

Gambling and Betting

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Abstract. The new Civil Code regulates both the gambling contract and betting or wagers. The legislator does not assign, however, a legal definition to these contracts, the definitions being outlined in theory and practice. Both types of contracts can take the form of organized business activities or unorganized activities of individuals. Authorization is granted by the Ministry of Public Finance through its Gambling Commission. Gambling involves only the element of chance, whereas betting also depends on other elements, both contracts being concluded either orally or in writing, depending on the nature of the game or bet.

Keywords: Wager, Gambling, Bet, Regulation.

1. Introduction

Before the entry into force of the new Civil Code, gambling and wagering contracts pertained to the category of unnamed contracts. Established legal principles and jurisprudence have led to the shaping of clear definitions for the two types of contracts, and the frequency with which they are encountered in practice has led to the need for legislating them.

The law does not distinguish between gambling and wagering, but legal principles offer the clarifications required in order to understand these notions.

Following the entry into force of the new Civil Code, these contracts are now regulated in art. 2264-2266, which stipulate some issues regarding gambling and wagering categories.

They are defined as aleatory contracts by virtue of which the parties are mutually bound to pay a sum of money or another asset to the winner depending on whether an event occurs or fails to occur, on the skill, knowledge, abilities, intelligence etc. of contractors or other persons, or on hazard, which presuppose chances of gain and risks of loss for all contracting parties.

Regardless of the role of the parties in the gambling process, the legal regime of the gambling and wagering contract is the same, and the effects generated by these contracts are identical.

2. Concept and Classification

The gambling contract [1] is a contract whereby the parties mutually undertake to transfer a well-determined material asset, consisting of a sum of money or other property, depending on the achievement or failure of an event, both parties being thus subject to both winning or losing. This event may depend exclusively on chance, but it may also depend on the skill, intelligence, strength and knowledge of the parties or other persons.

The bet or wager contract is a contract whereby the parties argue their contrary opinions and establish that the one who is proven right will be entitled to a sum of money or another object. The winner is determined according to objective criteria for verifying the claims of the parties.

These contracts are regulated in art. 2264-2266 of the new Civil Code, but the legislator does not assign a legal definition to them, the definitions being outlined in theory.

The role played by the parties in the contract is the most important *criterion for differentiation* between the two contracts, so that, if at least one party has an active role, we are dealing with a gambling contract [2], and if the parties do not have an active role in the event, we are dealing with a wager contract.

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Both contracts may take the form of either organized business activities, or unorganized activities of individuals. Organized activities can include: sports betting, casino games, the national lottery with all of its sub-branches: Lotto 6 of 49, 5 of 40, chance, etc. The most common among unorganized activities are billiards, bowling, chess, backgammon, card games, ad-hoc sports competitions etc.

G.E.O. no. 77/2009 provides that the operation and organization of gambling activities in Romania is a *state monopoly*. The right to exploit and organize gambling activities is evidenced by a license of organization granted by the state, for each type of activity, and based on a gambling permit [3]. Authorization is granted by the Ministry of Public Finance, through its Gambling Commission [4].

Organizing gambling requires, as covered in G.E.O. 77/2009, a game, a stake or a fee, a private equity fund, rules of the game, organizers and participants. The fee can be *direct* – when it is levied directly from the participant by the organizer, in exchange for the right to participate – or *disguised* – in the case of an additional amount to that collected from the same person, whether received or requested by the organizer or other person, in exchange for the right to participate.

The organizer of gambling can be a Romanian legal entity, established under the conditions of the law and authorized to this end.

A participant in gambling can be any major person.

Fraudulent gambling is gambling in which the element of chance or the selection method are modified by changing data or input parameters, for this very purpose.

3. Classification of Gambling

Gambling can be classified into:

- *Betting*, which is distinguished by using future results that will occur without the involvement of the organizers
- *Mutual betting*, whereby the prize is distributed to the winners, in proportion to the number of winning variants, the organizers being only involved in collecting participation fees and in distributing prizes
- *Fixed-odds betting*, in which the organizer determines, based on his own criteria, the shares of multiplying the stake, and lets the participants know when the variants they had betted on are winning;
- *Lottery games*, which use purely random results of the drawing of numbers, letters, symbols or tickets;
- *Bingo games conducted in game halls*, which involve some gains awarded successively, generated by random elements and obtained through lottery-type draws
- *Bingo games organized by televisions*, the difference between them and hall bingo games being given by the fact that the participants are not physically present, but the game is broadcast live on TV
- *Casino gambling*, in which events are produced by specific means of play, in the presence of participants, with or without their direct involvement
- *Slot-machine games*, in which events are organized through specific machines, systems or equipment, and the gain depends on chance

The following categories are permitted without authorization, as they are not regarded as gambling:

- *Recreational games* – aimed at testing the participant's dexterity, intelligence or strength and do not entail a gain based on a random element. They are operated by means of equipment, machines or devices of any kind
- *Actions to stimulate sales operated by various economic operators* - they do not require any fees or additional costs, and no increase in the previous price
- *Raffles* – if they have a non-profit character for organizers and are organized in communities

4. Legal Characters and the form of Gambling and Wager Contracts

The wager and gambling contract are characterized by the fact that, in terms of legal characters, they are:

- *Bilateral, mutually binding agreements*, because both parties have mutual obligations arising from the same contract. The occurrence of the event leads to gain or loss for one of the parties, but this only affects the performance of the contract, not its nature
- Consensual contracts, which is recognized due to the situation that the mere agreement of will is sufficient for their valid conclusion. With no right of action for enforcement of obligations arising from these contracts, the legal provision of special forms for their conclusion was meaningless;
- *Random contracts*, considering the date when the contracts were concluded, when both parties are subject to either gain or loss
- In the case of unorganized betting or gambling, the contract may be concluded *verbally*. The contract is concluded in *writing* when it involves buying a ticket for participating in an organized game or bet, or when it requires the purchase of tokens for participating in the game

5. The Legal Effects of Wager and Gambling Contracts

It is important to take into account the fact that *the party who paid voluntarily cannot seek reimbursement for the payment made*, because this is expressly provided by the new Civil Code in art. 2264 par. 2. The Reason for this is that, just as the winner's rights cannot be defended by legal action, neither can the loser's rights, who voluntarily paid his debt. Exceptions to these provisions are situations where fraud, a person lacking exercise capacity, or a person who had limited exercise capacity is involved, because, in such situations, certain categories of people and good faith are defended. This is a legal effect of these contracts [5].

Another effect is that the *right to legal action for the payment of obligations arising from these contracts is not granted by law*, art. 2264 par. 1 of the new Civil Code expressly providing that "*there is no right of action for the payment of a debt arising from a gambling or wager contract*"; the debtor may oppose "*the gambling or betting exception*", which entails the lack of sanction and binding effects. Intermediaries who are legally authorized to collect stakes from persons that do not take part in the game cannot invoke "*the gambling or betting exception*", according to art. 2264 par. 1 and 3 in the new Civil Code.

Debts arising from such a contract cannot be subject to a recognition of debt, transactions, novation, compensation or forgiveness of load debt or other such legal documents, according to the same article. 2264 par. 3 of the new Civil Code. These debts have been assimilated by natural debt, remaining as simple debts of honor, and can be made voluntarily.

Gambling and betting are recognized in court only if authorized by the competent authority. Loans given to the loser, for use in the game, are assimilated to debts from betting or gambling, and are therefore not recognized in court. These considerations are not applied when it comes to the winner of the game or when the loan is granted after the game has been closed, to pay the loser's debt in the game; in these latter cases, there is a right to legal action, to recover the lent amount [6].

Bets made by people who actually participate in sports and skill games, racing or other such competitions are recognized in court. The law recognizes the right to take legal action in the case of sports bets, covering this in art. 2265 of the new Civil Code [7]. This exception can be argued by the fact that the greatest importance for the outcome of the bet is not chance, but the skills or qualities of athletes [8]. The court may either dismiss the action, or reduce the amount, if the bet amount is excessive [9].

6. Conclusions

The operation and organization of gambling in Romania is a state monopoly and the right to operate and organize these activities is evidenced by a license of organization granted by the state, and a gambling permit. The license of organization is granted for each separate type of activity.

The reimbursement of the payment made voluntarily may not be required by the party who has paid, nor does the law provide the right to taking any legal action for payment of obligations arising from these contracts. The law recognizes the right of action in the case of sports bets, thus regulated in art. 2265 of the new Civil Code. But both gambling and betting give way to taking legal action only if they permitted by the

competent authority. The organizer of gambling can be a Romanian legal entity, established under the conditions of the law and authorized to this end.

7. References

- [1] G.E.O. no. 77/2009 defines gambling as "that commercial activity which meets all of the following conditions: it assigns material gain, usually financial, following public tender by the participant, against a direct or disguised participation fee, earnings being assigned by random selection of the results of events in the game, regardless of how they are produced. This category also includes those activities in which the prizes are established based on the results of events or contests that will occur without the involvement of organizers".
- [2] On the organized gambling contract, see J. Goicovici six, *Progressive Contract Formation*, Wolters Kluwer Publishing House, Bucharest, 2009, p. 192-212.
- [3] Both the license of organization and the operating authorization are nominal documents, limited in time.
- [4] The Ministry of Public Finance, together with the Minister of the Interior, by joint order, establish the composition of this commission. Its structure will have to include at least one representative of the Ministry of Finance, the Ministry of the Interior and the National Office for Preventing and Combating Money Laundering.
- [5] Article 2264 par. 2 NCC states: "The loser cannot seek reimbursement for the payment made voluntarily. However, he can require reimbursement in case of fraud or if the payer was devoid of the legal capacity of exercise or had limited legal capacity of exercise".
- [6] M. Muresan, S. Fildan, *Civil Law. Special contracts*, Cordial Lex Publishing House, Cluj Napoca, 2012, p. 379.
- [7] Art. 2265 NCC states: (1) The provisions of art. 2264 do not apply to bets made between individuals themselves taking part in races, games of skill or any sports. (2) However, if the bet amount is excessive, the court may dismiss the action or, where appropriate, reduce the amount. (3) In cases mentioned in par. (1), intermediaries who legally authorized to collect bets from people that do not take part in the game cannot invoke the provisions of art. 2264 par. (1) and (3).
- [8] The legal provisions referred to in this article are applicable only to participants in sporting competitions, and not to other people not directly involved in the competition.
- [9] C. Hamangiu, I. Rosetti Balanescu, Al. Băicioanu, *Treatise of Romanian Civil Law*, vol. II, Bucharest, Socec Publishing House, 1943, p. 631.