



Press Office of the Constitutional Court

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## COMPULSIVE GAMBLING: UNCONSTITUTIONALITY OF THE FIXED PENALTY ESTABLISHED FOR BREACH OF DUTIES TO INFORM

The fixed administrative penalty of 50,000 Euros, imposed on licensed gambling operators and owners of gambling rooms and betting parlours for breaching the duty to provide information on the risks of compulsive gambling, is unconstitutional.

It is for the Legislator to establish a new penalty that complies with the Constitution, with relevant minimum and maximum thresholds.

This was held in [Judgment No. 185](#), filed today (Judge Rapporteur: Franco Modugno), in which the Constitutional Court declared the unconstitutionality of Article 7(6), second sentence, of Decree-Law No. 158 of 2012, converted into Law No. 189 of 2012. The challenged provision indiscriminately punished non-compliance with the duties to inform – through written information on betting tickets and devices, or displaying signs and information about local health authorities – with a remarkably severe punishment that is fixed and cannot be adjusted by the administrative authority or by the courts according to the circumstances of individual cases. In the case before the Court, the owner of a bar that hosted only one gambling device was ordered to pay a fine of 50,000 Euros because he had not displayed a sign warning clients about the risks of compulsive gambling, even though he had properly fulfilled his other duties relating to the prevention of compulsive gambling.

The Constitutional Court recalled that, according to its own case law, granting courts a margin of discretion in quantifying penalties – both criminal and administrative – within minimum and maximum thresholds, so that they can be adjusted to the specific circumstances of individual cases, is the natural implementation of constitutional principles, starting with the principle of equality.

In the case before the Court, the fixed nature of the penalty prevents consideration of the differing levels of seriousness of individual unlawful acts, which depend on the breadth of the gambling options offered and the type of violation committed. In particular, as for non-compliance with duties relating to gambling rooms, the

seriousness of the misconduct depends on the size and location of the room, its attendance, its number of gambling devices and whether the duties were not observed in full or in part. This means that a fixed penalty might be manifestly disproportionate compared to the misconduct committed and, therefore, unconstitutional.

It is not possible to find, within the framework currently in force, a penalty that the Constitutional Court can adopt instead of the one declared unconstitutional, given the impossibility to equate the punished behaviours. However, this does not preclude a declaration of unconstitutionality from being issued, which is generally not prevented by the fact that a gap in regulation may arise. It is for the Legislator to fill this gap. The principle also applies where the questions concern treatment in punishment, except for cases where the simple removal of the provision establishing the punishment leads to “unsustainable gaps in protection”: for example, an impairment of the protection granted to fundamental individual rights or interests that are particularly important to society, against serious forms of aggression, which may result in a breach of constitutional or supranational obligations. It is only in these cases that it becomes essential to identify, through the “points of reference” provided by the current framework, penalties that – while respecting the limits on the Court’s power to intervene – can take the place of the one deemed unconstitutional by the referring judge.

This scenario does not arise in the case before the Court. While it is true that protection of health, a purpose of the measures to fight compulsive gambling, is a constitutionally relevant aim, it must also be stated that the conducts in question concern the failure to observe duties to inform, which are preventive in nature and “significantly precede the actual harm to the interest being protected”.

The penalty should thus be simply removed from the legal system, and the Legislator should set a new one.

Rome, 23 September 2021