

# Municipal regulation of gambling in the Czech Republic

J. Janderová, V. Schejbalová

**Abstract**— Gambling has become major issue in the Czech Republic with uncontrollably increasing number of casinos, gaming houses and video-lottery machines in restaurants. As municipalities find national level statutory regulation insufficient, they often decide to restrict or ban gambling on their territory themselves. Therefore, they issue secondary legislation - generally binding municipal ordinances. Historically, interpretation of constitutional limits to original legislation of local governments obstructed their efforts. The change in the Constitutional Court perception of the scope of self-governing competence to issue generally binding municipal ordinances is summarized. The current practice of municipalities and economic impacts are discussed. In the end, changes *de lege ferenda* are proposed.

**Keywords**— generally binding ordinances, local government, lottery, municipality, regulation of gambling.

## I. INTRODUCTION

**D**UE to its negative consequences, gambling has become an immense social issue, which public authorities are seeking to regulate both at central and local levels.

Repeated active participation in lotteries and betting games often causes addiction to this activity, especially among low-income groups or easily influenceable persons. Dependence can lead to gambling, which has serious implications not only for the player but also his surroundings. Threat of later enforcement of debts, may encourage these people to try to obtain funds through illegal activities. Persons addicted to gambling tend also to other addictions. Therefore, gambling is closely related to societal problems such as public disorder, increased crime rate etc. The purpose of legal regulation of gambling is thus to protect society from the negative social phenomena.

Lottery and other gambling games have become a business with substantial revenues, thus authorities that have competence to regulate gambling, often find themselves under pressure from interest groups, activists, and lottery operators.

This work was supported in part by the Czech Ministry of Education, Youth and Sport under Grant No. SGSFES\_2015001, Project Title: Economic and Social Development in Private and Public Sectors, Partial activity 07: Modeling Quality of Life in Communities with Extended Powers in the Czech Republic (sponsor and financial support acknowledgment goes here).

Jana Janderová is with the University of Pardubice, Faculty of Economics and Administration, Institute of Administrative and Social Sciences (e-mail: jana.janderova@upce.cz).

Veronika Schejbalová is a former student of the University of Pardubice, Faculty of Economics and Administration and currently works with a business company.

The alarming number of gaming-houses and casinos in the Czech Republic provide ample opportunity for gamers, and cause ultimately serious nuisance. However, the state authorities have been reluctant to decrease numbers of casinos and gaming houses at central level. Their inability to cope with the issue has prompted municipalities to take action by themselves. As many of them find regulation at national level to be inadequate, they strive to reach the targeted state of lowering the nuisance caused by gambling by their own means, namely through generally binding municipal ordinances. Nevertheless, this practice is far from perfect, as it leads to significant local differences.

The aim of this article is to discuss regulation of local affairs through generally binding municipal ordinances, especially those relating to regulation of gambling. It examines both legal and economic aspects of the issue, identifies the reasons why municipalities proceed with their own regulation of gambling, and analyses what actual impact such regulation brings. Further, through the Czech Constitutional Court case law analysis it summarizes what changes in its view of municipal legislation limits were recorded during past few years.

## II. LEGISLATION REGULATING GAMBLING IN THE CZECH REPUBLIC

### A. Act No. 202/1990 Sb., on Lotteries and other Similar Games

Operation of lotteries and other betting games is regulated by Act No. 202/1990 Sb., On Lotteries and Other Similar Games (the Lottery Act). The purpose of the Lottery Act is to set conditions and define a framework for running business in operation of lotteries and betting games. The aim of legal regulation is thus to set such rules to protect society from the negative consequences of gambling.

The Lottery Act is drawn as to prohibit operation of lotteries and similar activities except when conditions provided for in this Act are met. The Act defines lottery in Sec. 1 (2) as a kind of game, in which any natural person who pays a deposit, voluntarily participates. Return on the bet is not guaranteed. Winning or losing is decided by chance or circumstance unknown in advance set by operator at predetermined game conditions. The game can be carried out using mechanical, electro-mechanical, electronic or other devices.

Engaging in any gambling business is conditioned by

ensuring equal conditions for all participants. Lottery participant may be any natural person older than eighteen. Lottery may be operated only by a legal entity based in the Czech Republic, which has a license to operate such games. So that a legal person, could become operator of lottery games, it must particularly deposit registered capital, the amount of which varies for different types of lottery and betting games.

#### *B. Issuing and Revocation of a License to Operate Lottery*

As mentioned above, operation of all types of lottery games is subject to authorization. Licenses are granted for a period of one year. The application must satisfy statutory requirements and conditions for entering gambling business set by law must be met. Licenses may only be issued in favor of a joint-stock company with a registered capital of an amount, which varies depending on the type of licensed lottery. The applicant is required to prove its ability to ensure professional service and operability of all gaming devices. Sec. 4 (2) of the Lottery Act further provides that a license may be issued only if gambling activities are carried on in accordance with law, do not disturb public order, and proper operation of devices, including proper technical equipment, is ensured. According to the kind and type of lottery, licenses are granted by municipalities, regional authorities or Ministry of Finance.

Operation of gaming machines may be permitted by the three above mentioned authorities, while the competence of the relevant authority to issue the particular license is dependent on the presumed operating conditions. Municipalities grant licenses under powers delegated to them by the state (i.e. not in the self-governing competence), if the location of the gaming machine is in its territory. Regional authority issues licenses in their administrative district, if the operator of the lottery is to be a municipality. Ministry of Finance authorizes operation of slot machines located in casinos or gambling machines in a currency other than Czech crowns.

Ministry of Finance also grants licenses for casino gambling, betting games like Bingo, electronic roulette, online odds betting, gaming or technical installations, which are mainly video lottery gaming terminals.

As mentioned above, a license is issued subject to meeting the statutory conditions. Generally, the operator must meet the following conditions:

- 1) being a legal entity based in the Czech Republic;
- 2) suitability of the operator (proved by a certificate of no criminal records);
- 3) deposit of registered capital, the amount of which varies for different types of lottery games;
- 4) deposit of a guarantee in a special bank account;
- 5) ensuring technical aspects of the operation; and
- 6) ensuring payment of levy to cover public benefit purposes.

If the operator ceases to meet the conditions, the authority that issued its license may revoke the license by its administrative decision.

### III. REGULATION OF GAMBLING AT LOCAL LEVEL

#### *A. Reasons for Regulation of Gambling at Municipal Level*

To explain the reasons why the issue discussed in this article arouse, it must be stated that although lotteries and similar games are regulated by law, an uncontrolled expansion of this scourge occurred in recent years. Video lottery gaming terminals began to replace gaming machines in 2002, 2003. The exact wording of the Act did not recognize at that time this particular device, and thus did not regulate it anyhow. The big boom continued and the number of video lottery gaming terminals increased most from 2007 to 2009. Currently, there are about 56, 000 of such video lottery gaming terminals in operation. It is the Ministry of Finance, which grants licenses to operate such machines, as was already discussed.

With the massive increase of gambling effort to regulate it arose. Although the Act governing the matter at national level has been amended several times in order to cope with new developments in the field of gambling business, many local governments still consider this regulation to be inadequate, and therefore seek to modify gambling rules within their own self-governing competence. Such regulation is possible by means of issuing generally binding ordinances, in which municipalities may establish conditions for the operation of gambling on their territory. It was recorded that already in 2011 two hundred municipalities regulated gambling. However, in the light of local conditions, municipalities regulate gambling on their territory in varying scopes and forms. This practice leads to significant local differences.

To summarize, the reason why municipalities utilize their competence to issue local legislation, is the fact that gambling usually causes serious nuisance, and that the national level regulation does not appear to be sufficient.

#### *B. Consequences of Municipal Regulation for Lottery Operators*

Municipalities that have decided to regulate gambling in their territory, often face a conflict between the regulation stipulated in their generally binding ordinance and the license issued by the Ministry of Finance. If such conflict occurs, the Ministry of Finance is obliged to adhere to the provision of Sec. 43 (1) of the Lottery Act, which stipulates that: Authority, that authorized a lottery or other similar game, shall withdraw the license, if there later occur or become known circumstances for which it would not have been possible to authorize the lottery or other similar game, or if the data on the basis of which the license was issued later prove to be false.

Therefore, on the basis of this provision, the Ministry of Finance initiates administrative proceedings to cancel the license whenever it finds a contradiction of the already issued license with a new provision contained in any generally binding municipal ordinance. Since this agenda is so extensive that it is not in the possibilities of the Ministry to seek all collisions in its own initiative, municipalities are obliged to send generally binding municipal ordinances regulating

gambling, not only to the Ministry of Interior, which generally supervises them as will be explained below, but also to the Ministry of Finance. If the review proceeding pursuant to Sec. 43 (1) of the Lottery Act is initiated, the Ministry of Finance is obliged to inform the municipality concerned about it. The municipality should be also informed by the Ministry of the completion and results of the proceedings.

#### IV. GENERALLY BINDING ORDINANCES ISSUED BY MUNICIPALITIES

##### A. Constitutional and Statutory Delimitation of Powers to Issue Municipal Legislation

Czech municipalities, basic local government units, are endowed with self-government as their constitutional right. Thus, apart from other competences, they may regulate their local affairs by issuing secondary legislation - generally binding ordinances. This competence is granted to them by Art. 104 (3) of the Czech Republic Constitution, which provides that municipal assemblies may within the scope of their competence issue generally binding municipal ordinances. Issuing generally binding municipal ordinances under self-governing competence differs from publishing municipal legislation under delegated powers, which is governed by Article 79 (3) of the Constitution, and is permissible only upon explicit statutory authorization.

The substance of self-government municipal rulemaking is to regulate matters falling under the management of municipalities. Such regulation stems from local conditions and needs, and is based on their detailed knowledge. It is therefore a municipal competence to regulate certain statutorily defined circle of affairs on their own, relatively independently of the state. A fundamental part of this authorization to issue municipal legislation is to impose obligations, which may be both a command and a ban on certain practices [14].

Limits of the self-governing powers are set by Act no. 128/2000 Sb., On Municipalities (hereinafter the Municipalities Act), in Sec. 35, which defines the subject matter of tasks that fall under municipal jurisdiction. Furthermore, the limits of powers are provided for in Sec. 10, which determines the purposes for the performance of which municipalities may impose obligations in their generally binding ordinances.

##### B. Generally Binding Municipal Ordinances Governing Public Order

According to Sec. 10 of the Municipalities Act municipalities may impose obligations by generally binding ordinances

a) to ensure security of local matters of public order; in particular, municipalities may determine which activities that could disturb public order or be contrary to good morals, protection of safety, health or property may be conducted only in places and at times set by the generally

binding ordinance, or provide that such activities are prohibited at some public squares in the municipality,

- b) to ensure organization, course and termination of publicly accessible sports and cultural events, including dances and discos, by setting binding conditions to the extent necessary to ensure public order,
- c) to ensure the maintenance of cleanliness of streets and other public areas, protection of environment, public green areas and the use of municipal facilities serving the needs of the public, or
- d) when a special statute stipulates so.

Thus the obligations most commonly imposed, are those that should help to ensure public order. The following graph shows which of the activities disturbing public order in municipalities were regulated in 2014 most frequently.

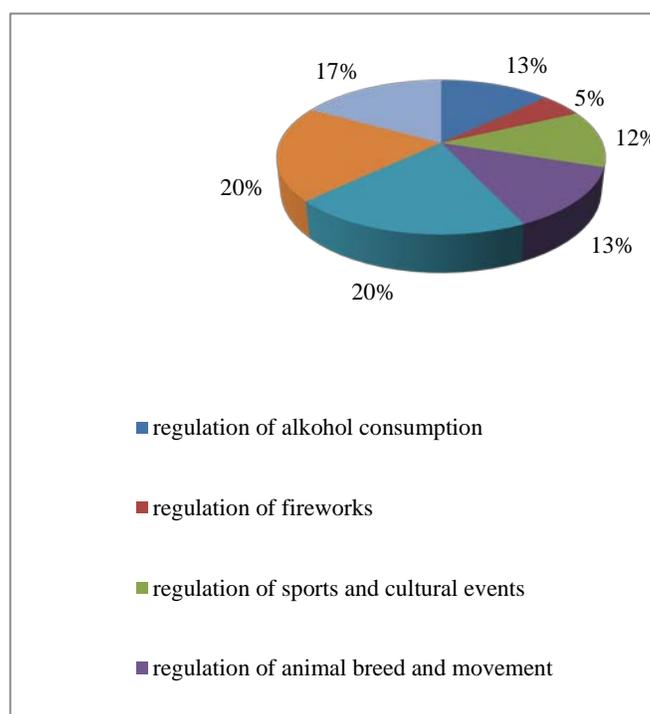


Fig. 1: Generally binding municipal ordinances governing public order issued most commonly in 2014 [13]

##### C. Supervision over Generally Binding Municipal Ordinances

Generally binding ordinances of municipalities are subject to ex-post control, i.e. every piece of such legislation is supervised after its release. Municipalities have a statutory obligation to send each generally binding ordinance issued by them to the Ministry of Interior to assess them. This must be done immediately after their publication, i.e. after their posting on the official board of the municipal authority. If the Department of supervision and control of the Ministry of Interior finds ambiguity or fault in its content, it informs the municipal assembly about its findings in writing and invites them to correct such error. Usually, it is corrected by issuing revised generally binding municipal ordinance. Time limit for

remedy is set by law at sixty days. Should the municipal assembly ignore the instructions of the Ministry and not provide a remedy within the time limit, or should the generally binding municipal ordinance contain such serious errors that the Ministry finds it null and void, it suspends the effect of such generally binding municipal ordinance and files a petition with the Constitutional Court.

The Constitutional Court has jurisdiction pursuant to Art. 87 (1), (2) of the Constitution to annul legal enactments other than statutes or individual provisions thereof if they are in conflict with the constitutional order or a statute.

Unlawfulness of generally binding municipal ordinances may be caused by their illegal content or wrongful procedure. Unlawfulness caused by illegal content may occur when municipality regulates a matter, which falls outside the scope of its self-governing competence; stipulates obligations beyond those provided for by statutes; or it commits errors in the interpretation of vague legal concepts such as “Public Order”, “Public Square”, “Peace and Quiet at Night” etc. [1].

The Constitutional Court evaluates in the proceedings for revocation of a generally binding municipal ordinance in particular compliance of the contested generally binding municipal ordinance with the Constitution and other Acts - secondary legislation must not conflict with any Act or international treaty. The Constitutional Court is bound in the proceedings by the scope and content of the filed petition, which limits it must not exceed. A test consisting of four steps has been introduced for the assessment of generally binding municipal ordinances and other secondary legislation. The four steps test was first used in judgment No. Pl. US 63/04 of March 22nd, 2005. Thus, procedure of considering generally binding municipal ordinances is as follows [1]:

The power of the municipality to issue such generally binding ordinance is examined in the first step.

Then the Constitutional Court assesses whether the municipality did not act outside its statutory scope of subject-matter competence.

It is determined whether the municipality had not acted *ultra vires* (i.e. abused its powers), in the third step.

In the fourth, last step, the Constitutional Court examines whether the municipality has not acted obviously unreasonably when issuing the examined generally binding municipal ordinance. The content of the generally binding municipal ordinance is measured by the criterion of rationality in this step.

The first two steps examine the formal criteria; third and fourth step can be described as criteria relating to the actual content of the contested generally binding municipal ordinance. For each of the steps Senate, or Plenum, of the Constitutional Court delivers an opinion that must be adequately justified in its findings. If the generally binding municipal ordinance passes all four steps of the test, it is obvious that its content complies with law, thus it is flawless and stays valid.

## V. CONSTITUTIONAL COURT CASE LAW

### A. *Original View of the Municipal Legislation Limits*

The original view of the Constitutional Court was that although municipalities were granted their legitimate right to self-government and thus the competence to issue generally binding ordinances, an explicit statutory authorization to do so for each individual piece of legislation and regulated substantive matter was always required [7], [14], [17]. Thus, it was almost impossible for municipalities to impose new obligations, as there were few statutory provisions explicitly allowing them to do so. Gambling could not have been regulated on municipal level. Whenever any municipality tried to issue such generally binding ordinance, it was later annulled.

This attitude was criticized by experts for blurring the differences between municipalities rulemaking under the provisions of Art. 104 (3) and Art. 79 (3) of the Constitution.

Later, the Constitutional Court changed its opinion and identified Sec. 10 of the Municipalities Act (mentioned above) as a specific statutory provision which determines three basic material areas where Municipalities may issue generally binding ordinances without explicit statutory authorization [7]. Gambling undoubtedly falls under Sec. 10 (a) of the Municipalities Act as an activity that may jeopardize public order. Thus this change of Constitutional Court's opinion was crucial and meant a new start of municipal regulation of gambling.

### B. *Change in the Constitutional Court's Opinion*

Turning point in the Constitutional Court opinion of the scope of competence to issue generally binding municipal ordinances dates back to 2006, 2007. Several judgments were delivered from that time on, which apparently show that the Constitutional Court significantly altered its original positions. However, gradual departure from the original view caused ambivalence and disunity of opinions - particularly regarding the generally binding municipal ordinances governing public order.

One of the most important judgments in which the Constitutional Court has departed from its original legal opinion, is judgment file No. Pl. US 45/06, concerning municipality Jirkov. Ministry of Interior filed a petition to the Constitutional Court to annul generally binding ordinance of the city Jirkov no. 4/2005 seeking to protect public order in public spaces [35].

The Constitutional Court has made several changes in the Jirkov judgment compared to its initial case law. First, it refrained from restrictive interpretation of Art. 104 (3) of the Constitution. As explained above, a specific statutory authorization to impose an obligation by a generally binding municipal ordinance was always required. The municipal rule-making was recognized as original in the Jirkov judgment, which means that municipalities may issue generally binding ordinances (and impose obligations) within their self-governing competence without a specific statutory

authorization. Further, together with this new opinion comes a change in perception of Sec.10 of the Municipalities Act. This provision was originally viewed only as such statutory authorization for issuing generally binding ordinances. Newly Sec. 10 of the Municipalities Act is interpreted rather as a definition of subject-matter areas of municipal norm creation in their self-governing powers.

Another important change concerns the discrepancies between municipal secondary legislation with statutes. Earlier it was strictly required that secondary legislation - including generally binding municipal ordinances - must comply with all applicable statutes and may not alter rules which were already stipulated by statutes. Ministry of Interior objected in the Jirkov case that a generally binding municipal ordinance regulating care for public greenery collided with a regulation already contained in the Act No. 326/2004 Sb., On Plant Care. The Constitutional Court allowed for such collision in regulation in this case, under the condition that the local rules pursue a different purpose from the statutory regulation - which was proved Jirkov case. The Constitutional Court did not find any flaws in the generally binding municipal ordinance in the Jirkov case, therefore the petition to repeal it was dismissed and left the contested generally binding municipal ordinance in force [6], [17], [27].

Shift or deviation from the original Constitutional Court case law can be found in other judgments as well – e.g. in its judgment No. Pl. US 69/04. It deals with a change in the requirements for the definition of “public space” so as to safeguard public order [30]. Requirement of public space exact specification was replaced by a mere requirement of proportionality, in this case. For activities such as organizing music events, begging, free movement of dogs, operation of amusement parks, circuses, etc. the requirement of an exact specification of the public space remains unchanged. Generally, it can be summarized that shall the municipality decide to regulate by generally binding ordinances activities for the purpose of protecting public order in public space, it is required to exactly identify the area where the activity is regulated. However, shall it decide to regulate the activity on the whole of its territory, it is required to specify the grounds for such relation properly, especially to provide materially substantiated reasons [33].

The Constitutional Court proceeded similarly, when it dealt with petition for annulment of a generally binding ordinance of the city Kořenov. In its judgment No. Pl. US 35/06 the Constitutional Court stated that shall a municipality want to regulate activities which it regards as a threat of public order disturbance; it first needs to examine the nature of activities it wishes to regulate and to consider the seriousness of the breach of public order by such activities. A regulation concerning the whole area of the municipality must always be properly justified by disturbance of protected municipal interest [33].

Last case that brought a significant change in the view of the Constitutional Court, which will be discussed here, is its

judgment No. Pl. US 33/05. In this case, the Ministry of Interior submitted a petition to annul a generally binding ordinance of the city Krupka No. 12/2004, On Securing Local Matters of Public Order by Limiting Consumption of Alcohol and Other Addictive Substances in Public Spaces. The argument for the annulment of the generally binding municipal ordinance lied in the statement that it contains regulation of activities that are already regulated by a statute, namely by Act No. 379/2005 Sb., On Measures to Protect against Damage Caused by Tobacco Products, Alcohol and Other Addictive Substances and on Amendments of Related Acts. Therefore, no alteration through a generally binding municipal ordinance was allowed [32].

Although consumption of alcohol and misuse of drugs are considered to be a major social issue and acting against public order, the Constitutional Court in its earlier case law (several times) did not allow for regulation of such activities at the local level. This happened e.g. in cases file No. Pl. US 32/05, file No. Pl. US 34/06, and file No. Pl. US 44/06 [31], [34],[]. The reason for the refusal of local regulation was the assumption that in this case municipalities exceeded the limits of the statutory authorization contained in Sec. 10 (a) of the Municipalities Act. Another argument for the rejection was a discrepancy of the generally binding ordinance with a statute and the opinion of the Constitutional Court, that a generally binding municipal ordinance cannot alter a matter which is reserved to a statutory regulation and is regulated by a statute. At that time, municipalities were allowed to regulate the consumption and sale of alcoholic beverages only in connection with organization of events open to the public.

This Constitutional Court opinion was finally altered in its judgment file No. Pl. US 33/05. [32] It was determined that the generally binding municipal ordinance of the city Krupka intends to achieve an entirely different objective from that which is observed by a statute. While the statute regulates the use of alcohol and other addictive substances with the aim to protect public health, the generally binding municipal ordinance aims at protecting public order in accordance with Sec. 10 (a) of the Municipalities Act. The Constitutional Court concluded that regulation of alcohol consumption at local level is legitimate, but only in the event that such regulation pursues a different purpose than statutory regulation and provided that public space is specified sufficiently [17], [31], [32].

Municipal regulation of video-lottery gambling terminals was explicitly authorized by the Constitutional Court in 2013 in the case of Klatovy [21]. This municipality challenged a provision of the Lottery Act which prohibited banning video-lottery gambling terminals by generally binding municipal ordinances to those businesses with an effective license issued by Ministry of Finance. The provision expected that Ministry of Finance should terminate all licenses till the end of 2014. Till then, municipalities would have to tolerate gambling on their territory. This provision was annulled by the Court as unconstitutional as it breached the right to self-government. Earlier, in 2011, in the case of Chrastava [23], the

Constitutional Court annulled a provision of a generally binding ordinance by which the municipality revoked effective licenses issued to video-lottery gambling terminals by the Ministry of Finance. Thus, the proper procedure is to restrict gambling generally on the municipal territory by a generally binding ordinance and initiate administrative proceedings with the Ministry of Finance which is the only authority that may revoke individual licenses.

After having analyzed the legal limits of municipal regulation, we shall proceed with a discussion of economic aspects of such norm creation.

## VI. NEGATIVE AND POSITIVE ASPECTS OF GAMBLING REGULATION

### A. Impact of Hazard Regulation on Municipal Budgets

The main negative aspect associated with the regulation of lotteries and similar games lies in the reduction of levy on lotteries which is revenue of public budgets. The Lottery Act in its sixth part obliges lottery games operators to pay part of their earnings. The taxpayer is in accordance with Sec. 41 of the Lottery Act each lottery operator, object of the levy is defined as the amount by which the total stakes exceed the total of winnings paid. For gaming machines the rate is at 20% of this amount. A fixed sum set in the amount of CZK 55 per gaming machine and one day also forms part of the levy. Levies are paid quarterly in the form of advances which administered by the tax authorities. Levy proceeds from lotteries go to public budgets - specifically, the funds are distributed as follows:

- 1) 20% of proceeds to the state budget,
- 2) 80% of proceeds to municipal budgets.

In 2013, total betting deposits amounted to total of CZK 123.9 bil., out of which paid winnings were CZK 95.3 bil. Operators of lotteries created profit of CZK 28.6 bil., of which CZK 5.72 bil. were payments to public budgets - of which CZK 1.14 bil. was the income of state budget and CZK 4.58 bil. of municipalities budgets. The graph shows the evolution of the amount of deposits, winnings and profits from lottery games from 2004 to 2013.

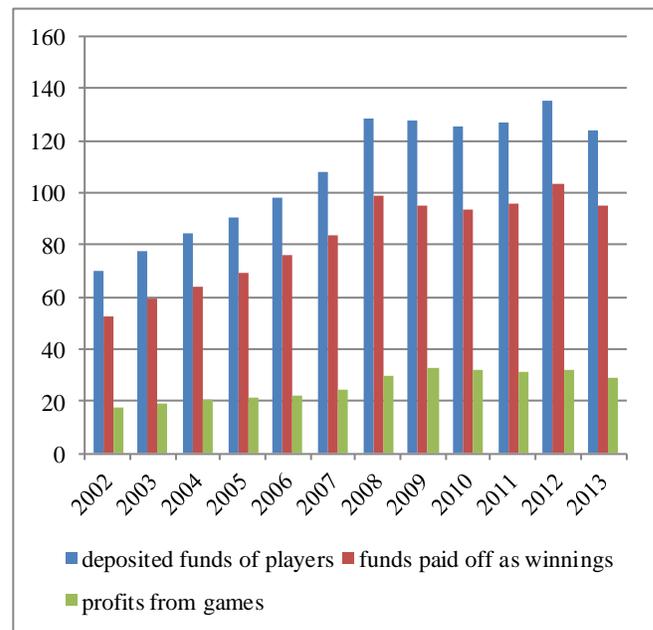


Figure 2: The amount of deposits and winnings from lottery and profits in the years 2002-2013 in bill. CZK [8], [9]

### B. Positive Aspects of Gambling Regulation

Negative consequences of regulation, the reduction of contributions from lotteries to public budgets, can be easily quantified in monetary terms. However, quantifying the positive benefits is not so easy. The reason is that the positive effects of gambling regulation at municipal level show consequences in the social sphere. The positive aspects of gambling regulation include e.g.:

- 1) reduction of indebtedness of the population,
- 2) reduction of crime rate,
- 3) reduction of unemployment,
- 4) improvement of conditions in the gaming houses surroundings,
- 5) reduction of public nuisance,
- 6) other social aspects (e.g. lower levels of homelessness, quality of leisure time activities, etc.).

### C. Current Methods of Municipal Gambling Regulation

Taking into account both positive aspects of gambling restrictions, and reductions in budget incomes on the other hand, municipalities face fundamental question whether to proceed with any legal regulation at all, and if, to which extent.

As municipalities, namely the larger cities, often perceive very intense impacts of gambling on their territory, they seek establishment of such conditions that would allow for keeping gambling at a reasonable level to avoid public nuisance. The reduction in budget revenue does not prove to form serious obstacle, since many of them appreciate the societal benefits of regulation more [8], [15]. However, municipalities differ in the extent to which they actually regulate gambling activities. The following table shows the number of municipalities that regulate gambling and distinguishes them by manner and scope of regulation.

	2009	2010	2011	2012
Absolute prohibition of gambling	2	2	17	79
Regulation of all types of electronic gaming devices – by place, and/or time	6	10	32	142
Regulation of gaming machines only	54	62	88	96
Other regulation (e.g. ban on advertising)	1	1	3	6

Table 1: Number of municipalities regulating gambling by manner and scope of regulation [11], [12], [13]

The table shows that the number of municipalities which regulated gambling in 2012 noticeably increased compared to other years. This trend is observed in all manners of regulation, but the highest increase can be observed in the regulation of electronic gaming devices by place, time, or both.

However, it is argued that absolute ban on gambling often leads to expansion of illegal gambling; the prohibition in the large cities (like Brno) may also lead to moving gambling businesses to surrounding municipalities.

## VII. CONCLUSION - PROPOSALS DE LEGE FERENDA

The case law of the Constitutional Court has evolved in context of development of Czech democracy and amendments of various Acts. Recent case law shows a trend in untying local governments and expanding space for governing their own local affairs. Municipalities have more options how to regulate their affairs and they are not bound so tightly by earlier restrictive and uncompromising opinions of the Constitutional Court. Thus they often use this possibility to regulate gambling, as they find statutory regulation insufficient.

Further, the economic aspect of gambling restrictions, the decrease in budget revenue, does not stop them from a regulation imposing restrictions on gambling. However, those restrictions differ municipality from municipality.

Gambling and its regulation have been widely discussed by political representation at national level. The Lottery Act is commonly considered to be inadequate and outdated. Although it has been amended several times, the amendments were unable to respond to the rapid developments in the field of gambling and lotteries. Lottery operators always find new possibilities for circumventing the statute and use its imperfections.

Thus it is commonly agreed that there should be a significant change in legislation and a bill is currently discussed in the Parliament.

We believe that the following changes *de lege ferenda* could improve the current state of things and increase efficiency of regulation.

Municipalities should be granted more powers in the

process of issuing licenses to run gambling business in their territory. The location of casinos and gaming facilities should be decided solely by the municipality. If a municipality decides to ban all gambling on its territory, it should have the competence to do so. The total number of casinos and also of gaming devices should be subject to a statutory limitation and correspond with the city population. All technical games should be allowed only in casinos and gaming houses. Gaming machines would thus disappear from restaurants.

Further, a central information system, compulsory for all operators participating in lotteries and gambling in the country should be introduced. The system should act as a monitoring and control mechanism of gambling. A register of persons excluded from participating in gambling should follow. Such register should contain records of individuals that receive assistance in material need, persons in insolvency proceedings, and those who ask for registration on their own request.

We can conclude that sole setting of new legal rules will not solve the gambling issue. It is also important to find mechanisms that will ensure a tight control of their observance.

## REFERENCES

- [1] FILIPOVÁ, J. *Selected Aspects of Supervision over Municipalities Rulemaking*. (in Czech original: *Vybrané aspekty dozoru nad normotvorbou obcí*.) Časopis pro právní vědu a praxi. Brno: Masarykova univerzita, 2010. č. 1, s. 59-64. ISSN:1210-9126.
- [2] HENDRYCH, D. *Administrative Law*. 8<sup>th</sup> edition (in Czech original: *Správní právo*. 8. vydání) Praha: C. H. Beck, 2012. ISBN: 978-80-7179-254-3.
- [3] HOLLÄNDER, P. *Question Marks over the Constitutionality of Municipal Ordinances*. (in Czech original: *Otazníky ústavnosti obecních vyhlášek*.) Právní rozhledy. Praha: C. H. Beck, 2008. č. 19, s. 693-697. ISSN: 1210-6410.
- [4] JIRÁSEK, J. *Constitutional Basis of State organization* (in Czech original: *Ústavní základy organizace státu*.) Praha: Leges, 2013. ISBN: 978-80-87576-57-1.
- [5] KOUDELKA, Z. *Legislation of Self-governments*. (in Czech original: *Právní předpisy samosprávy*.) Praha: Linde, 2008. ISBN 80-7201-690-7.
- [6] KOUDELKA, Z. *Municipalities and Regions*. (in Czech original: *Obce a kraje*.) Praha: Linde, 2001. ISBN: 80-7201-272-X.
- [7] LANGÁŠEK, T. *Turnover in the Constitutional Court Perception of Generally Binding Ordinances*. (in Czech original: *Obrat v názráni Ústavního soudu na obecně závazné vyhlášky*.) Právní rozhledy. Praha: C. H. Beck, 2008. č. 10, s. 356-362. ISSN: 1210-6410.
- [8] MINISTRY OF FINANCE OF THE CZECH REPUBLIC *Assessment and overview of the results of the operation of lotteries and other similar games for the year 2013*. (in Czech original: *Hodnocení a přehled výsledků provozování loterií a jiných podobných her za rok 2013*.) [online]. Praha: Ministerstvo financí České republiky, 2013. [cit. 2015-04-14]. Available from: <http://www.mfcr.cz/cs/soukromy-sektor/monitoring/vysledky-z-provozovani-loterii/2013/hodnoceni-vysledku-provozovani-loterii-18429>
- [9] MINISTRY OF FINANCE OF THE CZECH REPUBLIC. *Gambling regulation* (in Czech original: *Regulace hazardu*) [online]. 2013 [cit. 2015-04-27]. Available from: <http://www.mfcr.cz/>
- [10] MINISTRY OF FINANCE OF THE CZECH REPUBLIC. *The New Act is a Breakthrough in the Regulation of Gambling in the Czech Republic*. (in Czech original: *Nový zákon přináší průlom v regulaci hazardu na území České republiky*.) [online]. Praha: Ministerstvo financí České republiky, 2014. [cit. 2015-04-14]. Available from: [www.mfcr.cz/cs/aktualne/tiskove-zpravy/2014/novy-zakon-prinasi-prulom-v-regulaci-haz-19430](http://www.mfcr.cz/cs/aktualne/tiskove-zpravy/2014/novy-zakon-prinasi-prulom-v-regulaci-haz-19430)

- [11] MINISTRY OF INTERIOR OF THE CZECH REPUBLIC. *Information on the activities of the department of public administration, supervision and control the Ministry of Interior in the area of surveillance and control for the 2011.* (in Czech original: *Informace o činnosti odboru veřejné správy, dozoru a kontroly ministerstva vnitra na úseku dozoru a kontroly za rok 2011.*) Praha: Tiskárna Ministerstva vnitra, 2012.
- [12] MINISTRY OF INTERIOR OF THE CZECH REPUBLIC. *Information on the activities of the department of public administration, supervision and control the Ministry of Interior in the area of surveillance and control for the 2013.* (in Czech original: *Informace o činnosti odboru veřejné správy, dozoru a kontroly ministerstva vnitra na úseku dozoru a kontroly za rok 2013.*) Praha: Tiskárna Ministerstva vnitra, 2014. ISBN: 978-80-86466-41-5.
- [13] MINISTRY OF INTERIOR OF THE CZECH REPUBLIC. *Information on the activities of the department of public administration, supervision and control the Ministry of Interior in the area of surveillance and control for the 2014.* (in Czech original: *Informace o činnosti odboru veřejné správy, dozoru a kontroly ministerstva vnitra na úseku dozoru a kontroly za rok 2014.*) Praha: Tiskárna Ministerstva vnitra, 2015. ISBN: 978-80-86466-74-3.
- [14] MÜLLEROVÁ, H. *Generally Binding Ordinances of Municipalities in the New Constitutional Court Case Law.* (in Czech original: *Obecně závazné vyhlášky obcí v nové judikatuře Ústavního soudu.*) Správní právo. Praha: Ministerstvo vnitra ČR, 2011, č. 7, s. 385-403. ISSN 0139-6005.
- [15] NATIONAL MONITORING CENTRE FOR DRUGS AND DRUG ADDICTION. (Národní monitorovací středisko pro drogy a drogové závislosti.) *Gambling in the Czech Republic and its implications.* (in Czech original: *Hazardní hraní v České republice a jeho dopady.*) Praha: Úřad vlády ČR, 2014.
- [16] PANARA, C., VARNEY, M. *Local Government in Europe: The 'Fourth Level' in the EU Multi-Layered System of Governance.* Abingdon: Routledge, 2013. ISBN: 9781135021269.
- [17] POSPÍŠIL, I. *Most Recent Constitutional Court Case Law on Generally Binding Ordinances of Municipalities.* (in Czech original: *Nejnovější judikatura Ústavního soudu k obecně závazným vyhláškám obcí.*) Časopis pro právní vědu a praxi. Brno: Masarykova univerzita, 2010. č. 1, s. 51-59. ISSN: 1210-9126.
- [18] POSPÍŠIL, I. *Regulation of Gambling - a Glove thrown before the Constitutional Court: Constitutional Limits of Local Governments "Control" and their Completion by Case Law* (in Czech original: *Regulace hazardu jako rukavice hozená před Ústavním soudem: ústavní limity „kontroly“ územních samosprávných celků a jejich dotváření judikaturou.*) Časopis pro právní vědu a praxi. Brno: Masarykova univerzita, 2012. č. 2, s. 111-116. ISSN: 1210-9126.
- [19] PRŮCHA, P. *Administrative Law.* (in Czech original: *Správní právo.*) Brno: MU Brno, 2009. ISBN 978-80-7239-207-0.
- [20] RAJCHL, J. *Generally Binding Ordinances of Municipalities Regulating Gaming Machines.* (in Czech original: *Obecně závazné vyhlášky obcí o výherních hracích přístrojích.*) Správní právo. Praha: Ministerstvo vnitra ČR, 2010, č. 4, s. 218-228. ISSN: 0139-6005.
- [21] Judgment of the Czech Constitutional Court file No. Pl. ÚS 6/13
- [22] Judgment of the Czech Constitutional Court file No. Pl. ÚS 56/10
- [23] Judgment of the Czech Constitutional Court file No. Pl. ÚS 29/10
- [24] Judgment of the Czech Constitutional Court file No. II. ÚS 2335/12
- [25] Judgment of the Czech Constitutional Court file No. III. ÚS 2336/12
- [26] Judgment of the Czech Constitutional Court file No. IV. ÚS 2315/12
- [27] Judgment of the Czech Constitutional Court file No. Pl. ÚS 45/06
- [28] Judgment of the Czech Constitutional Court file No. Pl. ÚS 63/04
- [29] Judgment of the Czech Constitutional Court file No. Pl. ÚS 57/05
- [30] Judgment of the Czech Constitutional Court file No. Pl. ÚS 69/04
- [31] Judgment of the Czech Constitutional Court file No. Pl. ÚS 32/05
- [32] Judgment of the Czech Constitutional Court file No. Pl. ÚS 33/05
- [33] Judgment of the Czech Constitutional Court file No. Pl. ÚS 35/06
- [34] Judgment of the Czech Constitutional Court file No. Pl. ÚS 34/06
- [35] Judgment of the Czech Constitutional Court file No. Pl. ÚS 44/06