

THE (UN)JUST WAY FORWARD – GIOCONEWS OCTOBER 2015

Time restrictions imposed only on legal gambling: is this measure fit for curbing pathological gambling?

In a series of talks concerning the assessment of new time restrictions measures, it has been pointed out that there are two important things that the jurisprudence (though timidly) is willing to take into account. Namely the lack of proportionality, and the systemic omission of an assessment of whether pathological gambling actually derives from legal gambling rather than from illegal one.

As of today, we want to highlight yet another major flaw of time restrictions initiatives imposed by local governments. We are talking about a weakness that, it must be said, the jurisprudence is still trying to avoid tackling, however we believe that such is crucial to the debate, especially because it allows for an easy and transparent way to base someone's evaluation based on technical, scientific and cultural evidence rather than on personal bias. Namely, testing the suitability/ appropriateness/ efficacy of the regulations whose aim is to combat pathological gambling.

The total inadequacy of time restrictions regulations and the consequent closing of legal gambling shops vis-à-vis the targeted goal results from the scientific assessment, which could be carried out by any pathological gambling expert charged with the investigation, of what are the actual effects of said regulations in terms of health of subject affected by pathological gambling.

The results of such an investigation will appear shocking only to outsiders: in reality, and contrary to what assumed by local administrations, time restrictions would not only be unfit to the scope, but would be described as an indirect cause of the strengthening of such phenomenon.

Specifically, it is to be noted that if it is true that these regulations aim at assisting pathological gamblers, it is also true that evidence shows that they are totally ineffective: a person who needs a product has no problem adapting to a different schedule, and would not have problems at driving to a neighboring municipality with a preferable opening schedule.

It should be also noted that, what drives decision making and the psychology of dependency are both an obsessive-compulsive behavior that can be dealt with appropriate mechanism aimed at tackling such issue. Moreover, it is very hard to determine in a scientific way who should be considered a vulnerable subject. In certain cases, young people and elders are considered to be so, while other studies suggest that it should be the 32/55 age group.

The truth is that time restrictions are more of a linear cost-cutting than sound management. What seems to be the case is that these types of measures meet media needs rather than a genuine, wise and efficient attempt to restrain such phenomenon. Someone could argue that it is a way of obtaining votes instead of improving health.

Another technical/ scientific comment is that even if such provisions don't do good, it is also not a neutral one. Indeed, an excessive restrictive measure (as in most cases) basically corresponds to prohibition. A response to the prohibition imposed at the local level (something that the legislator has abandoned years ago) corresponds to an increase in the illegal gambling supply. No one would argue against the fact that illegal gambling supply does not offer the same levels of protection, security, legality and moderation as legal one.

The local time restrictions ordinances do not offer any study of the actual efficacy of it.

From a legal standpoint, these ordinances cannot be limited to the mere goal of safeguarding of an interest. Just as an evaluation taken in a judicial forum must determine if an assessment was conducted during the pre-trial phase. All of this in light of a general principle of proportionality, in compliance with the adequacy of the means utilized in regard to the targeted goal, as well as coherence, rationality and proportionality of the circumstances and the content of the act.

We already had the chance to recall a passage which expresses a wise jurisprudence *“the previous authority, even in case of the wide use of discretionary powers, when issuing a measure, in regard to its factual substance, is always bounded by principles of utility and adequacy of the means used to achieve its goal, as well as the principle of proportionality and coherence between the actual circumstances and the content of the act and of the minor sacrifice as possible for private recipient of the relevant measures that negatively impacts their judicial sphere (see Council of State 23.08.2000, n. 4568). Generally speaking, for these reasons ... it must be backed by adequate and suitable opinions of technical organza, in order to balance the primary and fundamental public interests ... with the interests of the private to carry out its economic activities in line with the principle of free enterprise”* (see ex multis, TAR Veneto, section III, January 2, 2009, n. 6).

The investigation apropos of the question of legitimacy of time restrictions regulations in regards to its objectives is a must, not only in respect to legal gambling operator’s interests, but also vis-à-vis the safeguarding a certain general interest, such as: (i) ensuring and effective and efficient measures for vulnerable subject (whom can really be defined as such) and for those people affected by pathological gambling; (ii) not to encourage “parallel” gambling offer in those areas in which legal gambling has been restricted; (iii) limit the distortive effects of “parallel access” to gambling, which are not subjected to State’s authority, on vulnerable subjects and those who are affected by pathological gambling; (v) minimize the effects of the downsizing of legal gambling personnel, not because of mere economic losses but due to the risk of business shutdown by restrictions imposed.

All of the aforesaid holds true, unless they can convince us that by imposing time restrictions on bakeries, on public interest grounds, will reduce the number of people affected by diabase; or unless they can proof that by completely shutting down bakeries they can once and for all eliminate said disease, always on the base of public interest; or except if they can guarantee that in such case we would not experience the opening of a large number of stands that offer goods which, as some would say, do not possess the legal health requirements.

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