



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

LAURUS INVEST HUNGARY KFT AND OTHERS v. HUNGARY
(Applications nos. 23265/13 and 5 others)

The European Court of Human Rights (Second Section), sitting on 8 September 2015 as a Chamber composed of:

Guido Raimondi, *President*,

Işıl Karakaş,

András Sajó,

Nebojša Vučinić,

Helen Keller,

Egidijus Kūris,

Robert Spano, *judges*,

and Abel Campos, *Deputy Section Registrar*,

Having regard to the above applications lodged on 4, 5 and 8 April 2013,

Having regard to the decision of 19 November 2013 to join the applications,

Having regard to the observations submitted by the Government and the observations in reply submitted by the applicant companies,

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicant companies is set out in the appendix.

The Hungarian Government (“the Government”) were represented by their Agent, Mr Z. Tallódi, from the Ministry of Justice.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

3. The applicant companies were involved in developing and operating entertainment centres, slot-machine arcades and other gaming arcades in Hungary.

4. In 2012 the Hungarian Parliament enacted Law no. CXLIV of 2012 (“the Arcade Ban Act”) restricting the activities of amusement arcades and prohibiting the operation of slot-machine terminals, except in the three casinos with licences for live gambling operations.

5. According to the applicant companies, the brief legislative explanation of the Arcade Ban Act provided little insight into the purpose and reasoning behind the legislation. Although it imposed an outright prohibition on amusement arcades operating slot machines, it expressly allowed existing casinos to do so. It also authorised lotteries, bookmakers, totalisers, bingo halls, scratch cards and sweepstakes. The applicant companies stated that, until recent times, the government had effectively encouraged the growth of the – hitherto unregulated – online gambling market as a source of tax revenue for Hungary.

6. The Arcade Ban Act did not provide for any legal avenue for the interested parties to be heard, to appeal or otherwise to challenge the revocation of the respective licences to operate slot machines in amusement arcades. The ban was introduced in an expedited manner and was not preceded by a public consultation. The revocation of the applicant companies’ licences occurred within fifteen days of the publication of the first announcement of the idea in the Hungarian press. The Arcade Ban Bill was introduced on 1 October 2012 and enacted the following day, on 2 October 2012. It was proclaimed on 9 October and came into force on 10 October 2012.

7. As background, the parties submitted that under Law no. XXXIV of 1991 (“the Gambling Act”), the operation of slot machines in amusement arcades in Hungary was a liberalised market activity, supervised by the Tax Authority. Operators were liable to significant fines for any compliance violations. The only precondition under the Gambling Act for the operation of slot machines in an amusement arcade was that a licence had to be obtained from the relevant authority for the operation of each slot-machine terminal. In addition to the general operating licence, a specific licence was necessary for each type of game and slot-machine terminal. The applicant companies were in possession of licences and related operating permits with indeterminate validity. The licences were subject to annual review to ensure that the slot machines were being operated in accordance with the law.

8. By 2010 a total of 1,270 slot machine operating licences had been granted in Hungary. Class II arcades (a maximum of two slot machines per venue) operated in bars and pubs, while “high-level” class I arcades (more than twenty slot machines per venue), otherwise known as “professional slot-machine houses”, were frequently located in malls and major shopping centres in urban areas, requiring a large investment for their installation and maintenance.

9. As of the date on which the present applications were lodged, two class II casinos were located in Budapest: the State-owned Tropicana Casino and the privately owned Las Vegas Casino. Another casino located

in Sopron was co-owned by the State. The income earned by those casinos from their slot machines has increased by 500 to 800% since the ban imposed on amusement arcades.

10. On 1 November 2011 Parliament amended the Gambling Act by means of Law no. CXXV of 2011, which, *inter alia*, required slot-machine operators to switch to server-based slot machines at a cost of approximately 10,000 euros per slot machine. Compliance with the new law required large-scale arcade operators to invest several hundred million Hungarian forints (HUF). This and subsequent legislation multiplied the tax payable by arcade operators, resulting in a fall in the number of slot machines operated.

11. The applicant companies submitted that, on the basis of those Acts, they had been confident that they could continue to operate, provided that they complied with the new regulations and that their licences were not withdrawn. However, despite those legislative developments and the applicant companies' expectations, the Arcade Ban Act had effectively wiped out their business.

12. On 4 October 2013 the Constitutional Court dismissed two applicant companies' constitutional complaints challenging the Arcade Ban Act.

13. Meanwhile, on 16 May 2013, five of the applicant companies in application no. 23853/13 (that is, Berlington Hungary Tanácsadó és Szolgáltató Kft, Lixus Szerencsejáték Szervező Kft, Lixus Projekt Szerencsejáték Szervező Kft, Lixus Invest Szerencsejáték Szervező Kft and Megapolis Terminal Szolgáltató Kft) brought an action in damages against the State, claiming a total of HUF 8 billion on account of an alleged breach of European Union law by the national legislature, which had effectively deprived them of their business.

14. In the ensuing litigation, on 13 February 2014 the Budapest High Court stayed the proceedings and requested a preliminary ruling from the Court of Justice of the European Union (CJEU) concerning the gambling tax and the Arcade Ban Act (C-98/14, EU:C:2015:386).

15. The questions put by the Budapest High Court were, in so far as relevant, the following.

“22. ...

(8) Is non-discriminatory legislation of a Member State compatible with Article 56 TFEU [Treaty on the Functioning of the European Union] if it prohibits with immediate effect the use of slot machines in amusement arcades, without allowing the operators of games of chance affected a transitional or adjustment period or offering them appropriate compensation, and, at the same time, establishes in favour of casinos a monopoly in the operation of slot machines?

...

(10) If questions 8 and/or 9 are answered in the affirmative, what criteria must the national court take into account to determine whether the restriction was necessary, appropriate and proportionate in the context of the application of Articles 36 TFEU, 52(1) TFEU and 61 TFEU or where there are overriding requirements?

(11) If questions 8 and/or 9 are answered in the affirmative, having regard to Article 6(3) TEU [Treaty on European Union], must account be taken of the general principles of law, as regards the prohibitions laid down by a Member State and the grant of a period of adjustment? Must account be taken of fundamental rights – such as the right to property and the prohibition on depriving a person of property without compensation – in connection with the restriction arising in the present case and, if so, in what way?

(12) If questions 8 and/or 9 are answered in the affirmative, must the judgment in *Brasserie du pêcheur* and *Factortame* (C-46/93 and C-48/93, EU:C:1996:79) be interpreted as meaning that infringement of Articles 34 TFEU and/or 56 TFEU may give rise to liability for damages on the part of the Member State on the ground that those provisions – because of their direct effect – confer rights on individuals in the Member States?

...

(15) Is the principle of EU law applicable according to which the Member States are obliged to pay compensation to individuals for damage resulting from infringements of EU law attributable to the Member States also where the Member State has sovereignty in the area which the adopted legislation concerns? In such a case do fundamental rights and the general principles of law derived from the common constitutional traditions of the Member States also serve as a guide?"

16. On 11 June 2015 the CJEU (First Chamber) gave judgment. It held, in so far as relevant, as follows.

"116. ...

(1) National legislation such as that at issue in the main proceedings, which, without providing for a transitional period, introduces a five-fold increase in the flat-rate tax to be paid on slot machines operated in amusement arcades and, in addition, introduces a proportional tax on that activity, constitutes a restriction on the freedom to provide services guaranteed by Article 56 TFEU provided that it is liable to prohibit, impede or render less attractive the exercise of the freedom to provide the services of operating slot machines in amusement arcades, this being a matter which it is for the national court to determine.

(2) National legislation such as that at issue in the main proceedings, which, without providing for either a transitional period or compensation for operators of amusement arcades, prohibits the operation of slot machines outside casinos constitutes a restriction on the freedom to provide services guaranteed by Article 56 TFEU.

(3) Restrictions on the freedom to provide services which may result from national legislation such as that at issue in the main proceedings can only be justified by overriding reasons in the public interest if the national court finds, after an overall assessment of the circumstances surrounding the adoption and implementation of that legislation:

that it actually pursues, primarily, objectives relating to the protection of consumers against gambling addiction and the prevention of criminal and fraudulent activities linked to gambling; the mere fact that a restriction on gambling activities incidentally benefits, through an increase in tax revenue, the budget of the Member State concerned, does not prevent that restriction from being considered actually to be pursuing, primarily, those objectives;

that it pursues those goals consistently and systematically, and

that it meets the requirements arising from general principles of EU law, in particular the principles of legal certainty and the protection of legitimate expectations and the right to property.

...

(5) Article 56 TFEU is intended to confer rights on individuals, in such a way that its infringement by a Member State, including as a result of its legislative activity, gives rise to a right of individuals to obtain from that Member State compensation for the damage suffered as a result of that infringement, provided that that infringement is sufficiently serious and there is a direct causal link between that infringement and the damage sustained, this being a matter which it is for the national court to determine.

...

(7) The fact that national legislation such as that at issue in the main proceedings concerns an area falling within the competence of the Member States does not affect the answers to the questions raised by the referring court.”

17. The CJEU also held as follows.

“11. Paragraph 26(3) of the law on games of chance [Law XXXIV of 1991] was ... amended, with effect from 10 October 2012, by Paragraph 5 of Law CXLIV of 2012 amending Law XXXIV of 1991 on the organisation of games of chance (‘the amending law of 2012’) so as to grant to gaming casinos the exclusive right to operate slot machines.

12. Paragraph 8 of the amending Law of 2012 inserted into the Law on games of chance Paragraph 40/A, subsection 1 of which provided that licences for the operation of slot machines installed in amusement arcades issued before the effective date of that amending Law would lapse on the day following that date and that organisers of games of chance would be required to return those licences to the tax authorities within fifteen days of that date.

...

The existence of restrictions on the fundamental freedoms

...

44. By [question 8], the referring court asks whether national legislation such as the amending Law of 2012, which, without providing for either a transitional period or compensation for operators of amusement arcades, prohibits the operation of slot machines outside casinos, constitutes a restriction on the free movement of goods and freedom to provide services, guaranteed by [Article] 56 TFEU.

...

51. [I]t follows, inter alia, from the [judgments in *Anomar and Others*, C-6/01, EU:C:2003:446, paragraph 75, and *Commission v. Greece*, C-65/05, EU:C:2006:673, paragraph 53] that national legislation which authorises the operation and playing of certain games of chance in casinos only constitutes an obstacle to the freedom to provide services.

52. In those circumstances, the answer to question 8 is that national legislation, such as that at issue in the main proceedings, which, without providing for either a transitional period or compensation for operators of amusement arcades, prohibits the use of slot machines outside casinos constitutes a restriction on the freedom to provide services guaranteed by Article 56 TFEU.

...

The justification of the restrictions on the freedom to provide services

54. By questions 3, 4, 10 and 11, which should be considered together, the referring court asks, in essence, to what extent the restrictions that could result from national legislation, such as that at issue in the main proceedings, may be allowed as exceptional measures expressly provided for in Articles 51 TFEU and 52 TFEU, applicable in this area under Article 62 TFEU, or justified, in accordance with the case-law of the Court, by overriding reasons in the public interest.

...

The existence of overriding reasons in the public interest

56. It should be noted at the outset that legislation on games of chance is one of the areas in which there are significant moral, religious and cultural differences between the Member States. In the absence of harmonisation at EU level, the Member States are, in principle, free to set the objectives of their policy on betting and gaming and, where appropriate, to define in detail the level of protection sought (see, to that effect, judgments in *Dickinger and Ömer*, C-347/09, EU:C:2011:582, paragraph 47, and in *Digibet and Albers*, C-156/13, EU:C:2014:1756, paragraph 24).

57. The identification of the objectives in fact pursued by the national legislation is, in the context of a case referred to the Court under Article 267 TFEU, within the jurisdiction of the referring court (judgment in *Pfleger and Others*, C-390/12, EU:C:2014:281, paragraph 47).

58. However, it must be stated that the declared objectives pursued by the legislation at issue in the main proceedings, namely the protection of consumers against gambling addiction and the prevention of crime and fraud linked to gambling, constitute overriding reasons in the public interest capable of justifying restrictions on gambling (see, to that effect, judgments in *Carmen Media Group*, C-46/08, EU:C:2010:505, paragraph 55, and in *Stanley International Betting and Stanleybet Malta*, C-463/13, EU:C:2015:25, paragraphs 48 and 49 and the case-law cited).

...

The proportionality of the restrictions to Article 56 TFEU

62. As a preliminary point, it should be noted that the choice of methods for organising and controlling the operation and playing of games of chance or gambling, such as the conclusion with the State of an administrative licensing contract or the restriction of the operation and playing of certain games to places duly licensed for that purpose, falls within the margin of discretion which the national authorities enjoy (see judgments in *Anomar and Others*, paragraph 88 and *Carmen Media Group*, C-46/08, EU:C:2010:505, paragraph 59).

63. A limited authorisation of those games on the basis of special or exclusive rights granted or assigned to certain bodies, which has the advantage of confining the desire to gamble and the exploitation of gambling within controlled channels, is capable of falling within the pursuit of the public interest objectives of protecting the consumer and public order (see, inter alia, judgments in *Läärä*, C-124/97, EU:C:1999:435, paragraph 37; *Zenatti*, C-67/98, EU:C:1999:514, paragraph 35, and *Anomar and Others*, C-6/01, EU:C:2003:446, paragraph 74).

64. The restrictions imposed by the Member States must, nevertheless, satisfy the conditions laid down in the case-law of the Court as regards their proportionality, that is to say, be suitable for ensuring attainment of the objective pursued and not go

beyond what is necessary in order to attain that objective. It should also be recalled in this connection that national legislation is appropriate for ensuring attainment of the objective relied on only if it reflects a concern to attain it in a consistent and systematic manner (see judgment in *HIT and HIT LARIX*, C-176/11, EU:C:2012:454, paragraph 22 and the case-law cited).

...

71. [A] policy of controlled expansion of gambling activities can only be regarded as being consistent if, first, criminal and fraudulent activities linked to gambling and, secondly, addiction to gambling could have been a problem in Hungary at the material time and if the expansion of authorised and regulated activities could have solved that problem (see, to that effect, judgments in *Ladbrokes Betting & Gaming and Ladbrokes International*, C-258/08, EU:C:2010:308, paragraph 30; *Zeturf*, C-212/08, EU:C:2011:437, paragraph 70, and in *Dickinger and Ömer*, C-347/09, EU:C:2011:582, paragraph 67).

72. It is for the referring court to determine, in the context of the case before it, whether those conditions are satisfied and, if applicable, whether the expansion in question is on such a scale as to make it impossible to reconcile with the objective of curbing addiction to gambling (see, to that effect, judgment in *Ladbrokes Betting & Gaming and Ladbrokes International*, C-258/08, EU:C:2010:308, paragraph 38).

73. To that end, that referring court must carry out a global assessment of the circumstances in which the restrictive legislation at issue was adopted and implemented.

The examination of the justifications in the light of fundamental rights

74. Moreover, it should be noted that, where a Member State relies on overriding requirements in the public interest in order to justify rules which are liable to obstruct the exercise of the freedom to provide services, such justification must also be interpreted in the light of the general principles of EU law, in particular the fundamental rights now guaranteed by the Charter of Fundamental Rights of the European Union ('the Charter'). Thus, the national rules in question can fall under the exceptions provided for only if they are compatible with the fundamental rights the observance of which is ensured by the Court (see, to that effect, judgments in *ERT*, C-260/89, EU:C:1991:254, paragraph 43; *Familiapress*, C-368/95, EU:C:1997:325, paragraph 24, and *Ålands Vindkraft*, C 573/12, EU:C:2014:2037, paragraph 125).

...

– The principles of legal certainty and the protection of legitimate expectations

...

77. In that regard, it must be pointed out that the principle of legal certainty, the corollary of which is the principle of the protection of legitimate expectations, requires, inter alia, that rules of law be clear and precise and predictable in their effect, especially where they may have negative consequences on individuals and undertakings (see, to that effect, judgments in *VEMW and Others*, C-17/03, EU:C:2005:362, paragraph 80 and the case-law cited; *ASM Brescia*, C-347/06, EU:C:2008:416, paragraph 69, and *Test Claimants in the Franked Investment Income Group Litigation*, C-362/12, EU:C:2013:834, paragraph 44).

78. The Court has also held that a trader cannot place reliance on there being no legislative amendment whatever, but can only call into question the arrangements for the implementation of such an amendment (see, to that effect, judgment in *Gemeente*

Leusden and Holin Groep, Joined Cases C-487/01 and C-7/02, EU:C:2004:263, paragraph 81).

79. Likewise, the principle of legal certainty does not require that there be no legislative amendment, requiring as it does, rather, that the national legislature take account of the particular situations of traders and provide, where appropriate, adaptations to the application of the new legal rules (judgments in *VEMW and Others*, C-17/03, EU:C:2005:362, paragraph 81, and *Plantanol*, C-201/08, EU:C:2009:539, paragraph 49; see, to that effect, judgment in *Gemeente Leusden and Holin Groep*, Joined Cases C-487/01 and C-7/02, EU:C:2004:263, paragraph 70).

...

84. As regards ... the amending Law of 2012, it is apparent from the decision to refer that that Law resulted, on the day following its entry into force, in the automatic revocation of the licences to operate slot machines in amusement arcades, without providing for either a transitional period or compensation for the operators concerned.

85. In that regard, it should be noted that, when the national legislature revokes licences that allow their holders to exercise an economic activity, it must provide, for the benefit of those holders, a transitional period of sufficient length to enable them to adapt or reasonable compensation system (see, to that effect, European Court of Human Rights, *Vékony v. Hungary*, no. 65681/13, §§ 34 and 35, 13 January 2015).

86. Moreover, the applicants in the main proceedings argue that, before the entry into force of the amending Law of 2012, they incurred expenses in order to adapt to the implementation, under the amending Law of 2011, of the new system for the operation of slot machines. That operating system, which was supposed to enter into force on 1 January 2013, required that slot machines operated in amusement arcades would function online and would be connected to a central server. That legitimate expectation was undermined with immediate effect following the adoption of the amending Law of 2012.

87. In that regard, it must be noted that a trader who has made costly investments in order to comply with the scheme adopted previously by the legislature could see his interests considerably affected by the withdrawal of that scheme before the date announced, all the more so if that withdrawal takes place suddenly and unforeseeably, without leaving him enough time to adapt to the new legal situation (see, to that effect, *Plantanol*, C-201/08, EU:C:2009:539, paragraph 52).

88. It is for the national court to ascertain, in the light of all the foregoing considerations, whether national legislation such as that at issue in the main proceedings meets the requirements arising from the principles of legal certainty and the protection of legitimate expectations.

– The right to property

89. The applicants in the main proceedings also allege that national legislation such as that at issue in those proceedings infringes the right to property of amusement arcade operators, enshrined in Article 17 of the Charter.

90. In that regard, it should be noted that national legislation that is restrictive from the point of view of Article 56 TFEU is also capable of limiting the right to property enshrined in Article 17 of the Charter. Likewise, the Court has already held that an unjustified or disproportionate restriction of the freedom to provide services under Article 56 TFEU is also not permitted under Article 52(1) of the Charter, in relation to Article 17 thereof (*Pfleger and Others*, C 390/12, EU:C:2014:281, paragraphs 57 and 59).

91. It follows that, in the present case, the examination, carried out in paragraphs 56 to 73 of the present judgment, of the restriction represented by legislation such as that at issue in the main proceedings from the point of view of Article 56 TFEU also covers possible limitations of the exercise of the right to property guaranteed by Article 17 of the Charter, so that a separate examination is not necessary (see, to that effect, *Pfleger and Others*, C-390/12, EU:C:2014:281, paragraph 60).

Answers to questions 3, 4, 10 and 11

92. In the light of the foregoing, the answer to questions 3, 4, 10 and 11 is that restrictions on freedom to provide services which may result from national legislation such as that at issue in the main proceedings can only be justified by overriding reasons in the public interest if the national court finds, after an overall assessment of the circumstances surrounding the adoption and implementation of that legislation:

- that it actually pursues, primarily, objectives relating to the protection of consumers against gambling addiction and the prevention of criminal and fraudulent activities linked to gambling; the mere fact that a restriction on gambling activities incidentally benefits, through an increase in tax revenue, the budget of the Member State concerned, does not prevent that restriction from being considered actually to be pursuing, primarily, those objectives;
- that it pursues those goals consistently and systematically, and
- that it meets the requirements arising from general principles of EU law, in particular the principles of legal certainty and the protection of legitimate expectations and the right to property.

...

The existence of an obligation to provide compensation on the part of Member State concerned

...

101. By questions 5 and 12, the referring court asks, in essence, whether Article 34 TFEU and/or 56 TFEU are intended to confer rights on individuals, in such a way that their infringement by a Member State, including as a result of its legislative activity, gives rise to a right of individuals to obtain from that Member State compensation for the damage suffered as a result of that infringement.

...

104. According to settled case-law, EU law confers a right to compensation where three conditions are met: the rule of law infringed must be intended to confer rights on individuals; the infringement must be sufficiently serious; and there must be a direct causal link between the breach of the obligation resting on the State and the damage sustained by the injured parties (see, inter alia, judgments in *Brasserie du pêcheur* and *Factortame*, Joined Cases C-46/93 and C-48/93, EU:C:1996:79, paragraph 51; *Danske Slagterier*, C-445/06, EU:C:2009:178, paragraph 20, and *Commission v Italy*, C-379/10, EU:C:2011:775, paragraph 40).

...

106. Consequently, the answer to questions 5 and 12 referred for a preliminary ruling is that Article 56 TFEU is intended to confer rights on individuals, in such a way that its infringement by a Member State, including as a result of its legislative activity, gives rise to a right of individuals to obtain from that Member State compensation for the damage suffered as a result of that infringement, provided that

that infringement is sufficiently serious and there is a direct causal link between that infringement and the damage sustained, which it is for the national court to determine.

...

111. By question 15, the referring court asks, in essence, to what extent the fact that national legislation such as that at issue in the main proceedings concerns an area falling within the competence of the Member States affects the answers to questions 5, 7, 12 and 14.

112. It suffices to note, in that regard, that, as was pointed out in paragraph 34 above, the Member States must exercise their competences consistently with EU law and, in particular, the fundamental freedoms guaranteed in the Treaty, which apply to situations such as those at issue in the main proceedings, which fall within the scope of EU law.

113. In those circumstances, the justifications put forward by a Member State in support of a restriction on those freedoms must be interpreted in the light of the fundamental rights, even where that restriction concerns an area falling within the competence of that Member State, provided that the situation at issue falls within the scope of EU law (see, to that effect, judgment in *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 21).

114. Likewise, any infringement of EU law by a Member State, including when it concerns an area falling within the competence of that Member State, renders that Member State liable in so far as the conditions set out in paragraph 104 of the present judgment are satisfied.”

18. The case is still pending before the Budapest High Court.

B. Relevant domestic law

19. Under section 26(3) of the Gambling Act, as amended by the Arcade Ban Act, slot machines can be operated only in casinos; in any given casino, only one company may operate slot machines.

Section 40/A(1) provides that previously issued licences to operate slot machines in amusement arcades become null and void on the entry into force of the Arcade Ban Act.

20. Law no. CLXXVII of 2013 on the transitional provisions of the new Civil Code¹ provides as follows.

Section 1

“Unless this Law provides otherwise, the provisions of Law no. V of 2013 on the [new] Civil Code shall be applied to:

- (a) facts and legal relations occurring; and
- (b) legal statements made

after its entry into force.”

1. The new Civil Code came into force on 15 March 2014.

Section 54

“The provisions of the [new] Civil Code concerning non-contractual liability ... shall be applied to any conduct – including omissions – causing damage that occurred subsequent to its entry into force. Continuing conduct causing damage which commenced prior to the Code’s entry into force shall be subject to the previous rules, even if the conduct causing damage terminates or the damage occurs after the Code’s entry into force.”

21. Article 339 of the old Civil Code establishes liability for non-contractual damage, with a limitation period of five years as per Article 324 § 1 of the same Code.

22. The established case-law of the Supreme Court (*Kúria*) concerning the State’s tort liability was summarised by the Budapest Court of Appeal in leading case no. EBD2014.P.1 as follows.

“[T]he Supreme Court held in leading case no. EBH1999.14 that rules of tort liability could not be applied to legislation, that is, to an activity aimed at adopting general and abstract legal rules of behaviour. In leading case no. BH1993.312 it also considered that the damage potentially resulting from the entry into force of a law laying down a general normative rule does not create a relationship of civil-law liability between the legislature and the alleged victim of the legislation. ... Furthermore, leading case no. BH1994.31 also reflects the case-law according to which the legislature cannot be held liable for the adoption of normative rules, unless there are additional findings of fact [*többlettényállás*].”

In the leading case, such “additional findings of fact” consisted of the Constitutional Court’s underlying conclusion that the law-making process in question had been dysfunctional, in that the resultant legal provision was nothing more than an individual decision to the detriment of the complainant, couched in the terms of a legislative instrument.

C. Relevant law of the European Union

23. Article 4 § 3 of the Treaty on European Union (TEU) provides as follows.

“Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

The Member States shall facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives.”

24. Article 56 of the Treaty on the Functioning of the European Union (TFEU) provides, in so far as relevant:

“Within the framework of the provisions set out below, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of

Member States who are established in a Member State other than that of the person for whom the services are intended.

...”

25. Article 267 of the TFEU provides, in so far as relevant:

“The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

(a) the interpretation of the Treaties;

(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

...”

26. Article 17 § 1 of the Charter of Fundamental Rights of the European Union provides as follows.

“Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.”

27. CJEU case-law contains the following principles.

“The purpose of a preliminary ruling by the Court is to decide a question of law, and that ruling is binding on the national court as to the interpretation of the Community provisions and acts in question” (judgment of 3 February 1977 in *Benedetti*, C-52/76, EU:C:1977:16, paragraph 3 of the operative part).

“[A] judgment in which the Court gives a preliminary ruling on the interpretation or validity of an act of a Community institution conclusively determines a question or questions of Community law and is binding on the national court for the purposes of the decision to be given by it in the main proceedings” (order of 5 March 1986 in *Wünsche*, C-69/85, EU:C:1986:104, paragraph 13).

“... in accordance with settled case-law, all the authorities of the Member States have the task of ensuring observance of the rules of Community law within the sphere of their competence ...

It should also be remembered that the interpretation which, in the exercise of the jurisdiction conferred upon it by Article 234 EC, the Court gives to a rule of Community law clarifies and defines, where necessary, the meaning and scope of that rule as it must be, or ought to have been, understood and applied from the time of its coming into force ... In other words, a preliminary ruling does not create or alter the law, but is purely declaratory, with the consequence that in principle it takes effect from the date on which the rule interpreted entered into force ...

It follows that, in a case such as the main proceedings, a rule of Community law as thus interpreted must be applied by an administrative body within the sphere of its competence even to legal relationships which arose and were formed before the Court gave its ruling on the request for interpretation ...” (judgment of 12 February 2008 in *Kempter*, C-2/06, EU:C:2008:78, paragraphs 34-36).

“As regards Article 4 TEU, it should be recalled that according to settled case-law, under the principle of sincere cooperation laid down in paragraph 3 of that article, it is for the Member States to ensure judicial protection of an individual’s rights under

EU law ... In addition, Article 19(1) TEU requires Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law” (judgment of 19 November 2014 in *ClientEarth*, C-404/13, EU:C:2014:2382, paragraph 52).

“On any view, a breach of Community law will clearly be sufficiently serious if it has persisted despite a judgment finding the infringement in question to be established, or a preliminary ruling or settled case-law of the Court on the matter from which it is clear that the conduct in question constituted an infringement ...” (judgment of 13 March 2007 in *Test Claimants in the Thin Cap Group Litigation*, C-524/04, EU:C:2007:161, paragraph 120; and judgment of 12 December 2006 in *Test Claimants in the FII Group Litigation*, C-446/04, EU:C:2006:774, paragraph 214 and the case-law cited there).

COMPLAINTS

28. The applicant companies alleged that the revocation of their licences to operate amusement arcades with slot machines in Hungary amounted to an unjustified interference with their rights under Article 1 of Protocol No. 1, read alone and in conjunction with Article 14 of the Convention. Moreover, the absence of any legal avenues to challenge that measure amounted to a violation of their rights under Articles 6 and 13 of the Convention.

THE LAW

29. The applicant companies complained that the revocation of their licences to operate amusement arcades with slot machines amounted to an unjustified deprivation of property, in breach of Article 1 of Protocol No. 1, read alone and in conjunction with Article 14 of the Convention.

Article 1 of Protocol No. 1 reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

Article 14 of the Convention reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

30. The Government contested the applicant companies' allegation. They argued, in particular, that the applicant companies had failed to exhaust all domestic remedies. In particular, they could have brought – and could still bring – an action in damages against the State alleging a violation of European Union law. They submitted that, in the absence of a provision to that effect in the legal instruments forming the basis of EU law, the Court of Justice of the European Union (CJEU) had developed in its case-law the principle that, if a member State violated EU law – which enjoyed supremacy over national law – notably by not taking all the necessary steps to give full effect to EU law in its national legal system, it should bear tort liability *vis-à-vis* the holders of rights under EU law (they referred to the judgment of the CJEU of 19 November 1991 in joined cases *Francovich*, C-6/90 and *Bonifaci*, C-9/90, EU:1991:428). That principle had been extended by the CJEU to cover losses which had originated in the actions or omissions of any State organ and which violated EU law and thus resulted in a violation of the rights enshrined in EU law (they referred to the judgment of the CJEU of 5 March 1996 in joined cases *Brasserie du Pêcheur*, C-46/93, and *Factortame*, C-48/93, EU:C:1996:79). In such cases, member States' immunity was restricted; therefore, they could be sued with a reasonable prospect of success.

31. The applicant companies argued that it was the settled case-law of the Hungarian courts that the legislature could not be successfully sued for damage caused by legislation (they referred to leading case no. EBD2014.P.1 (see paragraph 22 above)). Therefore, such an action was not an effective remedy that had to be used in the circumstances. As for the Government's suggestion that they could bring an action for violation of EU law, they argued that the subject matter of such a complaint would be different from that of the present applications, as it would have nothing to do with their rights under the Convention. They further argued that, ever since Hungary's accession to the EU, the Hungarian courts had not established the legislature's liability for breaching EU law. In view of the settled case-law reiterated in the above-mentioned leading case, the likelihood of such an outcome was minimal. Given the complete lack of relevant and settled case-law, as well as the costs and time those additional – and most likely futile – proceedings would require, the applicant companies were of the view that an obligation to pursue an action in damages against the legislature would place a disproportionate burden on them and constitute an obstacle to the effective exercise of their right of individual application under Article 34 of the Convention.

32. Article 35 § 1 of the Convention provides, in so far as relevant:

“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law ...”

33. The assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application

was lodged with the Court. However, as the Court has held on many occasions, this rule is subject to exceptions, which may be justified by the particular circumstances of each case (see *Baumann v. France*, no. 33592/96, § 47, 22 May 2001).

34. In the present case, the Court observes that shortly after the present applications were lodged, some of the applicant companies (see paragraph 13 above) brought an action in damages against the State, claiming compensation for the loss of business sustained on account of the impugned legislation, which was allegedly in breach of EU law. The other applicant companies have not availed themselves of that legal avenue.

35. In the ensuing proceedings, the Budapest High Court perceived an issue potentially emerging under the relevant EU law. It then decided to request a preliminary ruling from the CJEU. At this juncture, the Court notes the relevant domestic case-law according to which the enactment of laws does not normally create a relationship of civil liability between the legislature and those alleging damage as a result of that legislation (see paragraph 22 above). However, for the Court, the fact that the High Court decided to obtain a ruling from the CJEU, rather than to resolve the case on the basis of that case-law, demonstrates that there was a reasonable prospect that any liability allegedly incurred on the part of the State would be decided with regard to the relevant EU law, rather than solely on the basis of the case-law of the domestic courts.

36. In its judgment of 11 June 2015, the CJEU held as follows (C-98/14, EU:C:2015:386):

“Article 56 TFEU [Treaty on the Functioning of the European Union] is intended to confer rights on individuals, in such a way that its infringement by a Member State, including as a result of its legislative activity, gives rise to a right of individuals to obtain from that Member State compensation for the damage suffered as a result of that infringement, provided that that infringement is sufficiently serious and there is a direct causal link between that infringement and the damage sustained, which it is for the national court to determine.”

37. The Court observes that the above-mentioned ruling makes reference to a potential infringement of the principle of freedom to provide services within the European Union, which the impugned legislation is capable of causing. The CJEU reiterated that EU member States bore liability towards the individuals concerned for such infringements. Article 56 of the TFEU has been interpreted to entitle injured parties to claim compensation for the resultant damage; and it is for the national courts to assess in this context whether the infringement was sufficiently serious and whether there was a causal link between that infringement and the damage sustained. In carrying out that assessment, the national courts have to examine the impugned measures also from the perspective of Article 17 of the Charter of Fundamental Rights of the European Union (see §§ 89-92 of the CJEU reasoning, cited in paragraph 17 above).

38. The Court further notes that, in accordance with Article 267 of the TFEU and the well-established case-law of the CJEU, a preliminary ruling given by the CJEU is binding on the referring national court as to the interpretation of the provision of EU law in question. It clarifies and defines the meaning and scope of that provision as it must be, or ought to have been, understood and applied at the time it came into force. Furthermore, pursuant to the principle of “sincere cooperation”, the authorities of EU member States have the task of ensuring, within the sphere of their competence, that the rules of EU law, as interpreted by the CJEU, are observed and that individuals’ rights under EU law are judicially protected. Consequently, the Court considers that guidance provided by a preliminary ruling must be observed not only in the specific dispute which has given rise to the referral but also, indirectly, in other cases, even those concerning legal relationships which had arisen before the CJEU gave the ruling in question. The Court observes at this juncture that a breach of Community law is “sufficiently serious” – for the purposes of the test consistently applied by the CJEU in cases concerning State liability for infringements of EU law – if it persists despite a preliminary ruling or settled case-law of the CJEU from which it is clear that the conduct in question constituted an infringement (for the relevant principles of EU law, see paragraph 27 above).

39. The ruling in the present case provides the Hungarian courts with guidance as to the criteria to be applied in the case pending before them. According to that guidance, justifications for the restriction complained of must also be interpreted in the light of the general principles of EU law, in particular the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union, including Article 17 thereof.

40. It follows that the litigation in progress before the national authorities ought to be capable of encompassing, ultimately, the issue of justification for the alleged breach of the litigant applicants’ rights guaranteed by Article 1 of Protocol No. 1. In the course of this scrutiny, the established case-law of the CJEU and the preliminary ruling given in the instant case require the national courts to assess, firstly, whether the restrictions satisfy the conditions laid down in the case-law of the CJEU as regards their proportionality (see § 64 of the CJEU reasoning, cited in paragraph 17 above) and whether they are compatible with the fundamental rights guaranteed by the CJEU (see §§ 74-91 of the CJEU reasoning, cited in paragraph 17 above). In particular, the national courts must assess whether the restriction actually and primarily pursues objectives relating to the protection of consumers against gambling addiction and the prevention of criminal and fraudulent activities linked to gambling; whether it pursues those goals consistently and systematically; and whether it meets the requirements arising from general principles of EU law, in particular the principles of legal certainty and the protection of legitimate expectations, and the right to property (see § 92 of the CJEU reasoning, cited in

paragraph 17 above). Secondly, in the event of an infringement of Article 56 of the TFEU, the national courts are further required to examine whether that infringement is sufficiently serious and whether there is a direct causal link between the infringement and the damage sustained.

41. This method of scrutiny bears close resemblance to that applied by the Court for the purposes of Article 1 of Protocol No. 1. In essence, the Court's case-law requires that, in order for an interference to be compatible with Article 1 of Protocol No. 1, it must be lawful, in the general interest, and proportionate, that is, it must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among many other authorities, *Beyeler v. Italy* [GC], no. 33202/96, § 107, ECHR 2000-I, and *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 75, ECHR 2007-III). The requisite fair balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 69-74, Series A no. 52).

The Court further notes that the assessment required by the CJEU explicitly relies, at least partly, on the case-law of the Court (see § 85 of the CJEU reasoning, cited in paragraph 17 above).

42. The Court considers that, to substitute its own assessment for that of the national courts as guided by the CJEU, without awaiting the outcome of those proceedings, would be tantamount to ignoring its subsidiary role (see *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51).

43. Consequently, the Court is satisfied that the pending court case offers a reasonable prospect of success for the applicant companies to have their claims adjudicated on the merits and, potentially, to obtain damages. It is therefore capable of providing redress in the circumstances for the alleged violation of the litigant applicants' rights under Article 1 of Protocol No. 1, read alone and in conjunction with Article 14 of the Convention, and thus constitutes an effective remedy to be used for the purposes of Article 35 § 1 of the Convention.

It follows that the applications must be rejected as premature in respect of those applicant companies whose case is currently pending before the Budapest High Court, in so far as Article 1 of Protocol No. 1, read alone and in conjunction with Article 14 of the Convention, is concerned.

44. Moreover, as regards the remaining applicant companies, the Court is satisfied that, in view of the ruling of the CJEU (see paragraphs 23, 27 and 38 above), they also have the possibility of lodging a claim similar to the extant one and thus of availing themselves of a remedy which is likewise capable of redressing their grievances.

It follows that their applications must be rejected for non-exhaustion of domestic remedies, in so far as Article 1 of Protocol No. 1, read alone and in conjunction with Article 14 of the Convention, is concerned.

45. Lastly, for essentially the same reasons, namely, the availability of a legal avenue capable of providing adequate redress, the complaints under Articles 6 and 13 of the Convention concerning the alleged lack of access to a court or the absence of a remedy, are manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4 of the Convention.

46. In sum, the Court concludes that the applications must be rejected, pursuant to Article 35 §§ 1, 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the applications inadmissible.

Abel Campos
Deputy Registrar

Guido Raimondi
President

APPENDIX

No	Application No.	Lodged on	Applicant Head office/Nationality	Represented by
1.	23265/13	04/04/2013	LAURUS INVEST HUNGARY KFT a Hungarian limited liability company based in Budapest CONTINENTAL HOLDING CORPORATION a company established under the laws of California, USA, based in Beverly Hills	Péter KÖVES
2.	23853/13	05/04/2013	BERLINGTON HUNGARY TANÁCSADÓ ÉS SZOLGÁLTATÓ KFT a Hungarian limited liability company based in Budapest LIXUS SZERENCSEJÁTÉK SZERVEZŐ KFT a Hungarian limited liability company based in Budapest LIXUS PROJEKT SZERENCSEJÁTÉK SZERVEZŐ KFT a Hungarian limited liability company based in Budapest LIXUS INVEST SZERENCSEJÁTÉK SZERVEZŐ KFT a Hungarian limited liability company based in Budapest CITY-WIN SZERENCSEJÁTÉK SZERVEZŐ KFT a Hungarian limited liability company based in Budapest MEGAPOLIS TERMINAL SZOLGÁLTATÓ KFT a Hungarian limited liability company based in Budapest	András GRÁD and László András KELEMEN
3.	24262/13	05/04/2013	TAYLOR'S KFT a Hungarian limited liability company based in Budapest NEW STAR PLAY KFT a Hungarian limited liability company based in Budapest STAR GAME KFT a Hungarian limited liability company	András GRÁD

No	Application No.	Lodged on	Applicant Head office/Nationality	Represented by
			based in Budapest NEW CARADMON KFT a Hungarian limited liability company based in Budapest CARADMONICA KFT a Hungarian limited liability company based in Budapest NEW STAR GAME KFT a Hungarian limited liability company based in Budapest	
4.	25087/13	04/04/2013	A. KFT a Hungarian limited liability company based in Putnok J. KFT a Hungarian limited liability company based in Putnok K. ZMRT a Hungarian limited liability company based in Budapest L. KFT a Hungarian limited liability company based in Szentes M. KFT a Hungarian limited liability company based in Budapest S. KFT a Hungarian limited liability company based in Budapest S. C. KFT a Hungarian limited liability company based in Debrecen S. J. KFT a Hungarian limited liability company based in Debrecen SZ. KFT a Hungarian limited liability company based in Újfehértó T. KFT a Hungarian limited liability company based in Gyulaháza T. D. KFT a Hungarian limited liability company based in Szentes	Dániel András KARSAI

No	Application No.	Lodged on	Applicant Head office/Nationality	Represented by
5.	25095/13	08/04/2013	CREATIVE GAMING SOLUTIONS KFT a Hungarian limited liability company based in Csomád	Zsolt LAJER
6.	25102/13	05/04/2013	J. M. KFT a Hungarian limited liability company based in Szeged	Dániel András KARSAI