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Legal mechanisms for gambling addiction protection: analysis of an emerging regulatory model in Ukraine

Правові механізми захисту від ігрової залежності: аналіз моделі регулювання, що формується в Україні

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Abstract

The purpose of this article is to analyze the legislation of Ukraine on the protection of gambling players from the formation of gambling addiction, to identify ways and means of protection, to evaluate their effectiveness and to formulate proposals for improving (strengthening) the protection of the rights of gambling players. The research used general scientific and special

The research used general scientific and special scientific methods of scientific knowledge. In particular, the dialectical method of learning the phenomena of the surrounding reality, comparative-legal, systemic-structural, methods of logic (analysis, synthesis, induction, deduction, analogy).

Many prevention measures have already been implemented in Ukraine. In addition, the player is protected by the right to receive free psychosocial assistance in the event of problems with gambling and free medical assistance in the event of a diagnosis of gambling addiction. The state also

Анотація

Метою цієї статті є аналіз чинного законодавства України з питань захисту гравців в азартні ігри від формування ігрової залежності, виявлення способів і засобів захисту, оцінка їх ефективності та формування пропозицій щодо покращення (посилення) захисту прав гравців в азартні ігри.

У дослідженні використано загальнонаукові та спеціально наукові методи наукового пізнання. Зокрема, діалектичний метод пізнання явищ навколишньої дійсності, порівняльноправовий, системно-структурний, методи логіки (аналіз, синтез, індукція, дедукція, аналогія).

В Україні вже запроваджено багато заходів профілактики. Крім того гравця захищено правом отримати безкоштовну психосоціальну допомогу у разі виникнення проблем з азартними іграми та безкоштовну медичну допомогу у разі діагностування ігрової

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provides free socio-psychological rehabilitation of players during and after treatment for gaming addiction.

The disadvantage is the bringing of the player to administrative responsibility for participating in illegal gambling and the impossibility of recognizing him as a victim in criminal proceedings to compensate for the damage caused by the crime (engagement in the gambling business).

Keywords: gambling, gambling business, gambling disorder, ludomania, player protection.

залежності. Також державою забезпечується безкоштовно соціально-психологічна реабілітація гравців під час та після лікування ігрової залежності.

Недоліком є притягнення гравця до адміністративної відповідальності за участь в незаконних азартних іграх та неможливість визнання його потерпілим в кримінальному провадженні для відшкодування заподіяної злочином (зайняттям гральним бізнесом) шкоди.

Ключові слова: азартні ігри, гральний бізнес, ігрова залежність, лудоманія, захист гравця.

Introduction

A person's desire to play is related to a natural need. There are various game theories formulated in philosophy, psychology, pedagogy and other sciences. In particular, the following game theories are distinguished in psychology:

- The biological nature of play (Karl Groos). Based on comparisons of the characteristics of children's play activities and the instinctive activities of young animals, the German psychologist proved that play has a biological nature and is one of the ways of preparing for future serious activities, the main content of a child's life (Groos, 1896);
- Socio-historical nature of the game (Grenville-Stanley Hall). The development of the child's psyche is a kind of repetition of the stages of the development of humanity, regardless of the conditions of its life and upbringing. The American psychologist proved that the child's play in form and content duplicates history from the primitive communal system to modern society (Hall, 1921);
- *Psychoanalytic game theory* (Sigmund Freud). Within the framework of this theory, the use of games is considered as a means for the child to express instincts, desires, aspirations that he cannot realize directly in life (Freud, 1923).

Regarding azart (passion), there are two versions of the origin of the word "azart". According to the first of them, the word "azart" comes from the French word "hasard", which, translated into Ukrainian, means "enthusiasm, zeal, ardor, feverishness". In addition, in French there is the adjective "hasarde", which translates as "risky", and the verb "hasarder", which translates as "to dare, to risk". According to the second version, this word comes from the Arabic name of the dice game "azar" (Pohoretskyi & Toporetska, 2014, p. 11)

Azart (passion) is an innate feature of human nature, which is a source of motivation in various life situations: both positive and negative. It is excitement that motivates a person to participate in sports competitions. But at the same time, excitement drives a person to gamble again and again. Therefore, in our opinion, psychoanalytic game theory and gambling as an innate feature of human nature provoke a person to gamble again and again and contribute to the formation of gaming addiction.

This human nature does not allow the state to completely ban the gambling business in the state, because people are still looking for an alternative to fulfill their passion and start playing illegal gambling games. Then the gambling business becomes a tool of criminal activity. Having passed the path of banning the gambling business from 2009 to 2020, Ukraine has witnessed the state's inability to combat the illegal gambling business. Therefore, in 2020, the gambling business was legalized in Ukraine. But this posed new challenges to the state regarding the development and implementation of legal measures to protect the population from the harmful effects of gambling, and players from gambling addiction.

Ludomania (gaming addiction, gambling disorder) occurs because of a player's abuse of gambling. Gambling addiction is a mental illness. According to the International Classification of Diseases (ICD) issue 10 (ICD-10), which is currently used in Ukraine, ludomania is defined as a pathological tendency to gamble (F63.0), which is classified under the category of disorders of habits and urges (ICD-10 Version:2010, 2010). In ICD-11, which is being implemented in Ukraine, WHO recognized ludomania as

a mental disorder (6C50) that occurs because of addictive behavior, and included it in the group of mental, behavioral or nervous disorders (ICD-11 for Mortality and Morbidity Statistics, 2019).

But such a disease does not appear all at once, at first a person has certain problems with gambling, but the game does not yet affect his daily life. It takes about 12 months to form a stable gaming addiction and includes the stages of a tendency to addictive behavior (systemic gambler), addictive behavior - problem gambling (problem gambler), pathological behavior - gambling addiction (pathological gambler) (Toporetska et al., 2023, p. 21).

The task of the state is to ensure the protection of the player from this mental illness and to take measures for its prevention, regardless of the chosen model of regulation of the gaming business market (complete ban, restriction or full permission of all gambling). These measures are not limited to health care but require a comprehensive cross-sectoral approach. The more player protection tools are created and implemented by the state, the faster it will be possible to detect problematic gaming behavior and aid the player. A comprehensive approach allows not only to help individual players, but also to reduce the negative consequences of gambling for the whole society.

This study is the first comprehensive study of the mechanisms of protection of gambling players from gambling addiction in terms of their effectiveness. The authors of this study hope to start an active discussion about the need to improve legislation and strengthen the protection of gamblers against gambling addiction

The purpose of this study is to analyze the current legislation of Ukraine on the protection of gamblers from the formation of gambling addiction, to identify ways and means of protection, to evaluate their effectiveness and to formulate proposals for improving (strengthening) the protection of the rights of gamblers.

In accordance with the defined goal, the authors set the following tasks:

- 1. To analyze the relationship between the regulation model of gambling business and the prevalence of gambling addiction in the state using the example of Ukraine.
- 2. To single out the methods and means of protecting the rights of the gambler under the legislation of Ukraine.

Theoretical framework

Most scientific works in Ukraine are devoted to issues of legal regulation of the gambling business or the fight against the illegal gambling business by means of operational investigative activities or criminal proceedings.

D. O. Getmantsev in his monograph examines the general issues of legal regulation of contracts on games, concepts and types of lotteries, the main principles of regulation of the lottery market in Ukraine and foreign countries (Getmantsev, 2008, p. 40). R. O. Pinyaga devoted his candidate's thesis to the crimes related to gambling (Pinyaga, 2015, p. 21). In this work, the author emphasizes that gambling is a risky activity that is always associated with financial fraud, including in banks and money laundering from this crime. M. A. Pohoretskyi and Z. M. Toporetska consider the peculiarities of the investigation of the gambling business (Pohoretskyi & Toporetska, 2015, p. 250). In this monography the authors cite modern ways of disguising gambling business for lottery activity, as well as paying attention to the peculiarities of legalization of criminal proceeds from gambling business using the banking system. V. V. Vysotska considers the issue of criminal-legal analysis of the crime of occupation by gambling business (Vysotska, 2016, p. 172).

Later, Z. M. Toporetska prepared a thorough work on public management of the gaming business, which became the methodological basis of this article (Toporetska, 2022a).

These works are very valuable, the general theoretical positions set forth by the authors underlining the research.



At the same time, no work in Ukraine considered the nature of games in general and gambling in particular, as well as what motivates a player to play again and again, how gambling addiction is formed, and what is the relationship between specific mechanisms of legal regulation and the development of gambling addiction.

Based on the gaming theories outlined above, we note that states choose different models of legal regulation of the gambling business market: prohibitive (complete prohibition of gambling business in the state); permissive (full permission of all gambling games); protectionist or monopolistic (the state exercises its monopoly right and restricts the gaming business market to protect society from the spread of gaming addiction). Ukraine has gone through all these forms and currently has chosen the most correct one - monopoly. However, currently there are no works in Ukraine devoted to the study of this model in relation to the existing mechanism of protecting players from gambling addiction.

However, currently there are no works in Ukraine dedicated to solving the problems of gambling player protection, including those carried out by legal organizers of gambling games based on licenses, considering a complex legal approach from the standpoint of various branches of law.

Methodology

This comparative legal study was carried out by studying primary legal materials, as well as secondary legal materials related to the studied legal issues. The theoretical and empirical basis of the research is represented by legislative acts, theoretical research.

The methodological basis of the study was made up of general scientific methods of cognition: the dialectical method of cognition of the phenomena of the surrounding reality and the comparative-legal method for comparison of the rights and opportunities of a gambler, which are defined in the norms of various branches of Ukrainian law.

The main research method was chosen as a regulatory and legal research. It is carried out by studying primary legal materials, as well as secondary legal materials related to the researched legal issues. Data were collected through document study and library research and analyzed using a qualitative approach and logic methods.

Methods of logic (analysis, synthesis, induction, deduction, analogy), absolute and comparative advantages were used to identify and generalize the problems that arise during the protection of the rights and interests of gambling players and to formulate proposals for their solution.

Several research techniques and methods were used in the study. First, with the help of a conceptual analysis, the current state of legal regulation of issues of protecting society from gambling addiction is determined. For this, several research methods and content analysis methods were used to study the legislation as the basis of the research. This made it possible to determine the normative acts regulating the gambling business and the issue of implementing mechanisms for their protection. In the future, a complex of general scientific methods, analysis and synthesis, generalization, logical-structural analysis, control was used to determine the legal status of the player.

In accordance with the system-structural approach the authors were able to investigate the issue of the state-created system of bodies, opportunities, and mechanisms that can be used by the player and other persons if they suffer due to problematic gaming behavior or gambling addiction. This made it possible to identify the main shortcomings in the legal regulation, which lead to the violation of the rights of players to be protected against the development of gaming addiction.

Results and Discussion

The influence of the gambling business regulation model in the state on the prevalence of gambling addiction

In its historical development, Ukraine has gone through all three main models of state regulation of the gambling market: the period of permissiveness (1991-2009); the period of complete prohibition of all



gambling (2009-2020); the period of strict state regulation and market restrictions (2020 till now) (Toporetska, 2022a).

Although Ukrainians in general are not a gambling nation by nature, the model of market regulation affects the specific player who plays in them. Therefore, even if a small prevalence of gambling addiction is officially recorded in society, this does not mean that gambling does not have an impact on individual players.

So, for example, during the period of permissive gambling (1991-2009), slot machines were allowed to be placed not only in temporary buildings, but also in the premises of cafes and shops, so they were freely accessible to the public. At that time, the legislation of Ukraine did not contain any tools to protect the player from the formation of gaming addiction. Therefore, players who had gambling problems often found themselves alone with their problems. These mental problems were joined by economic ones (serious debts), which the player could not cope with on his own. That is why there were cases where code players committed suicide due to threats from "creditors".

From 2009 to 2020, there was an absolute ban on the gambling business in Ukraine, and the organization or conduct of gambling was recognized as a crime. But the state could not effectively fight against the illegal gambling business, which became widespread, especially on the Internet (Pohoretskyi & Toporetska, 2015). At the same time, the player was not recognized as a victim of this crime but was actually a criminal. At the same time, players could be held administratively liable for participating in illegal gambling under Art. 181 of the Code of Ukraine on administrative offenses. Accordingly, due to the lack of a legal gambling business in the country, the state did not recognize the fact that a person in Ukraine has such a disease as gambling addiction, so the player did not receive any protection and assistance from the state. A complete ban on the gambling business, in our opinion, is the most dangerous form of state regulation of gambling in terms of danger to society as a whole and players of such illegal gambling.

In 2020, gambling business is allowed in Ukraine by Law No. 768 (Law No 768-IX, 2020). As you know, the gambling business is a high-risk type of activity, since gambling can form a person's gambling addiction (Toporetska, 2022a, p. 227). This requires the state to take special approaches to the state regulation of this market, which would ensure the consideration and protection of the public (public) interest and public values before the interests of business protection or the interests of filling the budget (Toporetska, 2022b, p. 153).

Since 2020, a new stage of state regulation of gambling has begun in Ukraine, which for the first time provided opportunities to protect the rights of gambling players. In particular, the territorial restriction of gambling establishments has been introduced; introduced player identification to prevent free access to gambling establishments; the Unified register of players who are restricted from accessing gambling establishments and/or participating in gambling was launched; the obligation for the organizers to apply the principles of responsible gaming and others was introduced. All these measures should strengthen the protection of gamblers against gambling addiction. In addition, the adopted Law No. 768 initiated the formation of state policy on the protection of society from gambling addiction. During these four years of Law No. 768, many initiatives have been implemented, so today the player can protect himself from gambling addiction or to get help in the event of such a disease.

Ways and means of protecting the rights of a gambler under the legislation of Ukraine

But as the practice of implementing Law No. 768 showed, Ukraine did not take enough measures to protect society from gambling addiction and protect players from gambling addiction. The problem became even more acute with the beginning of full-scale military operations on the territory of Ukraine, because the stress of war provokes people to seek escape from reality into the virtual world of gambling, so the population has become even more vulnerable to the influence of gambling.

The problem was brought to the level of the National Security and Defense Council of Ukraine and the level of the President of Ukraine by Decree of the President of Ukraine No. 234/2024 from April 20, 2024, the decision of the National Security and Defense Council of Ukraine from April 20, 2024 "On countering the negative consequences of gambling on the Internet" was put into effect (Decree No. 234/2024, 2024). This decision provides for the introduction of a ban on advertising of gambling games, the obligation to set game limits for players (regarding time and costs), the obligation for the Cabinet of Ministers of Ukraine



to implement the State Online Monitoring System, blocking of illegal internet sites of gambling organizers. Also, to prevent the spread of the disease, a national information campaign is planned regarding the dangers of gambling, threats of gambling addiction, methods of prevention and treatment of gambling addiction, contacts of institutions that aid persons with gambling addiction. Separately, it should be noted that the state recognized the inadequacy of means of protection for gamblers, therefore, by this decision, the Ministry of Health is directly obliged to adopt a protocol for the treatment of gambling addiction, and the Ministry of Social Policy - a standard for social and psychological rehabilitation of persons with gambling addiction, because this is the basis without which to overcome game addiction is impossible.

As ludomania is a mental illness, a person suffering from such an illness has the right to receive the necessary medical care. The Ministry of Health of Ukraine, published for public discussion draft of a new clinical protocol for medical care "Gaming addiction (gaming addiction)" (Ministry of Health of Ukraine, 2024). The protocol was developed with the participation of the author Z. Toporetska. This is the first medical document in Ukraine regarding the treatment of gaming addiction, which should significantly improve the diagnosis and treatment of this disease. Until now, psychiatrists were guided by foreign sources, but not every doctor speaks English or other languages, so access to such treatment protocols was quite difficult for doctors. Patients with gaming addiction can receive medical care free of charge according to the medical service packages of the National Health Service of Ukraine. However, a person must first consult a family doctor, who must issue a referral for receiving specialized medical care from a psychiatrist, since only a psychiatrist can establish a diagnosis of severe gaming addiction.

However, a family doctor can help a player who has a propensity for addictive behavior or addictive behavior but does not yet have a gambling addiction. In accordance with the order of the Ministry of Health of Ukraine dated 23.12.2023 No. 2118 "On the organization of providing psychosocial assistance to the population", family doctors are granted the right to provide psychosocial assistance to the population (Order No. 2118, 2023). The same help can be provided by psychologists of general or cluster health care institutions upon the referral of a family doctor or upon the patient's direct referral to a psychologist. A capable network of health care institutions of Ukraine has been created to ensure the availability of medical care for the population of Ukraine (Bilan, 2022, p. 159). All psychosocial care is free for the patient.

A gambler with gambling problems after treatment or during treatment has the right to receive a social service for socio-psychological rehabilitation of persons with gambling addiction. Social service includes the following set of services: counseling; psychological assistance (counseling, support, diagnosis, counseling, correction, psychotherapy, rehabilitation); assistance in obtaining free legal aid; representation of interests (Order No. 429, 2020). The service is also provided free of charge for citizens. However, the rules for its provision have not yet been determined.

The developed draft of the order of the Ministry of Social Policy of Ukraine "On approval of the State Standard of Social Services for Social and Psychological Rehabilitation of Persons with Gaming Addiction" was published for public discussion on 07/09/2024 and, we hope, the document will be adopted soon (Ministry of Social Policy of Ukraine, 2024). This document will allow doctors and social workers to cooperate more effectively and provide comprehensive assistance to persons with gaming addiction.

One of the principles of state policy in the field of gambling business is the fight against gambling addiction (ludomania). Law No. 768 provides for the responsibilities of the organizer of gambling games, which should reduce the risks of gambling addiction in players. These are: to adhere to the principles of responsible gaming, to ensure identification of players at the entrance to the gambling establishment or before starting to play on the Internet, to prevent participation in the game by persons under the age of 21 and those who are included in the Unified Register of Persons with Restricted Access to Gambling Institutions and participation in gambling, etc. Also, the organizers have a general duty to take measures to combat gambling addiction (ludomania), including placing informational materials on gambling addiction and responsible gambling on age restrictions, in places where activities are carried out in the field of organization and gambling. player, chances of winning, principles of responsible gaming, signs of pathological and problematic gambling addiction and places where you can get help in case of gambling addiction (Law No 768-IX, 2020). All these measures are measures to protect legal gamblers from gambling addiction.

However, illegal gambling still exists in Ukraine, and it is difficult to protect players from its harmful effects. Yes, the player's administrative responsibility for participating in illegal gambling and punished some penalty. But the player can check the legality of the game by obtaining information from the relevant registers of gambling operators maintained by the Gambling and Lotteries Regulatory Commission. Therefore, the player himself is responsible for checking the legality of the activity of a certain land-based or online gambling establishment, although the player as a consumer must be protected by the state. Therefore, in our opinion, administrative responsibility for participation in illegal gambling can arise for the player only if he knows about the illegality of such gambling.

The problem of bringing the player as an offender to administrative responsibility is related to the problem of the impossibility of recognizing the player as a victim in criminal proceedings initiated based on the facts of employment in the gambling business (Article 203-2 of the Criminal Code of Ukraine) (Law No. 2341-III, 2001). So, currently illegal gamblers cannot demand compensation for the damage caused and do not receive state protection in criminal proceedings, because formally they are considered participants in the crime, and they themselves are offenders who are brought to administrative responsibility. We consider this approach to be wrong, because the state must protect citizens from criminal offenses, therefore we propose making appropriate changes to the Criminal Code of Ukraine in order to ensure the right of players to compensation for damage caused as a result of their involvement in the illegal gambling business.

Conclusions

The legislation of Ukraine provides for several mechanisms to protect the rights of gamblers against the development of gambling addiction. Such possibilities are defined by the special law No. 768 and there are many administrative and legal means, which are primarily aimed at preventing the development of gaming addiction.

In addition, in the event of gambling problems or a diagnosis of gambling addiction, the player has the right to receive free psychosocial assistance and specialized medical (psychiatric) assistance, as well as free social service for socio-psychological rehabilitation after treatment.

The disadvantage of the current legislation is that the player is subject to administrative liability for participating in illegal gambling and the burden of establishing the legality of the activity of a certain gambling establishment (land-based or online) is transferred to the player. A disadvantage of the current legislation of Ukraine is also the impossibility of recognizing a player of illegal gambling as a victim in a criminal proceeding, because this deprives him of the right to compensation for the damage caused to him because of committing a crime.

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