/2009, with the subsequent amendments and completions, in the sense that the participation of individuals from the territory of Romania in remote gambling activities, as defined in art. 10 para. (1) letters h) - n), which are not authorized by ONJN, constitute a contravention, being sanctioned with a fine.

From another point of view, we could raise the issue, if the privacy of internet users is violated, by altering the confidentiality of electronic communication, exercised by redirecting access to an IP address. Our opinion is that we must take into account the provision of art. 26 of the Romanian Constitution, republished[10], which states that public authorities have the obligation to respect and at the same time protect intimate, family and private life, and every natural person has the right to dispose of himself, if he does not violate the rights and freedoms of others, public order or good morals. From the mentioned constitutional text, it results indisputably that the redirection of online gambling sites to an IP address with an intention of the content to respect the public order, in the

[8] Article 141 para. (2) and (3) of GD no. 111/2016 provides the following: "(2) The sites/platforms/applications of unauthorized gambling of operators that carry out or have carried out remote gambling activities in Romania or that promote unauthorized gambling will be included in "black list", by decision of the ONJN Supervisory Committee. The "black list" will be initiated at the proposal of the specialized directorates within the ONJN, and the approval for the introduction and removal from the "black list" will be made in compliance with the legal provisions in force. (3) The decision of the ONJN Supervisory Committee on "the blacklist" will be communicated to the providers of electronic communications networks and services, by e-mail or by posting on the ONJN website, www.onjn.gov.ro."

[9] The document is available online at: http://onjn.gov.ro/ordinul-nr-14723-06-2015/, accessed on 28.09.2020.

[10] Published in the Official Gazette of Romania, Part I no. 767 of October 31, 2003.

sense shown by the normative acts in the field of gambling, respects art. 26 of the Basic Law.

The implementation of legal regulations must also take into account compliance with the provisions of Law no. 677/2001[11] for the protection of persons with regard to the processing of personal data and the free movement of such data, with subsequent amendments and completions, as well as of Law no. 506/2004[12] on the processing of personal data and the protection of privacy in the electronic communications sector, with subsequent amendments and completions.

From the reading of the two laws, related to the legal basis provided in art. 10 para. (7), art. 15 para. (4) letter c) and art. 17 para. (11) of GEO no. 77/2009, with the subsequent amendments and completions, it results that the elements from the operative part of the administrative act harmonize with the normative framework in force and do not contradict the privacy.

Modification and completion of GEO no. 77/2009 by GEO no. 92/2014, approved with amendments by Law no. 142/2015 had as fundamental elements the following normative acts:

a) Law no. 82/2012[13] on the retention of data generated or processed by providers of public electronic communications networks and providers of electronic communications services intended for the public, as well as for amending and supplementing Law no. 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector, republished, subsequently, declared unconstitutional by the Decision of the Constitutional Court no. 440/2014[14]. Considering the fact that, within the period of 45 days from the publication of the decision of the Constitutional Court, no other law was promoted that would respect the rigors provided by the decision, Law no. 82/2012 was repealed by the effect of Decision no. 440/2014;

b) The provisions contained in art. 70 - 77 of the Civil Code[15] - Book I - About persons, Title II The natural person, Chapter II - Respect due to the human being and its inherent rights, Section 3 - Respect for the privacy and dignity of the human person, being detailed the situations that bring infringement of the privacy of an individual.

We can observe from the content of the mentioned legal provisions, including Law no. 82/2012 until the date of its repeal, that the claim of the existence of an interference in private life, based on art. 8 of the European Convention on Human Rights, the natural person has the duty to list and motivate which of the situations listed in art. 74 of the Civil Code are violated by administrative acts issued by the competent authority and infringes its privacy, due to accessing the site of unauthorized gambling in Romania. This aspect is supported by the appearance on the first page on the computer screen of a notification as a warning sign, that, in the event that the access will continue, it constitutes a contravention and is sanctioned with a fine, i.e. the participation of individuals from Romania in remote gambling activities that are not authorized by ONJN.

A characteristic feature of redirection is the non-alteration of the confidentiality of electronic communications, as access to the site remains the same, the site does not undergo any transformation under the action of the first warning page, both for individuals and the owner of the IT platform.

3. The effects of the procedure for restricting gambling sites

1. A consequence of the procedure of restricting gambling sites that are not authorized on the territory of Romania is represented by the observance of the provision of art. 4 of Law no. 506/2004[16]

[11] Published in the Official Gazette of Romania, Part I no. 790 of December 12, 2001, as subsequently amended and supplemented.
[12] Published in the Official Gazette of Romania, Part I no. 1101 of November 25, 2004, as subsequently amended and supplemented.
[13] Published in the Official Gazette of Romania, Part I no. 406 of June 18, 2012.
[14] Published in the Official Gazette of Romania, Part I no. 653 of September 4, 2014.
[15] Published in the Official Gazette of Romania, Part I, no. 511 of July 24, 2009, amended by Law no. 71/2011 and rectified in the Official Gazette of Romania, Part I, no. 427 of June 17, 2011 and in the Official Gazette of Romania, Part I, no. 489 of July 8, 2011.
[16] Art. 4 of Law no. 506/2004 has the following content: "Confidentiality of communications: (1) The confidentiality of communications transmitted through public electronic communications networks and electronic communications services intended for the public, as well as the confidentiality of related traffic data are guaranteed. (2) Listening, recording, storage and any other form of interception or surveillance of communications and related traffic data are prohibited, except in the following cases: a) is performed by users who participate in that communication; b) the users participating in the respective communication have given, in advance, the written consent regarding the performance of these operations; c) is carried out by the competent authorities, in accordance with the law. (3) The provisions of par. (1) and (2) are without prejudice to the possibility to carry out the necessary technical storage, for the

on the processing of personal data and the protection of privacy in the electronic communications sector, with subsequent amendments and completions. On the one hand, the provision refers to the protection of privacy with regard to the processing of personal data in the electronic communications sector, and with regard to access to these sites, although administrative acts do not refer to the processing of personal data services have obligations and duties regarding:

- the confidentiality of communications transmitted through public electronic communications networks and electronic communications services intended for the public;
- confidentiality of related traffic data;
- listening, recording, storing and any other form of interception or surveillance of communications and related traffic data;
- storing information or obtaining access to information stored in the terminal equipment of a subscriber or user.

The effect of restricting gambling sites unlicensed and unauthorized by ONJN and entered on the "blacklist" by redirecting access to the IP address XYZ does not affect the obligations and duties of respecting the confidentiality of communications, which leads concludes that redirection does not involve the interception of a data transmission. The website that illegally offers gambling is a public site and can be accessed by anyone, which means that the gambling website will be redirected for non-compliance with gambling legislation.

2. From another perspective of the interpretation of the provision contained in art. 10 para. (7) of GEO no. 77/2009 could argue that restricting the site can block the player's access, but the restriction does not in any way block access to a website and does not produce a corridor in the site's security barrier. The restriction does not constitute a cyber-attack, as the conditions of the constituent elements of a crime are not met. At the same time, the redirection has the character of preventing the phenomenon of crime and contravention, as well as the correct information of Romanian players, according to the legislation in the field of gambling - as the Romanian legislator understood to regulate it in the mentioned normative acts.

The blacklisting of sites does not provide for the application and use of techniques for capturing, transmitting, manipulating, recording, storing or communicating personal data, which in fact are all personal data processing operations, in accordance with paragraph (14) of the preamble to Directive 95/46/EC[17] of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, in conjunction with the provisions of Convention No. 108/1981[18] of the Council of Europe for the protection of individuals against automated processing of personal data.

In support of our opinion, the domestic legislation provides in art. 3 letter b) of Law no.

purpose of transmitting the communication, under the conditions of confidentiality. (4) The provisions of par. (1) and (2) are without prejudice to the possibility of making authorized records, in accordance with the law, of communications and related traffic data, when they are made in the context of lawful professional practices, in order to provide evidence of a commercial act or a communication made for commercial purposes. (5) The storage of information or obtaining access to the information stored in the terminal equipment of a subscriber or user is allowed only with the cumulative fulfillment of the following conditions: a) the subscriber or user in question has expressed his consent; b) the subscriber or user in question was provided, prior to the expression of the agreement, in accordance with the provisions of art. 12 of Law no. 677/2001, with subsequent amendments and completions, clear and complete information that: (i) is presented in a language that is easy to understand and easily accessible to the subscriber or user; (ii) include information on the purpose of processing the information stored by the subscriber or user or the information to which he has access. If the provider allows third parties to store or access information stored in the subscriber's or user's terminal equipment, the information in accordance with points (i) and (ii) will include the general purpose of the processing of this information by third parties and how the subscriber or user may use the settings of the internet browsing application or other similar technologies to delete the stored information or to deny third parties access to this information. (5^1) The agreement provided in par. (5) letter a) may be given by using the settings of the Internet browsing application or other similar technologies through which it can be considered that the subscriber or user has expressed his agreement. (6) The provisions of par. (5) are without prejudice to the possibility of storing or technically accessing the information stored in the following cases: a) when these operations are performed exclusively for the purpose of transmitting a communication through an electronic communications network; b) when these operations are strictly necessary in order to provide an information society service, expressly requested by the subscriber or user".

[17] Published in the Official Journal of the European Union L 281/31 of 23.11.1995, in Romanian 13/Volume 17, 31995L0046, available online at: https://eur-lex.europa.eu/legal-content/RO/TXT /?Uri = CELEX%3A31995L0046, accessed on 28.09.2020.

[18] Published in the Official Gazette of Romania, Part I no. 830 of December 21, 2001.

677/2001[19] on the protection of individuals with regard to the processing of personal data and on the free movement of such data, as subsequently amended and supplemented, that the processing of personal data is "any operation or set of operations carried out on personal data, by automatic or non-automatic means, such as collecting, recording, organizing, storing, adapting or modifying, extracting, consulting, using, disclosing to third parties by transmission, dissemination or otherwise, joining or combining, blocking, deleting or destroying." In other words, the processing of personal data leads to the fulfillment of obligations that any personal data controller must fulfill, according to the special law.

We consider that the restriction by redirection and the right of access to the information pages of individuals and legal entities, enjoy the freedom of information through computer channels, and the restriction operates on those gambling pages, which does not carry out its online gambling activity in accordance with the law.

3. What we can observe so far, is the fact that when identifying sites that carry out unlicensed and unauthorized gambling activities in Romania, the competent authority proceeds to restrict the site, according to the procedure established in the administrative act. We can ask a question from the perspective of the owner of the gambling platform: whether certain legitimate private interests are harmed?

In order to outline an answer to this question, we must refer to art. 2 para. (1) letter p) of Law no. 554/2004[20] on administrative litigation, with subsequent amendments and completions, which means justification and proof of non-compliance with the legitimate private interest by the public authority by the administrative act issued. Entering a contest of interests, since we cannot but admit the existence of a legitimate public interest on the part of the public authority, and from this general representation, another question can be formulated: which of the two interests predominates or has a greater preponderance for the situation of online gambling sites, unlicensed and unauthorized in Romania?

Until we draw an answer, we draw attention to the significance of the legitimate public interest, in the sense that it "aims at the rule of law and constitutional democracy, guaranteeing the fundamental rights, freedoms and duties of citizens, meeting community needs, achieving public authority", according to art. 2 para. (1) letter r) of Law no. 554/2004, with subsequent amendments and completions. The article 52 para. (1) of the Constitution enshrines the fundamental right of the injured party "in his right or in a legitimate interest of a public authority, by an administrative act or by not resolving a request within the legal term, to obtain the recognition of the claimed right or the legitimate interest, the annulment of the act and the reparation of the damage", as a guarantee of the protection of the citizens against the abuses of the public authorities and of the free access to justice.

At the same time, the provisions of art. 2 para. (1) letters a), p) and r) of the Law on Administrative Litigation define the notions of "injured person", "legitimate private interest" and "legitimate public interest", being in full accordance with the provisions of art. 52 para. (2) of the Constitution, republished, according to which, the conditions and limits of exercising the right of the injured person by a public authority are established by organic law. Or, the Law no. 554/2004 regulates the matter of administrative contentious, establishing the conditions under which the right to action may be exercised by the injured person against the issuer of the administrative act. In this sense, the issuance of the administrative act by a public authority finds its vocation through litigation in the exercise of the legitimate public interest, and from the perspective of the injured person, according to the meaning of the term "legitimate private interest", it can only claim, for the future, a certain conduct on the part of the public authority, based on a subjective right, conditioned by an obvious predictability.

As stated in the doctrine[21], regardless of the category of the two interests, both must be based on "law, custom or general principles of law", which leads to the exclusion of the defense of

[19] Published in the Official Gazette of Romania, Part I no. 790 of December 12, 2001.
[20] Published in the Official Gazette of Romania, Part I no. 1154 of December 7, 2004.
[21] Verginia Vedinaș, *Drept administrativ*, 12th edition, revised and updated, Ed. „Universul Juridic", Bucharest, 2020, p. 452; Antonie Iorgovan, *Tratat de drept administrativ*, vol. II, 4th edition, Ed. „All Beck", Bucharest, 2005, pp. 561-562.

unfounded interests through legal action.

In this paper we will not deepen the conditions for promoting actions in subjective administrative litigation and objective administrative litigation, these aspects have been detailed in the legal literature[22]. By reference to the legal provisions in the field of gambling and the role of the administrative contentious court which has the prerogative to exercise control of legality and opportunity/validity over the contested administrative act, in the right or in the legitimate private interest of the "injured person", we can he stated that the aim was to ensure that the conditions of proportionality between the purpose pursued by the legislature and the means used to prove the alleged breaches of his interests by the public authority were met.

Therefore, in principle, any legitimate interest may form the basis of an administrative contentious action, whereby the applicant may seek the annulment of the act, but nevertheless, „the social values present in the definition of the notion of legitimate public interest far outweigh the values protected in the case of the legitimate private interest. In administrative law relationships, protecting the interests of society as a whole is far more important than protecting individual or group interests" [23], which, according to the interpretation of art. 52 of the Romanian Constitution, republished, we can specify:

- within the administrative act, the legitimate public interest is protected, and in this case, the action in administrative contentious promoted must be justified from this perspective;

- there should be a collective interest in the annulment of the administrative act, as it concerns all natural persons on the territory of Romania who participate in remote gambling activities (online) and all legal persons - economic operators who operate remote gambling (online) who have not paid the license fees and authorization fees, as well as other amounts due to the state budget;

- from the point of view of the legitimacy of the interest, the administrative act issued has characteristics characteristic of the public interest, which any applicant should take into account, by formulating his reasons convincingly, so that he is not merely a „person concerned with an advantage".

4. The definition formulated in art. 5 letter kk) of the Administrative Code[24] on the meaning of the term "public service", is mentioned as "the activity or set of activities organized by a public administration authority or by a public institution or authorized or delegated by it, in order to satisfy a need of general or public interest, on a regular and continuous basis" which leads the entire direction and action of the public authority to restrict by redirecting gambling sites based on a "general need". According to an author's view[25], to which we agree, the interference between this meaning and the term "public interest" intertwine (although not defined in the Administrative Code), thus making both phrases applicable to the gambling system, by the equivalent force of these phrases, as well as the attributions in charge of the public authority, respecting the "normative autonomy", according to the quoted opinion.

4. Conclusions

Gambling is a state monopoly in European countries, and in Romania, the regulation is provided in art. 1 para. (1) of GEO no. 77/2009, with subsequent amendments and completions: "The organization and operation of the gambling activity on the territory of Romania constitutes a state

[22] Oliviu Puie, *Tratat teoretic şi practic de contencios administrativ*, Vol. I, Ed. „Universul Juridic", Bucharest, 2015, pp. 218-225. Cătălin-Silviu Săraru, *Contenciosul administrativ român*, Ed. C. H. Beck, Bucharest, 2019, p. 152-242.

[23] Verginia Vedinaș, Vasile-Cătălin Gentimir, *Poate fi utilizată procedura medierii în litigiile generate de activitatea administrației publice? Aspecte rezultate din activitatea Curții de Conturi a României,* „Dreptul", no. 1/2017, p. 145.

[24] Published in the Official Gazette of Romania, Part I no. 555 of July 5, 2019, adopted by Government Emergency Ordinance no. 57/2019, with subsequent amendments and completions.

[25] Dan Răzvan Grigorescu, *Reglementarea serviciului public în Codul Administrativ*, „Revista de Drept Public" no. 3/2018, p. 59: „The concepts of "general need" and "public interest" are not defined by the Administrative Code, but this lack can be made up by resorting to the definition of "legitimate public interest", contained in art. 2 para. (1) letter r) of Law no. 554/2004 [...] the definition in the law on administrative litigation can also be used as a benchmark in the application of the Administrative Code. However, it is important to emphasize that borrowing the meaning of the terms from Law no. 554/2004 must take into account their normative autonomy."

monopoly […]." The jurisprudence of the Romanian Constitutional Court[26] briefly examined the equal protection of the rights and interests of persons in the field of gambling, and it cannot be argued that this protection concerns only the public regulatory authority.

In a correct manner and for the same legal reasoning, we state that the public interest exercised by the authority by issuing normative administrative acts within the specific normative framework of gambling, prevails over any private interests.

The investigation of the restriction of gambling activities that do not comply with the law has been the subject of a preliminary ruling by the Court of Justice of the European Union, which has ruled that "restrictions on gambling activities may be justified by overriding reasons in the public interest, such as consumer protection and the prevention of fraud and incitement to excessive spending on gambling."[27]

While the Court recognized the specific characteristics of national supervision in the cross-border provision of online gambling services[28], it ruled at the same time that any restrictions on the freedom to provide services must "meet the criteria of necessity and proportionality" set out in the case law of the Court[29].

In another judgment, it was held that it was for the referring court to „examine whether there are other less restrictive means of ensuring a level of supervision of the activities"[30] of economic operators established in another Member State, equivalent to those which may be carried out in respect of operators whose registered office is in the country of provision of the service.

As the field of gambling is not harmonized at EU level, Member States may take the national measures they deem necessary, in compliance with the TFEU. Thus, a redirection of access to gambling sites complies with the restrictions referred to in the above-mentioned judgments, being „justified by objectives of general interest, provided that the measure is non-discriminatory and meets the requirements for proportionality", which means that the measure is appropriate and there is no less restrictive one.

We consider that the provisions mentioned in this paper guide the achievement of the objective of general interest, by imposing a conduct on the owners of computer platforms that provide gambling activities, and therefore, the redirection measure really responds to the concern to achieve the objectives pursued by the public authority.

At European level, there is no unitary practice and each state issues its own legal regulations, as it deems necessary, in relation to the specific situations in that state. Moreover, in the field of gambling, it has been found that there is a specificity depending on each state where gambling

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[26] Decision of the Constitutional Court no. 205 of May 15, 2003, published in the Official Gazette of Romania, Part I, no. 391 of June 6, 2003 stated that, "the field of gambling raises serious problems in terms of public order and morality, which justifies the adoption of restrictive measures"; Decision of the Constitutional Court no. 1,344 of October 13, 2011, published in the Official Gazette of Romania, Part I, no. 32 of 16 January 2012, the Court also took into account the case law of the Court of Justice of the European Union in the field of freedom to provide services. On that occasion, the Court noted that European case law essentially states the following: - "in the field of gambling regulation, Member States have a very wide margin of action; - the main objective of national regulation must be the fight against crime, more precisely the protection of gambling consumers against frauds committed by operators; - national legislation designed to limit the activity of gambling operators, in order to limit gambling addiction and to prevent fraud is in principle compatible with Community law; - art. 46 para. (1) of the EC Treaty allows restrictions on the freedom to provide services, justified on grounds of public policy, public security or public health, such as the objectives of consumer protection, the prevention of fraud and the incitement of citizens to pay excessive gambling, as well as the prevention of social disorders in general; Member States are free to set, according to their own scale of values, the objectives of their gambling policy and, where appropriate, to define precisely the level of protection pursued. The restrictions they impose must also comply with the requirements of the case-law of the Court, in particular as regards their proportionality"; Decision of the Constitutional Court no. 973 of November 22, 2012, published in the Official Gazette of Romania, Part I, no. 57 of January 25, 2013, by which it was noted that "the gambling market is a restrictive market, the right to organize gambling, as well as the conditions of their exploitation constituting a state monopoly, according to art. 1 para. (1) of the Government Emergency Ordinance no. 77/2009." Based on these premises, the Court, by the same decision, found that "in the field of gambling - a state monopoly - the state may adopt the conditions it deems necessary, precisely to safeguard the imperative of the public interest and to ensure effective control of this activity in order to avoid behaviors that fall within the criminal sphere."

[27] See CJEU judgment of 19 July 2012 in case C-470/11, SIA Garkalns, paragraph 39, ECLI: EU: C: 2012: 505; Judgment of the CJEU of 24 January 2013 in related cases C-186/11 and C-209/11, *International Ltd* (C-186/11), *William Hill Organization Ltd* (C-186/11), *William Hill Plc* (C-186/11), *Sportingbet Plc* (C-209/11), point 23, ECLI:EU:C:2013:33.

[28] See, for example, Judgment of the CJEU of 8 September 2009 in Case C-42/07 *Santa Casa*, paragraph 69, ECLI:EU:C:2009:519.

[29] Ibid, paragraphs 59-61.

[30] Judgment of the CJEU of 15 September 2011 in Case C-347/09, *Jochen Dickinger, Franz Omer,* paragraph 84, ECLI:EU:C:2011:582.

activities take place. In this sense, we mention that the field of services within the internal market was regulated by Directive no. 2006/123/EC[31], by which the European Parliament and the Council of the European Union in paragraph 25 of the preamble stated: „Gambling activities, including lotteries and betting, should be excluded from the scope of those activities which involve the implementation by Member States of policies relating to public policy and consumer protection"; and the provision provided in art. 2 para. (2) letter h) determine the scope of application: „This Directive shall not apply to the following activities: ... gambling activities which involve wagering a stake with a pecuniary value in games of chance, including lotteries, casino games and betting transactions".

Gambling that takes place in the European Union is not subject to the free movement of services, given that most European countries: Germany, France, England, Italy, Malta and others, have their own laws on the organization and conduct of this activity and provide: economic operators operating certain games of chance in their territory must obtain a license to that effect in that country.

According to an EC[32] press release, „...Member States are, in principle, free to set the objectives of their online gambling policies […] may restrict or limit the cross-border provision of all or certain types of gambling. online gambling services to defend the public interest. National rules focus mainly on consumer protection objectives, in particular on the prevention of gambling addiction and the protection of minors, as well as the fight against crime and fraud".

As we also mentioned from the analysis of the enunciated legal texts, it results that the restriction of access to unauthorized gambling sites in Romania, by redirection, based on the procedure presented in the Order of the President of ONJN no. 147/23.06.2015 has as legal basis the provision contained in art. 10 para. (7) the second thesis from GEO no. 77/2009, with subsequent amendments and completions, and is made for online gambling for which the gambling organizer's license and gambling license have not been obtained, although mandatory.

We emphasize the characteristic feature, as an effect of the online gambling activity without legal documents, that, on the one hand, the player's access is restricted, and on the other hand, the site owner once identified by the public authority representatives, actually transposes a tax fraud. We will not detail the commission of tax fraud in the field of gambling in this material, this topic will be the subject of a future analysis material, but we can not forget that the priority and particular element from the perspective of the economic operator to carry out an economic activity provision of gambling in the online environment (Romanian or foreign natural/legal person) remains the realization of a financial profit. Against this situation, "the private interest is evaluated as a simple vocation, possibility, which is not included in the legal category of law […] Private patrimonial interests conflict with the public interest."[33], and public law, as mentioned in the doctrine: "the essence of public law, in general, is the priority of the collective interest over the individual", by governing the public power regime and by defending its values, the public interest becomes the central element in the analyzed work. Thus, I answered the question of the existence of the competition of interests. Therefore, as noted in an author's work[34]: "administrative law is not only the right to organize and operate public services or the exercise of public authority, but also the right to manage the public interest", the side of administrative law is found at all levels of administration central and local public.

By borrowing the phrase "management of the public interest" and seeing the role, importance and lack of other criteria for restricting gambling sites, we argue in our understanding, *de lege ferenda*, that the need for deep and longer-term international cooperation it is required by concluding agreements to facilitate the exchange of information between national public authorities as regulators,

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[31] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, published in Official Journal L376/36, 27.12.2006, pp. 50-82. The document is available online at: https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex%3A32006L0123, accessed on 02.10.2020.

[32] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: "Towards a global European framework for online gambling" COM/2012/0596 final, 52012DC0596. The document is available online at: https://eur-lex.europa.eu/legal-content/RO/ALL/?uri=CELEX%3A52012DC0 596, last accessed 02.10.2020.

[33] Augustin Lazăr, *Conflictul de interese – o analiză comparativă*, „Dreptul" no. 9/2016, p. 30.

[34] Cristian Clipa, *Noțiunea de interes public, între definiții juridice și speculații economice*, „Revista Română de Drept Privat" no. 1/2019, p. 87.

as well as with economic operators operating online in gambling activities, regardless of the country of residence. In this regard, we will be able to appreciate with certainty that, within the framework of regulation and supervision of the supply and consumption of remote gambling, the economic activity represented by gambling will be carried out according to all documents issued by the competent authority and the essential elements. established in the principles that ensure the unity, homogeneity, coherence and capacity to develop the relations between the administrator of the state monopoly and the economic operators.

For the same identity of reason, but even more so, the situation should have been regulated as provided in art. 10 para. (7) thesis II - of GEO no. 77/2009, as the process of developing the phenomenon of gambling in the online environment, under the impetus of intrinsic and extrinsic human factors evolves day by day, to higher levels and is amplified creatively. In support of this course of action, we have taken into account that „[...] the public interest does not result from the sundry private interests we may have. If something (a law or policy) is in the public interest, this does not mean that it aims to realize certain private aims that specific individuals may have."[35]

In conclusion, we appreciate that the activity of conducting gambling in the online environment without holding a gambling organizer license, respectively the authorization to operate gambling is a tool for incorporation in several categories of analysis: criminal, economic, taxation, psychology, etc., which remains an open subject from this perspective.

The positive obligation of the state is transposed in this context, by virtue of the mentioned regulations, but insufficient for its multidisciplinary approach. Therefore, the statement I used at the end of this article: „the public interest has no independent content, but is discovered simply by aggregating individual interests; that which is in the interest of a preponderance of individuals is also in the public interest"[36], determines the evaluation and re-evaluation of the entire system, starting from the "aggregation of interests" of the holders of IT platforms (with or without organization license and operating license) with those of the state, as interested regulator of the field.

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[35] Eric Boot, *The Feasibility of a Public Interest Defense for Whistleblowing*, „Law and Philos" 39, 1–34, 2020, p. 33. https://doi.org/10.1007/s10982-019-09359-1.

[36] Aileen McHarg, *Reconciling Human Rights and the Public Interest: Conceptual Problems and Doctrinal Uncertainty in the Jurisprudence of the European Court of Human Rights*, „Modern Law Review", vol. 62, issue 5, 1999, p. 675, https://doi.org/10.1111/1468-2230.00231.