



SARA Law Research Center

International Journal of Legal and Social Order, <https://www.ccdsara.ro/ijlso>

ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188

Nº. 1 (2023), pp. 1-18

A GAP IN CRIMINAL LAW HARMONIZATION: DIFFERENT REACTIONS TO ILLEGAL GAMBLING IN DIFFERENT LEGAL CULTURES

R. LINDT

Received 06.01.2023; accepted 14.02.2023

<https://doi.org/10.55516/ijlso.v3i1.106>

Roland LINDT

Ferenc Mádl Institute of Comparative Law (MFI)

University of Miskolc (ME)

E-mail: lindt.roli99@gmail.com

ORCID ID: <https://orcid.org/0000-0002-5843-2813>

SUPPORTED BY THE ÚNKP-22-2 NEW NATIONAL EXCELLENCE PROGRAM OF THE MINISTRY FOR CULTURE AND INNOVATION FROM THE SOURCE OF THE NATIONAL RESEARCH, DEVELOPMENT AND INNOVATION FUND.



Abstract

Substantive criminal law regulation of European countries share major similarities. The reason behind this phenomenon is the fact that certain cultural aspects have had their influence on most of the societies of the continent. Discussing the roots of the common European culture, we have to emphasize the role of Christianity, the legacy of Greek philosophers and the reception of Roman law.

Nevertheless, the concept of certain criminal offences may diverge because of the different legal approaches of the same problems. Taking a simple example, the system of public education is probably regulated in detail by the majority of countries. However, the way of regulation highly depends on the values followed by the specific society. Sticking to our example, at what age should a child start to attend elementary school? Obviously, there is no universally acceptable answer to this question. If we imagined a legal system where the failure of making our children attend school is considered a crime, then the rules of compulsory school attendance would be, implicitly, a fundamental part of the definition of this offence.

This absurd experiment of thought clarifies that a comparative analysis in the field of criminal law may reveal considerable differences even between resembling legal systems whenever a criminal offence is based on administrative law regulation. That is why the examination of the concept of illegal gambling is a promising field of research: due to a variety of reasons, it is without a doubt that each country has its own instruments to punish this kind of activity, but legal definitions and applied methods are most likely not alike.

In the present paper, we introduce a Western, a Central and an Eastern European example to demonstrate diverse approaches. After that, we attempt to outline the essential characteristics of a globally significant, serious social problem, the compulsive gambling to see which strategy proves to be the most suitable to treat it.

Key words: *illegal gambling, gambling disorder, criminal law, administrative criminal law, comparative analysis.*

INTRODUCTION

As Perry (2006, p. 1171) summarized Hart's interpretation, „[a] rule is [...] a certain kind of complex social practice that consists of a general and regular pattern of behavior among some group of persons, together with a widely shared attitude within the group that this pattern is a common standard of conduct to which all members of the group are required to conform.” If we accept this statement, we can assume that the creation and the acceptance of any (legal) rule are highly influenced by the society in which it exists. Consequently, cultural differences between countries will imply non-negligible differences in their legal systems. Nonetheless, (substantive) criminal law is a branch of law where the applied theoretical concepts, usually contained by the general part of criminal codes, and the definitions of the majority of criminal offences are quite similar throughout Europe.

This observation might sound surprising at first sight, though the reasons behind the phenomenon are pretty obvious. In fact, the nations of the continent share common cultural roots: the moral principles of Christianity, the theoretical progress of Greek philosophers and the results of the Roman law all form part of the legacy of Europe, thus the different societies have a common core concept of values that also outlines the basic ideas of legal regulation.

The first 'layer' of the identically interpreted delicts is the one that is derived from the laws of nature or, in other words, is based on *naturalis ratio*. These conducts are considered unacceptable in not only Europe, but in each community around the world. Such prohibitions tend to appear in the teachings of the major world religions, thus being part of *lex divina* which is included in the concept of natural law. Concentrating on the European cultural heritage, we shall highlight the importance of the Ten Commandments in which the orders „you

A GAP IN CRIMINAL LAW HARMONIZATION: DIFFERENT REACTIONS TO ILLEGAL GAMBLING IN DIFFERENT LEGAL CULTURES

shall not murder” (Exod. 20.13) and „*you shall not steal*” (Exod. 20.15) appear. The concepts of homicide and theft can be found with the same content, although not with the exact same wording, in each national criminal law regulation.

On the other hand, the foundation of the first states and the creation of legal systems also provoked the appearance of a new series of unlawful acts related to the violation of the established legal order. A number of behaviors that belong to this category are described similarly in different legal regimes as well. For instance, the expression ‘perjury’ holds the same basic meaning everywhere: a witness who, in front of the authorities, gives false testimony (or suppresses evidence) regarding an essential circumstance of a case, thus realizing a violation of a procedural code. Another great example is bribery, when the perpetrator gives or promises some kind of illegal advantage to another person, in order to influence that person’s way of acting. Even though the exact definitions of criminal codes may differ in terms of the legal quality of the passive subject or the result of the unlawful conduct, this type of corruption has a universally accepted core content. These delicts already existed in the Roman Empire, therefore modern European countries inherited and improved the same basics.

In the third place, while discussing the harmonization of criminal law regulation, we must not ignore the role of the European Union in our continent, which is capable of creating minimum rules in this field via directives. We are able to observe the impact of EU legislation through money laundering or environmental crimes. In both cases, the supranational legislator prescribes the essentials of the definitions for the member states; that being the case, a comparative analysis is not desirable at this point either.

We have mentioned quite a few examples where national rules prove to be more or less equivalent. To make use of comparative approach, it is logical to study behaviors that constitute a violation of such detailed national regulation where the exact rules of different countries surely differ from each other and there is no relevant EU harmonization. Furthermore, it is also essential for the examined unlawful act to be severe enough to justify the use of criminal law instruments in all countries taken into account. Since the regulation of gambling is not influenced by EU legislation and the activity in question may be harmful to society from several points of view, which will be described below, it seems promising to scrutinise the definition of illegal gambling in different legal systems.

1. REASONS TO FIGHT AGAINST ILLEGAL GAMBLING

Before the introduction of the three chosen regulations, we strive to summarize the main reasons why the organization of gambling ought to be, and in most countries is, a strictly supervised area of services. Accordingly, we have delimited four groups of causes.

From a moral point of view, frequent participation in gambling is usually considered problematic: a non-negligible amount of the European societies look

down on those people who are involved in such activities on a regular basis. Despite this fact, gambling has ultimately become a form of socialization. At this point, it seems difficult to decide whether the lifestyle of the gambler offends the unwritten rules of ethics and should be treated as a form of deviance. Of course, the answer depends on many factors like the historical roots and the attitude of the society in which the gambler lives or the exact amount of time and financial sources spent on this kind of activity. In a recently published study, such a lifestyle is aptly called a 'deviant leisure', later being stated that „*the normalised 'socialisation' of gambling requires a more critical criminological eye that extends beyond the limited notions of 'crime' and 'deviance' and instead contextualises these issues through the more ontologically robust notion of harm*” (Raymen, Smith, 2020, pp. 381-383).

In addition, taking into consideration the Christian teaching, gambling is not explicitly categorized as a sin, however it can be interpreted as the manifestation of the desire to get wealthy easily, in other words, it is an activity motivated by the love of money. In this topic, the Gospel states that „*[n]o one can serve two masters; for either he will hate the one and love the other, or he will stand by and be devoted to the one and despise and be against the other. You cannot serve God and mammon*” (Matt. 6.24). Mammon, a name of the evil spirit represents here deceitful riches, money and possessions. So we can conclude that compulsive gambling and the constant chase of enrichment is immoral according to the Holy Bible.

Concerning the impact on health, we have to mention both physical and mental risks. It is proved that those who show the signs of gambling addiction usually experience a great variety of physical symptoms like insomnia, regular headache, hypertension, gastrointestinal and cardiac problems etc. (Balázs, Demetrovic, Kun, 2010, p. 51). Moreover, such patients frequently fall victim to some type of chemical addiction (mainly drug or alcohol) or suffer from maniac depression or antisocial personality disorder as well (Fekete, Grád, 2020, pp. 330-331). Cause-and-effect relation has been discovered between the mentioned mental disorders, though it is not evident that which one tends to be the core reason of the other psychological issues. A German survey published a few years ago records that while substance-related addictions usually develop after the onset of pathological gambling behavior, anxiety and mood disorders were present first in the 74,3% of the analyzed cases (Romanczuk-Seiferth, Mörsen, Heinz, 2016, p. 157).

Discussing the main criminological aspects, we should understand how the life of the people living with such a disorder is affected. Actually, the desperate desire to gamble makes the patient more likely to become the perpetrator or the victim of certain criminal offences. The link between the commission of crime and gambling addiction has been scrutinized by several authors, in many different countries. For example, a Spanish survey demonstrated that people concerned

A GAP IN CRIMINAL LAW HARMONIZATION: DIFFERENT REACTIONS TO ILLEGAL GAMBLING IN DIFFERENT LEGAL CULTURES

usually commit crimes against property: except robbery, these are non-violent acts (*Germán Mancebo, 2010, pp. 6-7*). Nevertheless, another study based on a sample of more than 1800 Canadian high school students showed that the rate of gambling addicts is higher among the perpetrators of both crimes against property and crimes against the person (*Brunelle, Leclerc, Cousineau, Dufour, Gendron, 2012, pp. 116-117, 120-121*). Another problematic point is that in the case of the descendants of a person involved, the risk of experiencing psychosocial disorder increases because of the harmful effect of the addiction on family life (*Németh, Demetrovics, Kun, 2018, p. 173*). Besides the situation of pathological gamblers, we must also notice that the unregulated gambling industry could be the hotbed of white-collar crime.

Finally, it is necessary to emphasize the economic reasons, or rather the budgetary interests of the state. On the one hand, a proper system of taxation regarding the gambling industry provides a significant revenue. On the other hand, compulsive gamblers, in many cases, lose their job, thus the once useful members of the society, the taxpayers may become people who need financial help from the state which means a serious loss of revenue and a new source of expenditure.

As we may conclude, it is not a possibility, but rather a quasi-obligation of the national legislator to create a sufficiently detailed regulation in this area.

2. THE REGULATION OF ILLEGAL GAMBLING IN CERTAIN EUROPEAN COUNTRIES

Having demonstrated that national legislators necessarily regulate illegal gambling in different ways and that such a regulation can necessarily be found in all developed countries, the last key element of the current study was to determine a group of European countries in which each member has a significantly different concept of law compared to the others.

As we have already stated, in our continent the majority of legal systems share a common core, namely the legacy of the Roman law. For this reason, the selection method was based purely on the geographical location of the countries: we have realized the analysis of a Western (Spanish), a Central (Hungarian) and an Eastern (Russian) European legal regime.

In order to make a meaningful comparison between the three systems, the following aspects have been examined in each case:

- the definition of illegal gambling,
- the list of unlawful conducts and
- the sanctions prescribed in connection with illegal gambling in the field of criminal law and administrative criminal law.

2.1. Spain

In Spain, a decriminalization process has taken place during the past decades. Before the 20th century, games based on pure luck were strictly

forbidden in the peninsula and the perpetrators of such crimes could be sentenced to death. The norms existing back then sanctioned both the organizers and the participants. The mentioned process started in the 70s, having triggered serious debates among practitioners. Finally, the last relevant criminal offence was repealed by an amendment of the Spanish Criminal Code then in force (the current Spanish Criminal Code: *Ley Órganica 10/1995, de 23 de noviembre, del Código Penal*; henceforward: Cóp) in 1983 (Pino, 2014, pp. 16-17, 27-31).

Today, there is no criminal offence named illegal gambling in the Cóp, however the aim of influencing games of gambling or betting is a qualifying circumstance of a certain type of corruption (*Cóp art. 286 quater.*). The discussed delict (*Cóp art. 286 bis. 4.*) can be committed by the „*executives, directors, employees or collaborators of a sporting company, whatever its legal status, as well as sportspersons, referees or judges, regarding conduct aimed at deliberately and fraudulently predetermining or altering the result of a match, game or competition of particular economic or sporting importance*” (official translation by the Ministry of Justice).

The term ‘special economic or sporting relevance’ is described by the Cóp in the same place: a sports competition of special economic relevance shall be considered to be one in which the majority of the participants receives any type of remuneration, compensation or economic income for their participation in the activity; and a sports competition of special sporting relevance shall be considered to be one that is classified in the annual sports calendar approved by the corresponding sports federation as an official competition of the highest category of the modality, speciality or discipline in question. Applicable sanctions prescribed in this provision are imprisonment (*pena de prisión*) and special disqualification from engaging in trade or commerce (*inhabilitación especial para el ejercicio de industria o comercio*).

The other essential source of law in our topic is the Act on gambling (*Ley 13/2011, de 27 de mayo, de regulación del juego*; henceforward: Rdj). This code gives us the definition of game of gambling (*Rdj art. 3. a*): „*any activity in which sums of money or objects that are economically assessable in any form are at risk on future and uncertain results, dependent to some extent on chance, and which allow their transfer between participants, regardless of whether the degree of skill of the players predominates in them or whether they are exclusively or fundamentally based on luck or chance*” (translation of the author). As the notion implies, a game has to fulfill three conjunctive criteria to be considered as a type of gambling falling under the scope of the Rdj:

- the participation fee,
- the potentially obtainable prize and
- the element of chance.

Lottery and betting have their own specific rules and own concepts as well (*Rdj art. 3. b)-c*).

A GAP IN CRIMINAL LAW HARMONIZATION: DIFFERENT REACTIONS TO ILLEGAL GAMBLING IN DIFFERENT LEGAL CULTURES

The legislator has not formulated a separate definition for illegal gambling; with a view to fill this gap, we can state that illegal gambling is any kind of game that falls under the scope of the Rdj, but does not comply with its rules. The Rdj itself describes several possible infringements, distinguishing three groups of them: very serious (*mu y grave*), serious (*grave*) and light (*leve*) (*Rdj art. 39-41.*). It shall be noted here that other related sources of law that develop the regulation of the Rdj may also define further infringements (*Rdj. art. 37.*).

Among very serious infringements (*Rdj art. 39.*), there are numerous that are qualified as criminal offences in other legal systems like the organization of gambling without authorization, illegal promotion of gambling, acquisition of authorization with the use of fake documents, repeated and unjustified refusal to pay the prize, manipulation or alteration of technical systems to the detriment of participants etc.

16 cases of serious infringement are defined in the (*Rdj art. 40.*). These include, but are not limited to, the violation of conditions prescribed in the authorization or of the gamer protection rules, provision of loans or any other form of credit to participants by operators, usage of non-authorized technical systems etc.

Light infringements (*Rdj art. 41.*) are not defined exhaustively: besides a few specified conducts like not cooperating with the agents of gambling authorities or insufficient communication to the public concerning the prohibition on the participation of children, every failures to comply with the obligations of the Rdj that are not qualified as serious or very serious infringements belong to this group.

The act describes the potentially applicable sanctions for each group (Rdj art. 42.):

- light: written warning and fine up to 100.000 euros;
- serious: fine of 100.000-1.000.000 euros and suspension of activity in Spain for a maximum of 6 months;
- very serious: fine of 1.000.000-50.000.000 euros, loss of the authorization, disqualification from carrying out activities related to gambling for a maximum period of four years and closure of the means by which information society services supporting gambling activities are provided.

Finally, it should also be noted that the perpetration of two light infringements within two years is qualified as a serious one, while the realization of two serious infringements within two years is considered a very serious one.

2.2. Hungary

Discussing Hungarian criminal (and administrative criminal) law, we usually evoke the result of the first successful codification process of the 19th century that is considered the first criminal code of the country. Act V of 1878, regularly referred to as Code Csemegi, did not have any provision in connection with illegal gambling. However Act XL of 1879, the first code of administrative

criminal law contained a whole chapter called ‘offences committed by gambling’ (*szerencsejáték által elkövetett kihágások*). This set of rules prohibited the organization of-, the provision of premise for- and the participation in illegal gambling.

Nowadays, the regulation of the area is much stricter. The main rules are laid down in Act XXXIV of 1991 (henceforward: Gambling Act) that has been amended more than fifty times during the past three decades. As article 1. follows, „*gambling is any game in which the player is entitled to win money or other prizes of pecuniary value in return for the payment of money or the provision of property, if certain conditions are met or if they are fulfilled. Winning or losing depends solely or predominantly on chance*” (translation of the author). The article also states that betting and slot machines fall under the scope of this definition as well. We can declare that the Hungarian wording is also made up of three conceptual elements, similarly to the Spanish example:

- the participation fee,
- the potentially obtainable prize,
- the result depending on solely or predominantly on chance.

The Gambling Act provides us a specific definition for illegal gambling too (*art. 37. 14.*). „*Games of chance which are subject to authorization under this Act and which are organized without a licence from the gambling supervisory authority*” (translation by the author). Therefore a game would be considered unlawful, under any circumstances, if the organizer did not possess the mandatory permission provided by the gambling authority. This definition is applied in the field of criminal law too.

The Gambling Act, like the Rdj, also defines numerous possible violations of gambling regulation that can be committed by the legal persons lawfully organizing gambling, yet we will focus on the relevant rules of Act C of 2012 (*Hungarian Criminal Code; henceforward: HCC*) and Act II of 2012 (*Code of Infringements; henceforward: CI*).

The criminal offence named ‘Unlawful Gambling Operations’ (*tiltott szerencsejáték szervezése*) (*HCC art. 360.*) describes three ways of perpetration (the current wording is in force since the promulgation of the Amending Act LXXVI of 2015):

- organizing unlawful gambling activities on a regular basis
- making available premises or instruments for the purpose of unlawful gambling activities,
- inviting to participate in unlawful gambling activity before the public at large.

The active subject is specific in each case: regarding organization, the perpetrator can only be someone who does not have the mandatory license, while the other two conducts can only be committed by those who are not qualified as organizers in accordance with this provision.

A GAP IN CRIMINAL LAW HARMONIZATION: DIFFERENT REACTIONS TO ILLEGAL GAMBLING IN DIFFERENT LEGAL CULTURES

Organizing refers to the control over the game or making others participate in the game, however the participation of the organizer is not required to become perpetrator. The meaning of the term ‘on a regular basis’ was a subject of debate in Hungarian jurisprudence for a long time and was concluded by the Supreme Court of Hungary: this element can be realized with at least two consecutive perpetration (*EBH.2017.B.17.*).

In the second case, the premise in question is not required to be the property of the perpetrator and its provision constitutes the offence, irrespective of whether there is a compensation. Instrument, in practice, usually refers to an electronic device that makes possible the participation in games that are organized outside Hungary.

Invitation is a *sui generis* preparation-like offence, meaning that the fulfillment of this conduct does not require the actual participation of the person invited (*Katona, 2019, p. 834; Görgényi, 2020, p. 650.*).

The respective sanction prescribed by the HCC is deprivation of liberty up to three years, which is the most severe possible sanction compared to the past two criminal codes of Hungary (*Act V of 1961, Act IV of 1978*) that had criminalized this delict as well. Prohibition from residing in a particular area is also possible (*HCC art. 364.*)

CI contains an infringement called ‘illegal gambling’ (*tiltott szerencsejáték*) (*CI art. 191.*), which on the one hand penalizes the organization of gambling in public places (*közterület vagy nyilvános hely*), on the other hand, it also orders to punish the participation in such a game. The main difference between the first part of the infringement and the criminal offence is that the perpetration of the prior can be realized by organizing only one illegal occasion too. Public place is defined (*CI art. 29. (2) a*)) as a place for public use which is accessible by everyone under the same conditions, irrespective of its owner or form of property. The Hungarian term ‘*nyilvános hely*’ (*CI art. 29. (2) b*)) also appears in the relevant article in order to broaden the meaning of public place.

2.3. Russia

The main source of law on gambling in Russia is the Federal law of December 29, 2006 No. 244-FZ (*henceforward: Russian Gambling Act*). According to this law, the organization of gambling is only lawful in the regions exhaustively listed in it (*Russian Gambling Act art. 9. 2.*); these administrative areas are referred to as gambling zones (*игорная зона*). It must be emphasized that bookmakers and totalizators do not fall under the scope of this restriction (*Seryogina, Zaytseva, Ryabko, Serogodskaya, 2018, p. 955*) and the organization of lottery does not fall under the scope of Russian Gambling Act, therefore the gambling zone system mainly affects the operation of casinos.

The same act also gives us the legal definition of gambling: „*an agreement between two or more parties or an agreement with a gambling operator in view to win based on an assumption of risk, in accordance with rules set by the gambling*

operator” (translation of the author) (Russian Gambling Act art. 4. 1)). This approach, unlike the others, highlights other conceptual elements:

- the game is treated as an agreement between two or more parties,
- this agreement can be concluded between a minimum of two players or between a player and the organizer,
- the rules are set by the organizer.

Besides, the chance to win and the dominant role of luck also appear explicitly, albeit there is only an implicit reference to the participation fee. This term for gambling is used in the field of criminal and administrative criminal law jurisprudence too.

The delict called ‘illegal organization and conduct of gambling’ (*Незаконные организация и проведение азартных игр*) was introduced into the Criminal Code of the Russian Federation (*Уголовный кодекс*, Federal law of June 13, 1996, No. 63-FZ; henceforward: RCC) in 2011 (*RCC art. 171.2.*) and since has been amended several times (*in details see: Kathaev, Margieva, 2020, pp. 402-403*). Due to the administrative regulation based on gambling zones, five different unlawful behaviors are defined within the definition of this crime (*translation available in: Seryogina, Zaytseva, Ryabko, Serogodskaya, 2018, p. 957*):

- „gambling organization and (or) conduction with use of the gaming equipment out of gambling zones,
- gambling organization and (or) conduction without Gaming License obtained in accordance with the established procedure in bookmaker offices and totalizators out of gambling zones,
- gambling organization and (or) conduction without a permission to implementation of gambling activities,
- gambling organization and (or) conduction with use of information and telecommunication networks, including Internet networks, or means of communication, including mobile communication, except for cases of interactive rates reception by gambling organizers in bookmaker offices and (or) totalizators,
- systematic space granting for illegal gambling organization and (or) conduction.”

Through the first three cases, we are able to observe the relevance of gambling zones in criminal law: the organization of ‘classic’ gambling like the operation of a casino can prove to be illegal in two ways: if it is realized outside the gambling zones, it surely is against the law; if it is realized inside one of the gambling zones, the lack of permission makes it unlawful. In the case of bookmakers and totalizators, only the acquisition of the so-called ‘game license’ matters. In addition, the organization via any electronic or telecommunication device is strictly prohibited, except for the interactive rates reception (usually as part of sports betting). Systematic space granting refers to the provision of

A GAP IN CRIMINAL LAW HARMONIZATION: DIFFERENT REACTIONS TO ILLEGAL GAMBLING IN DIFFERENT LEGAL CULTURES

premise for the organizer at least two times consecutively (*RCC art. 171.2. Note 1.*)

Later on, the provision in question formalizes five qualifying circumstances:

- commission by a group of persons by previous concert,
- commission accompanied by the commercialization in a large size,
- commission by an organized group,
- commission by the person with the use of official position and
- commission accompanied by the commercialization in especially large size.

The latter three are the especially qualified cases with the most severe potential sanctions. The definition of commission by a group of persons by previous concert or by an organized group are defined in the General Part of the RCC (*art. 35.*). The terms commercialization in a large and especially large size are also determined in the code (*RCC art. 171.2. Note 2.*): the prior refers to an income exceeding 1.500.000 rubles, the latter is an income exceeding 6.000.000 rubles.

In connection with this crime, the possibility of application of a large scale of sanctions is prescribed. As we have seen, in accordance with the details of the commission, three ‘categories of severity’ are distinguished: basic, qualified and especially qualified perpetration. In all three cases, fine and deprivation of liberty are applicable. It shall be noted that the limit of the amount of fine is described in two ways in every cases. There is an objectively defined frame (300.000-500.000; 500.000-1.000.000; 1.000.000-1.500.000 rubles) and also a subjective one based on the wages or other income of the person convicted, acquired in a certain period of time. In the case of basic perpetration, the convicted may also be sentenced to compulsory work. Moreover, in the scenario of especially qualified perpetration, the loss of the right to hold certain positions or engage in certain activities for a period of up to five years is also probable.

Included by the Russian Federal Code of Administrative Offences (*Кодекс Российской Федерации об административных правонарушениях*, Federal law of December 30, 2001, No. 195-FZ; henceforward: CAO), three relevant infringements have to be mentioned.

The criminal offence of illegal organization that has been analyzed above, has its less severe counterpart under the same name (*CAO art. 14.1.1.*). The first paragraph of the examined article describes almost the same possible offences that we have encountered in the RCC; a slight difference compared to the previously seen wording is the introduction of the term ‘duly obtained license’. Russian scientific literature states that in practice, the definitions used by the RCC and the CAO cause serious uncertainty and the interpretation in the actual cases highly depends on the evaluation of the investigative authority (*Kathaev, Margieva, 2020, p. 404*). As a consequence, we expect a new amendment in the near future.

Furthermore paragraph three and four of the article in question penalizes the violation of conditions stipulated by the permission (in the case of casinos) or by the license (in the case of bookmakers' office and totalizators).

Finally, paragraph five prohibits the presence and the employment of people under the age of eighteen years in gambling establishments.

Regarding sanctions, a fine can be imposed in connection with the violation of each paragraph. In general, the fine must be paid by the operator legal entity, albeit, based on paragraph five, the official who lets the underage person enter the gambling establishment can be punished as well. If the infringement described in the first paragraph is fulfilled, the confiscation of the gaming equipment is also prescribed. Last but not least, in the case of 'gross' violation of conditions contained by the license, in addition to the fine, the suspension of activity for a maximum of ninety days shall be imposed too.

A separate infringement applies to the violation of sports betting administrative regulation by omission (*CAO art. 14.1.1-1.*). The perpetrators of these unlawful actions can only be organizers related to bookmakers' offices and totalizators. Defined conducts are:

- failure to comply with the identification procedure,
- failure to comply with information obligations towards the All-Russian Sports Federation (*Общероссийская спортивная федерация*) and the executive body performing state supervision,
- failure to comply with the procedure of registration of the participants.

Here the CAO only prescribes the imposition of administrative fine.

Lastly, a rather special provision (*CAO art. 5.49.*) bans the organization of lottery and other risk-based games in connection with the result of the elections or a referendum.

3. SOME CHARACTERISTICS OF COMPULSIVE GAMBLING

In view to gain a better insight into the health and criminological aspects of our issue and thus be able to make a suggestion to ameliorate the presented legal regulations, it is desirable to summarize here some essential information on compulsive gambling. In a few words, we strive to introduce the conceptual evolution of the psychiatric term, the reasons behind the development and the course of the disease.

3.1. Evolution of the concept

Today, the phenomenon of compulsive gambling is officially recognized as a mental disorder by experts. This status became widely accepted due to the American Psychiatric Association (APA) which published the third version of the 'Diagnostic and Statistical Manual of Mental Disorders' (henceforward: DSM) in 1980, in which the term 'pathological gambling' appeared for the first time. Back then, it was placed among 'impulse-control disorders not elsewhere classified'. In the fourth version of DSM (1994), the terminology and the categorization did not

A GAP IN CRIMINAL LAW HARMONIZATION: DIFFERENT REACTIONS TO ILLEGAL GAMBLING IN DIFFERENT LEGAL CULTURES

change. Two conjunctive conditions were required for diagnosis (*DSM-IV-TR*, 312.31, pp. 671-674):

▪ „*Persistent and recurrent maladaptive gambling behavior as indicated by five (or more) of the following:*

- (1) *is preoccupied with gambling [...]*
- (2) *needs to gamble with increasing amounts of money in order to achieve the desired excitement*
- (3) *has repeated unsuccessful efforts to control, cut back, or stop gambling*
- (4) *is restless or irritable when attempting to cut down or stop gambling*
- (5) *gamble as a way of escaping from problems or of relieving a dysphoric mood [...]*
- (6) *after losing money gambling, often returns another day to get even [...]*
- (7) *lies to family members, therapist, or others to conceal the extent of involvement with gambling*
- (8) *has committed illegal acts such as forgery, fraud, theft or embezzlement to finance gambling*
- (9) *has jeopardized or lost a significant relationship, job, or educational or career opportunity because of gambling*
- (10) *relies on others to provide money to relieve a desperate financial situation caused by gambling*

▪ *The gambling behavior is not better accounted by a Maniac Episode.”*

As we can see, the first condition focuses on the potential symptoms, consisting of a list of ten elements, of the disorder in question, albeit it is sufficient for the patient to present half of the clinical signs in order to be diagnosed. The negative criterion refers to the possible presence of other mental disorders that ‘absorb’ the diagnosis of pathological gambling.

In 2013, due to the pressure of the most widely accepted scientific approach, the interpretation of pathological gambling changed radically. The fifth edition of DSM, currently in use, describes the characteristics of ‘gambling disorder’, being part of the category ‘non-substance-related disorders’ (*DSM-5*, 312.31, pp. 585-589). The reform of DSM was motivated by the fact that chemical or substance-related and behavioral or non-substance-related addictions have a significantly similar development and course (*for more details see: Fekete, Grád, 2020, pp. 288-289*).

Concerning the definitional elements, we have to underline some fundamental changes that took place in DSM-5. Each modification mainly affected the first condition, that had also been part of the definition of pathological gambling. According to the current handbook, only the last 12-month period shall

be examined in terms of the exhibition of the symptoms by the patient. Furthermore, the commission of illegal acts was eliminated from the list of symptoms, thus nine elements have remained, from which the exhibition of at least four is required for diagnosis. Another novelty is that the patients can be categorized in accordance with the severity of their mental problem. The three categories are defined based on the number of symptoms presented (mild: 4-5 criteria; moderate: 6-7 criteria; severe: 8-9 criteria).

The other important manual worth mentioning, produced by the World Health Organization, that is used to classify not only mental, but all types of diseases is called ‘International Classification of Diseases’ (henceforward: ICD). In our case, it seems that the current eleventh edition, published in 2022, has followed the conceptual development seen in DSM: the phenomenon is referred to as gambling disorder here as well, being defined as a ‘disorder due to addictive behaviour’ (ICD-11, 6C50). Nevertheless, ICD uses two subcategories that does not appear in the American handbook, having introduced gambling disorder predominantly online and predominantly offline. This distinction is probably justified by the fact that nowadays online casinos have been gaining more and more popularity.

3.2. Reasons behind the development of the disorder

According to Fekete and Grád (2020, p. 323) behavioral addictions are multifactorial diseases that require biological-psychological-sociocultural influences to develop. Accumulation within families implies biological determinacy, while psychological and sociocultural reasons may vary.

Regarding biological factors, we have to discuss a genetical and a neurobiological cause. The prior is known as the phenomenon of ‘genetical vulnerability’. A survey that took place almost twenty years ago in Canada demonstrated that, compared to normal population, a person suffering from gambling disorder is more likely to have a first-degree relative with the same condition. Moreover, alcoholism, bipolar disorder, depression and drug problems were also more frequent in the families concerned (Cox, Enns, Michaud, 2004, p. 261). Besides sociological reasons, it is proved that a certain genetic trait contributes to increased vulnerability (Németh, Demetrovics, Kun, 2018, p. 164). The other explanation from the field of neurobiology is the following: physiological functions such as arousal, impulse-control, reward and pleasure are regulated through the so-called neurotransmitter systems. Addictions, even behavioral addictions, can upset the physiological hormonal balance of the body, so that hormones such as dopamine, noradrenaline or serotonin begin to concentrate in the body when the pathological activity is pursued.

Internationally recognized psychologists have set up different, concurrent explanatory models for a better understanding of gambling disorder. As it is not our intention to introduce all of them, we just highlight the general addiction theory of Jacobs (*in details see: Fekete, Grád, 2020, pp. 332-333*) that is

A GAP IN CRIMINAL LAW HARMONIZATION: DIFFERENT REACTIONS TO ILLEGAL GAMBLING IN DIFFERENT LEGAL CULTURES

seemingly a great description of the mental state of the gambler. This approach states that sick people strive to reach a different identity state. During the game, a so-called ‘self-induced dissociative state’ is reached, i.e. the player is able to dissociate from everyday reality artificially. This mental condition is characterized by:

- the narrowing of consciousness,
- a change in personality,
- the loss of reality control and
- a drastic change in the experience of space-time.

Probably the most interesting group of causes for the experts of social sciences is the sociocultural one. Although we are convinced that the list of risk factors appearing in scientific literature is not yet exhaustive, several ones are widely accepted among scholars. Male sex, adolescence, low socio-economic status, belonging to a minority group, psychiatric problems (including psychoactive substance use) and predisposition to crime are cited as risk factors frequently. The results of Hungarian surveys identified low education level and unmarried family status as potential causes too. (*Németh, Demetrovics, Kun, 2018, pp. 159, 162-163*). In the topic, there can be found references to migration background, unemployment (*Romanczuk-Seiferth, Mörsen, Heinz, 2016, p. 158*), old age and being a casino employee (*Balázs, Demetrovics, Kun, 2010, p. 48*) as well.

3.3. Course of the disease

It goes without saying that like any other diseases, addictions have stages or phases too. The determination of the phase in which the patient is found at the beginning of the treatment is essential to plan the ideal therapy.

Blume separates four phases of pathological gambling (*in details see: Balázs, Demetrovics, Kun, 2010, p. 50; Németh, Demetrovics, Kun, 2018, pp. 157-158*):

- Phase of winning: initially, patients often win, causing the illusion of omnipotence. Losses may take place in this stage too, however they seem insignificant next to the ‘big gains’. Tolerance and loss of control already show up.

- Phase of losing: usually starts with a major loss. The addicted person experiences this as a severe blow, since the illusion of omnipotence is shattered. The denial of addiction, the demand of loans and the waste of family reserves begin.

- Phase of desperation: at this point, financial resources get exhausted and can only be provided by illegal means. This is where the patient hits rock bottom, though the unrealistic belief in a big payoff is still present.

- Phase of hopelessness: the player abandons the myth of ‘winning it all back’, however the feeling provided by the participation remains indispensable. The course ends in burnout and sometimes with suicide.

Another interpretation describes only three stages: phase of winning (*fase vincente*), phase of loosing (*fase perdente*) and phase of desperation (*fase della disperazione*) (Vico, 2011, p. 111). The two approaches are almost identical; in the latter, the phase of desperation contains all the elements of the last stage of Blume's description as well.

Possible outcomes of the process may be suicide, confrontation with the authorities and request for (professional) help.

CONCLUSION

Since there is no mandatory supranational source of law created by the EU in the area, gambling has to be regulated by national legislators. The need for state control can be justified with many arguments. The violation of administrative rules shall be punished by criminal law instruments.

European examples have shown that the problem can be treated in a variety of ways. While in Spain the code of criminal law does not contain a prohibition regarding the problem, the act on gambling defines a complex system of possible infringements. On the other hand, a detailed criminal offence with an elaborate system of qualification appears in Russian criminal law regulation in addition to the delicts described in the code of infringements. In Hungary, the act on gambling is a thorough piece of legislation, having been amended several times, thus the issue of illegal gambling receives less attention in the examined branches of law.

Although the analyzed approaches have shown significant differences, a common conceptual basis can be observed. In each country, the definitional elements of gambling are more or less identical, as well as the description of the main punishable conducts like the organization of gambling without permission or the provision of premise for gambling purposes.

Possible sanctions are quite diverse, however it seems that all the examined countries prefer the penalty of fine. Logically, if the expected financial sanction in the event of a breach of the law is significantly higher than the benefits of the breach, then it is not worth committing the offence. By implementing this idea, the legislator will be able to remarkably increase the general preventive effect.

Nonetheless, gambling disorder can not be effectively treated by using only legal instruments. A person suffering from this addiction needs a professional therapist to be cured, or at least to become asymptomatic in the long run. The purpose of legal regulation shall rather be prevention.

As we have noticed, illegal gambling is a criminal offence of high latency rate because there is no victim in the classic sense. Therefore it would be reasonable to introduce a special ground for exemption from criminal responsibility for those perpetrators who choose to uncover the circumstances of the crime and to cooperate with the authorities.

A GAP IN CRIMINAL LAW HARMONIZATION: DIFFERENT REACTIONS TO ILLEGAL GAMBLING IN DIFFERENT LEGAL CULTURES

Finally, addicted people should be protected from not only the unlawful organization of gambling, but also from themselves. Many players with low socio-economic status spend all their financial resources on legal forms of gambling. A possible solution regarding this side of the problem could be the introduction of a mandatory entry system which denies the right to enter, if the player receives any type of state aid on a regular basis.

BIBLIOGRAFIE

1. Ley Órgánica 10/1995, de 23 de noviembre, del Código Penal;
2. Ley 13/2011, de 27 de mayo, de regulación del juego;
3. Act XXXIV of 1991;
4. Act II of 2012;
5. Act C of 2012;
6. EBH.2017.B.17.;
7. Federal law of June 13, 1996, No. 63-FZ;
8. Federal law of December 30, 2001, No. 195-FZ;
9. Federal law of December 29, 2006 No. 244-FZ;
10. *The Holy Bible* <https://www.bible.com/hu/bible/8/GEN.1.AMPC> (downloaded: 11.01.2023.);
11. American Psychological Association, *Diagnostic and Statistical Manual of Mental Disorders* (4th ed., text rev.), Arlington, 2000. (DSM-IV-TR);
12. American Psychological Association, *Diagnostic and Statistical Manual of Mental Disorders* (5th ed.), Washington, 2013. (DSM-5);
13. World Health Organization: *International Classification of Diseases* (11th ed.), 2022. <https://icd.who.int/browse11/l-m/en#/http%3a%2f%2fid.who.int%2fid%2fentity%2f1041487064> (downloaded: 11.01.2023.) (ICD-11);
14. Balázs Hedvig, Demetrovics Zsolt, Kun Bernadette, *Kóros játékszenvedély*, in Demetrovics Zsolt, Kun Bernadette ed., *Az addiktológia alapjai IV.*, Eötvös Kiadó, Budapest, 2010, 43-76;
15. Brunnelle, Natacha, Leclerc, Danielle, Cousineau, Marie-Marthe, Dufour, Magali, Gendron, Annie, *Relation entre les jeux virtuels de hasard et d'argent et certaines conduites déviantes chez des jeunes du Québec*, *Criminologie*, Volume 45(2):107-132, 2012;
16. Cox, Brian J., Enns, Murray W., Michaud, Valerie, *Comparisons Between the South Oaks Gambling Screen and a DSM-IV–Based Interview in a Community Survey of Problem Gambling*, *Canadian Journal of Psychiatry*, Volume 49(4), 2004;
17. Germán Mancebo, Isabel, *La relevancia criminológica de las adicciones sin sustancia a determinadas conductas y de su tratamiento*, *International E-Journal of Criminal Sciences*, Article 3, no. 4, 2010;

18. Görgényi Ilona, *A közigazgatás rendje elleni bűncselekmények*, in Görgényi Ilona, Gula József, Horváth Tibor, Jacsó Judit, Lévay Miklós, Sántha Ferenc, Váradi Erika, Magyar Büntetőjog – Különös rész, Wolters Kluwer Kiadó, Budapest, 2020;
19. Grádné Fekete Mária, Grád András, *Pszichológia és pszichopatológia jogászoknak*, HVG-ORAC Lap- és Könyvkiadó, Budapest, 2020;
20. Katona Tibor, *A közigazgatás rendje elleni bűncselekmények* in Karsai Krisztina ed., Nagykommentár a Büntető Törvénykönyvhöz – Nagykommentár a Büntető Törvénykönyvről szóló 2012. évi C. törvényhez, Wolters Kluwer Kiadó, Budapest, 2019;
21. Khataev I. E., Margieva M. S., *Some Criminal-Legal Characteristics of an Illegal Arrangement of Gambling*, Advances in Economics, Business and Management Research, Volume 113, 2020;
22. Németh Attila, Demetrovics Zsolt, Kun Bernadette, *Szerencsejáték-használati zavar: tünettan, epidemiológia, kezelés*, in Petke Zsolt, Termkó Mariann ed., Felépülés a függőségből: szerencsejáték és szerhasználat, Medicina Kiadó, Budapest, 2018;
23. Perry, Stephen, *Hart on Social Rules and the Foundations of Law: Liberating the Internal Point of View*, Fordham Law Review, Volume 75(3):1171-1209, 2006;
24. Pino Abad, Miguel, *Despenalización de los juegos de azar en España*, Revista Vía Iuris, no. 16, 2014;
25. Raymen, Thomas, Smith, Oliver, *Lifestyle gambling, indebtedness and anxiety: A deviant leisure perspective*, Journal of Customer Culture, Volume 20(4):381-399, 2020; DOI: <https://doi.org/10.1177/1469540517736559>;
26. Romanczuk-Seiferth, Nina, Mörsen, Chantal, Heinz, Andreas, *Pathologisches Glücksspiel und Delinquentz*, Forensische Psychiatrie, Psychologie, Kriminologie, Volume 10(3):155-163, 2016; DOI: <https://doi.org/10.1007/s11757-016-0376-1>;
27. SERYOGINA, E. V., ZAYTSEVA, L. A., RYABKO, N. V., SEROGODSKAYA, E. S., *CRIME ANALYSIS OF ILLEGAL GAMBLING PROMOTION IN THE LIGHT OF AMENDMENTS TO THE CRIMINAL CODE OF THE RUSSIAN FEDERATION*, EUROPEAN RESEARCH STUDIES JOURNAL, VOLUME 21(SPEC. IS. 2), 2018;
28. Vico, Giulia, *Non mi diverto più! Il gioco d'azzardo patologico*, Rivista di Criminologia, Vittimologia e Sicurezza, Volume 1(1), 2011.



This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.