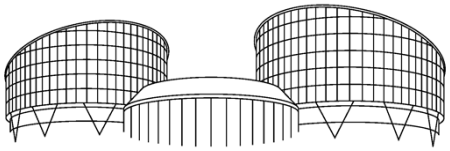

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF VERSACI v. ITALY

(Application no. 3795/22)

JUDGMENT

Art 8 • Private life • Refusal by the head of police to grant the applicant a "public security licence", to carry out bookmaking activities on behalf of a foreign company, for not fulfilling the domestic law "good character" requirement • Domestic authorities' decision not based on conduct directly attributable to the applicant but to individuals with whom he had social or family connections • Underlying reasons for the disputed measure linked to the applicant's private life • Art 8 applicable under its reasons-based approach • Vague and indefinite concept of "good character" sufficiently foreseeable in view of the clarifications provided in the guidance on administrative practice and in the domestic case-law • Sufficient judicial review in place to guarantee against arbitrary interference with fundamental rights by the head of police who had broad discretion in granting security licences • Disputed measure "in accordance with the law" • Wide margin of appreciation afforded to the domestic authorities in view of the specific regional context and the need to avoid the risk of crimes being committed within the gambling enterprise • Relevant and sufficient reasons given by the head of police • Absence of any flagrant non-observance or arbitrariness in the judicial review of those reasons • Impugned measure "necessary in a democratic society"

Prepared by the Registry. Does not bind the Court.

STRASBOURG

15 May 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Versaci v. Italy,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Ivana Jelić*, President*,
Alena Poláčková,
Péter Paczolay,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato,
Alain Chablais*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 3795/22) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Italian national, Mr Emanuele Sebastiano Bruno Versaci ("the applicant"), on 22 December 2021;

the decision to give notice to the Italian Government ("the Government") of the complaints concerning Article 6 § 1 and Article 8 of the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 15 October 2024 and 18 March 2025,

Delivers the following judgment, which was adopted on the latter date:

INTRODUCTION

1. The case concerns the refusal by the head of the police authority (*questore*) of the applicant's application for a "public security licence" (*licenza di pubblica sicurezza*) to carry out bookmaking activities on behalf of a foreign company because he did not fulfil the "good character" (*buona condotta*) requirement in Article 11(2) of Royal Decree no. 773 of 18 June 1931 (Consolidated Act on Public Security, *Testo unico delle leggi di pubblica sicurezza*; hereinafter: "TULPS"). It raises the question of whether the legal basis for that refusal met the requirements of Article 8 of the Convention as to the quality of the law and whether, in the specific circumstances of the case, the refusal was based on relevant and sufficient reasons and was subjected to a sufficient judicial review.

THE FACTS

2. The applicant, who was born in 1985 and lives in San Luca, was represented by Ms A. Mascia, a lawyer practising in Verona.

3. The Government were represented by their Agent, Mr L. D'Ascia, *Avvocato dello Stato*.

4. The facts of the case may be summarised as follows.

I. BACKGROUND TO THE CASE

5. On 6 October 2014 the applicant set up a business taking bets in Italy on behalf of an Austrian bookmaking company.

6. On 23 December 2014 section 1(643) of Law no. 190 of 23 December 2014 ("Law no. 190/2014") entered into force. It provided that persons carrying out bookmaking activities on behalf of foreign companies without the necessary authorisation from the Agency for Customs and Monopolies could regularise their legal situation using the procedure set out in that provision (see paragraph 23 below).

II. THE ADMINISTRATIVE PROCEDURE

7. On 8 January 2015 the Austrian company (see paragraph 5 above) made a regularisation application on behalf of the applicant (see paragraph 6 above).

8. For the purposes of that application, the applicant applied to the head of the Reggio Calabria police authority (*questore*) for a declaration under section 1(643) of Law no. 190/2014, which states that in order to lawfully carry out bookmaking activities in Italy on behalf of a foreign company one must obtain a public security licence as provided for by Article 88 TULPS (see paragraph 21 below).

9. The Reggio Calabria police headquarters (*Questura*) opened a preliminary investigation in order to assess whether the applicant had complied with the requirements of the law. On 5 May 2015 the *Questura* asked the applicant for further documentation so they could issue the licence. The applicant produced that documentation on 4 August 2015.

10. On 12 January 2016 the *questore* notified the applicant of the intention to refuse his application. He argued, in particular, that the applicant was not "of good character", as required by Article 11(2) TULPS (see paragraphs 1 above and 21 below) for the following reasons: (i) a close relative of the applicant was involved in judicial proceedings concerning drug trafficking and had been subjected to a police caution issued by the *questore* and to the preventive measure of special police supervision; (ii) the applicant had frequently been found by the police in the company of persons with criminal and police records for the offences of handling stolen goods, assisting an offender, kidnapping, criminal conspiracy, illegal possession of guns, aggravated theft, criminal conspiracy to traffic illegal drugs, blackmail, affray, assault and battery, manslaughter and drug trafficking.

The *questore* considered these matters had a negative impact on the assessment of the applicant's "good character", as required by Article 11(2) TULPS, as they showed that he did not have the high moral standards

required by law for the public security licence he had applied for. In particular, he could not be sure the applicant would not use the bookmaking activities as a vehicle to launder money deriving from unlawful activities or that there would not be criminal infiltration into the applicant's own activities.

11. On 14 January 2016 the applicant challenged the intention to refuse his application. He claimed, *inter alia*, that where a person was refused a public security licence because they were found to be not "of good character", the character assessment had to be based on the conduct of the individual concerned and that, in this regard, it was not sufficient that the individual concerned had family members or associates with criminal records.

12. On 3 February 2016 the *questore* refused the applicant's licence application and ordered him to cease his activities. The *questore* gave the following reasons:

> "IT WAS OBSERVED that during the inquiry carried out by this office the applicant had been found by the police on many occasions to be in the company of people with serious criminal and police records;
>
> ...
>
> HAVING REGARD to the requirement under Article 11 of the TULPS that, among other things, an applicant for any police licence must establish that he or she is of good character, a concept which includes being assessed as being beyond reproach or at least a positive assessment of the applicant's overall lifestyle and conduct;
>
> IT IS CONSIDERED that, for the purpose of assessing whether a person meets the good character requirement, this administration has an obligation to take into account an applicant's family environment and his or her personal relationships;
>
> IT IS CONSIDERED that the results of the inquiries undertaken support the assessment that those matters might affect the exercise of the activity in question;
>
> ...
>
> IT IS THEREFORE CONSIDERED that, for the above reasons, the conditions for refusing the applicant's application are met ..."

III. THE JUDICIAL PROCEDURES

13. On 25 February 2016 the applicant appealed against the refusal to the Reggio Calabria Section of the Calabria Regional Administrative Court (*Tribunale Amministrativo Regionale*, "TAR") and asked for the refusal to be provisionally suspended.

He argued first of all that that the decision criteria established by case-law had not been followed, since having family members with criminal records was not a sufficient basis to find a risk that a public security licence would be abused, unless it had been specifically found that that situation led to a risk of the abuse of the public security licence. The applicant submitted that, given that he had no criminal or police record himself, the refusal of his application had not been based on relevant or sufficient reasons and that no proper

reasons for refusal had been given. In particular, the *questore* had not given sufficient reasons for finding that the applicant's brother's criminal and police record entailed a risk that he would interfere in the bookmaking activities for which the applicant was seeking a public security licence.

The applicant further complained that the refusal had been based on "the results of the inquiries undertaken" without indicating in any way what those inquiries consisted of and what the consequences were that had been drawn from them.

The applicant also argued that the *questore* had not carried out an assessment of his character and antecedents but had limited his assessment to conduct which was not attributable to the applicant himself.

Lastly, the applicant complained of an alleged breach of his right to a fair hearing because, in his view, the reasons given for the refusal of his application (see paragraph 12 above) had been different from those indicated in the *questore*'s preliminary notice of the intention to refuse his licence application (see paragraph 10 above).

14. In his application for the provisional suspension of the refusal, which had been lodged on the same date as the appeal, the applicant observed that the bookmaking activities in question constituted the principal means by which he supported his family and that if he were unable to carry on those activities, he would be caused serious and irreparable prejudice.

15. On 24 March 2016 the TAR dismissed the applicant's application for a suspension of the refusal of his licence application. The decision was confirmed on 7 July 2016 by the *Consiglio di Stato*, which found that it was not possible to dispel the doubts raised by the applicant's connections with individuals with serious criminal and police records. These doubts had been confirmed by the police authority and had been the basis for refusing the applicant's application for a public security licence.

16. On 31 December 2017 the applicant received from the *Questura* a copy of a report by the *Carabinieri* of 2 October 2015, which had been used in the administrative procedure to assess whether he was "of good character". The report concluded that, notwithstanding some problematic association with individuals with criminal and police records, the applicant did not appear to be "unsuitable or a habitual offender" (*non risulta essere soggetto controindicato o che possa abitualmente delinquere*).

17. On 9 December 2019 the applicant filed further pleadings with the TAR.

As regards the police having found him in the company of people with serious criminal and police records on many occasions, the following observations were made:

> "the authority should have provided specific reasons why the applicant could no longer be considered a suitable person to hold a public security licence; it should also have stated the specific ways in which it foresaw that the licence might be abused, on the basis of an assessment of probable dangerousness based on logical inferences

> supported by some elements of fact, rather than just considering it sufficient that the applicant supposedly kept bad company. Moreover, his keeping bad company is not otherwise clarified (location, time-frame, etc.) nor are details of it specified (it concerns individuals who are presumed to live in the same place as the applicant, which is not a metropolis, but notably San Luca, which is a small town where public and private places to meet are not numerous)."

In respect of that "bad company" further observations were made as follows:

> "However, [keeping that bad company] is surely incapable of compromising [the applicant's] suitability to hold a public security licence given that the nature of the company and the infrequency of the meetings, the fact of the meetings having been a long time ago, and other reasons, does not allow a reasonable inference that that company was capable of actually affecting the suitability of the individual concerned; such a detrimental decision needs to be based on a proper assessment of the overall behaviour of the individual concerned ..."

> The applicant therefore considered that the refusal issued by the *questore* lacked reasoning: "The refusal does not include any contextualisation [of the applicant's conduct], nor any assessment based on elements of the applicant's conduct (of which there is absolutely no criticism); notwithstanding the applicant's requests for clarification of this aspect of the decision, no clarification has been provided by the *Questura*."

In conclusion, the applicant considered that the *questore* had not undertaken a proper assessment which could reasonably have led him to conclude that he lacked the required "good character":

> "... the required suitability to obtain a public security licence must be inferred from conduct attributable to the applicant (and not others) which is also different from conduct amounting to criminal offences, but which is relevant in respect of the activity which the individual aims to carry out ..."

18. By judgment no. 139 of 2 March 2020, the TAR dismissed the applicant's claims. It found that the police authority had a broad discretion under Article 11(2) of the TULPS in assessing whether applicants were able to fulfil the requirement of "good character" where they had done things which did not constitute criminal offences but made it inappropriate to grant or renew a public security licence. In the TAR's view, the issuing of the licence was not dependent on an assessment that the person concerned was not a danger to society. However, the police authority had to say why they considered the individual concerned was not "of good character". In the specific circumstances of the case, the police authority had correctly taken into account the applicant's relationships with individuals with criminal and police records, the fact that his brother was under special police supervision and that his mother had personal connections with a family which was under investigation by the police. In the TAR's view those circumstances were sufficient to find that the applicant did not satisfy the "good character" requirement. The TAR also found there had been no breach of the applicant's right to a fair hearing, as he had been able to present his case after the *questore*

had told him of the intention to refuse his application for the licence (see paragraphs 10-11 above).

In particular, as regards the "good character" requirement, the TAR held as follows:

> "In the case at issue, the proceedings instituted on the basis of the applicant's application led to the discovery of matters which reasonably led the *questore* of Reggio Calabria to refuse the public security licence.
>
> Although the applicant established that his brother has no criminal convictions [...] he was not able to dispel the doubts raised by his keeping 'bad company' with persons with serious criminal records, which have been checked by the police authority and on which the refusal is based.
>
> This court shares the concerns which led the third section of the *Consiglio di Stato* to dismiss the applicant's application for suspension of the refusal ... The importance attributed by the applicant to the report by the *Carabinieri* of 2 October 2015, from which he made arguments in his favour, cannot be upheld: the report, on the one hand, gives details of the family relationships and the company the applicant keeps and, on the other hand, limits itself to a statement – which appears contradictory – that the applicant does not appear to be 'unsuitable' or a 'habitual offender'; it is clear that, in order to obtain a public security licence ... in a sensitive local context such as the city of San Luca, the authority in exercising its discretion when making an assessment cannot and must not limit itself to observing that the person concerned does not habitually commit criminal offences, but must require much more, notably the full suitability of the person concerned which must be inferred from the absence of family, personal, and local connections which might lead to speculation about the non-transparent use of sensitive bookmaking activities ... The circumstances stressed by the *Questura* about the criminal records of the person concerned and his keeping bad company, the concerns about his brother and his wider family (the applicant's mother has family connections with the [G.a.S.] family, which has come to the attention of the police authority) are sufficient to justify the conclusion that the applicant lacks the required 'good character' ... In other words, there is a cumulation of circumstances which paint a picture from which the *Questura* has legitimately inferred that the applicant does not meet the 'good character' requirement.

19. On 9 October 2020 the applicant lodged an appeal against the TAR's decision with the *Consiglio di Stato*.

Firstly, the applicant argued that the decision of the TAR should be reviewed because it had been taken on the basis of circumstances which had not been referred to in the *questore*'s disputed refusal of the applicant's application, notably the facts that the applicant's brother was under special police supervision and that his mother had personal connections with a family which was under investigation by the police.

Secondly, the applicant argued that there had been no explanation in the disputed decision of how the fact that the applicant had been found in the company of persons with criminal and police records on many occasions justified the finding that he was not "of good character". In particular, the applicant observed that the vast majority of the reports of his keeping bad company had been made many years before the disputed decision, notably before 2002 and 2007. The applicant had been found in that company several

times between 2008 and 2013, but he observed that those occasions were isolated meetings with various individuals who did not have serious criminal records or concerned facts which had taken place after the police had recorded their observations on the applicant. Moreover, the applicant submitted that some of those meetings had taken place for business reasons. In the applicant's view, the TAR had failed to demonstrate how having isolated meetings with individuals, which were not described in detail as to their contents or circumstances, could be considered "associating" with those people and creating a risk of abuse of a public security licence.

The applicant further argued that the circumstances on which the first-instance decision had been based were not sufficient to justify the refusal of a public security licence. Firstly, the applicant had never been prosecuted for any criminal offence. Secondly, the applicant's brother had been acquitted of the charges of drug trafficking and, in any case, the applicant had no close relationship with his brother. Thirdly, the applicant's mother had no criminal or police record and the circumstances referred to by the TAR were too generic and vague to conclude that the applicant lacked the required "good character".

20. By judgment no. 4820 of 24 June 2021, the *Consiglio di Stato* dismissed the applicant's appeal and confirmed the refusal of the licence. It clarified that the police authority had a broad discretion in making an assessment of character and that its judgment could not be questioned by the judicial authorities unless it was arbitrary or manifestly unreasonable.

In the specific circumstances of the case, the assessment was not arbitrary or manifestly unreasonable. In particular, the *questore* had considered the applicant's previous association with persons with serious criminal and police records. The fact that the applicant's brother had been acquitted of drug trafficking was not sufficient to exclude the impact of that association on the assessment; moreover, the assessment had also been based on other information gathered by the police authorities which sufficiently confirmed that adverse assessment. In particular, the *Consiglio di Stato* held as follows:

> "6. In the present case, this [*Consiglio di Stato*] considers that the assessment of the *questore* of Reggio Calabria is not arbitrary or unreasonable.
>
> ...
>
> 6.3. As regards the applicant's keeping of bad company, the administration stressed that only some of the encounters referred to were meetings with convicted individuals in vehicles owned by the company of which the applicant was an employee. Others were meetings at times and in circumstances and locations which were not related to the applicant's professional activities ... The report of the *questore*, which is based on information gathered during the inquiry, shows an overall picture of the applicant keeping bad company which does not allow for a characterisation of the decision to refuse him a public security licence, because there was a risk that authorising him to operate in the gambling sector could facilitate the laundering of money of unlawful provenance including by persons close to the applicant, as manifestly unreasonable or seriously discriminatory.

6.4. The first-instance court observed that a public security authority is indeed entitled to refuse a police licence to a person who does not appear to be of good character or who is considered unsuitable to hold a licence because of a possibility that he or she might abuse a licence if one were issued to him or her.

6.5. In this respect, the reference made in the disputed decision to the 'involvement in judicial proceedings' of the applicant's brother cannot be considered wrong, given that, as it is well-known, for the purpose of the assessment required by Article 11(2) of the TULPS also criminal proceedings which were concluded with an acquittal can be taken into account.

...

7. In conclusion, this court observes that the decision on appeal correctly points out that the applicant's brother had not been convicted, but the appellate court does not argue with the claim that the applicant had numerous associates with serious criminal and police records, which the police authority referred to and used as the basis for the refusal of the applicant's licence application. The applicant's brother is himself involved in judicial proceedings concerning drug offences and is already subject to an oral caution from the *questore* and to the preventive measure of special police supervision. Moreover, the numerous criminal offences committed by people close to the applicant are relevant, as they constitute general and consistent circumstances capable of justifying the contested refusal, the express reasons for which arose from the conduct of the applicant (and not from that of his relatives and work colleagues) and which, when seen in the context of the specific risks undeniably connected with the activities of arranging, collecting and managing sports betting which has cash winnings that are paid electronically, a channel which can be used – and which has not infrequently been used – for the purpose of 'laundering' 'dirty' money obtained from illegal activities managed by organised crime."

Moreover, the *Consiglio di Stato* noted that the applicant's mother had connections with a family which was under police investigation.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

A. Royal Decree no. 773 of 18 June 1931 (*Testo Unico delle Leggi di Pubblica Sicurezza*, TULPS)

21. Public security licences are regulated by the TULPS, the relevant provisions of which read as follows:

Article 11

"Subject to any special conditions laid down by the law in individual cases, police licences shall be refused to:

(1) persons who have been sentenced to a term of imprisonment of more than three years for an intentional offence and have not obtained a rehabilitation (*riabilitazione*);

(2) persons who are subject to an oral caution or personal security measure or who have been declared habitual, professional or notorious criminals.

Police licences can be denied ... to a person who cannot show that he or she is of good character (*buona condotta*).

..."

Article 88

"A licence to carry on bookmaking may only be granted to entities licensed or authorised by Ministries or other entities which have been granted by law the power to organise and manage betting and to entities authorised by licence holders under the same concession or licence."

B. Law no. 732 of 24 October 1984 (Repeal of the good character requirement for employment as a civil servant)

22. The only provision of Law no. 732 of 24 October 1984 reads as follows:

"No 'good character' assessment can be requested or made for the purposes of employment as a civil servant.

Article 2(1)(3) of the Consolidated Act on the statute of civil servants of the State and any other provision which is incompatible with the present law are accordingly repealed."

C. Law no. 190 of 23 December 2014

23. Law no. 190 of 23 December 2014 set out a procedure for regularising the unauthorised taking of bets at the time of its entry into force. In particular, section 1(643) reads as follows:

"Pending the reorganisation of public gambling following the implementation of Article 14 of Law no. 23 of 11 March 2014 and in order to ensure the protection of public order and security and of vulnerable social groups and minors, as from 1 January 2015 with regard to those entities active as at 30 October 2014 and offering bets with cash winnings in Italy, whether on their own account or on behalf of third parties including foreign third parties, which are not connected to the national totaliser of the Customs and Monopolies Agency, in view of the fact that in such cases the player is the offeror and that the gambling contract is therefore made in Italy and consequently regulated by Italian domestic legislation, those entities may have their position regularised by applying by 31 January 2016 and subject to the following conditions:

(a) No later than 31 January 2016, the entities shall forward to the Customs and Monopolies Agency ... a declaration of commitment to tax regularisation ... together with an application for a public security licence pursuant to Article 88 of the [TULPS], and subsequent amendments ..."

II. RELEVANT ADMINISTRATIVE PRACTICE

24. Circular no. 1763 of 30 October 1996 of the Ministry of the Interior on requirements of excellent character and good character ("the Circular") was intended to clarify the meaning of "good character" for the purpose of

issuing public security licences, in the light of judgments no. 440 of 2 December 1993 (see paragraphs 35-41 below) and no. 311 of 25 July 1996 (see paragraphs 47-53 below) of the Constitutional Court.

25. The Ministry stated that the police authority had the burden of proving that an applicant did not meet the "good character" requirement, and that their assessment had to be undertaken on the basis of clear and certain criteria so as to guarantee full transparency. Those criteria had to be on the one hand compatible with the rights and freedoms enshrined in the Constitution and on the other hand capable of being the basis for a proper assessment by the public authorities. The assessment had to be undertaken in the light of the interests protected by the relevant public security licence and reasons should be given so that the individual concerned is able to understand the decision.

26. The Ministry stipulated that the assessment of "good character" must not take into account any element of personal or baseless beliefs about the individual or conduct of a political nature, except where it involved criminal offences.

27. The assessment was to be made objectively, excluding aspects relating to the individual's private life. It could take into account "only specific and objectively verifiable facts arising from the individual's personal life, including his or her family situation" (*solo fatti specifici ed obiettivamente verificabili che si sono manifestati nell'ambito della vita associata anche familiare*). Those facts had to be capable of raising doubts as regards the suitability of the individual concerned to the activities for which police authorisation was requested (*idonei a rilevare il grado di affidabilità ai fini dell'espletamento di un'attività soggetta ad autorizzazione di polizia*).

28. The Circular included a non-exhaustive list of circumstances capable of demonstrating a lack of "good character".

29. The authorities could only consider conduct which would go to show whether the individual was a suitable person to carry out the activities for which a public security licence had been requested.

30. The Circular indicated certain circumstances which, *inter alia*, could lead to the conclusion that an individual lacked the requisite "good character". It included, for example, repeat and habitual offenders, individuals against whom there was evidence of the commission of a criminal offence punishable by imprisonment of at least three years, and individuals subject to preventive measures.

31. It further clarified that the domestic authorities had to take into account facts capable of demonstrating a risk that the public security licence requested would be abused.

32. The Ministry indicated that the police authority had to carry out an assessment of any associates of the individuals who had criminal or police records if they might raise the possibility of abuse of the public security licence.

33. The Ministry further said that specific attention should be given to family relationships, where relatives of the individual might become involved in the use of the public security licence.

34. The Ministry recommended that sufficient reasons should be given for the refusal of applications for public security licences so that the individuals concerned could exercise their rights to have the decisions reconsidered.

III. RELEVANT DOMESTIC CASE-LAW

A. Constitutional Court

1. Judgment no. 440 of 2 December 1993

35. In its judgment no. 440 of 2 December 1993, the Constitutional Court declared Article 11(2) of the TULPS to be unconstitutional in so far as, for the purposes of the issue of public security licenses, it placed the burden of proving "good character" on the individual concerned.

36. As regards the concept of "good character", the Constitutional Court observed that it enabled the making of an "indicative value judgment" (*valore sintomatico*) on a "subjective lifestyle" (*modo di essere soggettivo*). Its aim was not to punish past conduct but to prevent possible future conduct related to the activities for which a public security licence had been requested.

37. As regards foreseeability, the Constitutional Court recognised that the assessment of "good character" conferred a broad discretion on the public administration (*ampia discrezionalità*), and held as follows:

> "the requirement of *'*good character*'* ... constitutes the basis for various assessments of reliability to be made by the administrative authority and, as such, cannot be considered in itself to be contrary to those principles of reasonableness to which every legal system must adhere. However, in order not to conflict with the non-negotiable requirement of certainty and to avoid the risk of arbitrariness, the broad discretion inherent in this general clause requires a precise definition of the specific conditions which the assessment must satisfy for the type of licence or authorisation applied for."

38. As observed by the Constitutional Court, the lack of foreseeability of the concept of "good character" had led to its being dropped as a requirement for some legal purposes such as eligibility for employment in the civil service (see paragraph 22 above). In particular, the legislator considered that the concept conferred too broad a discretion on the administrative authority and that it was based on vague and indeterminate criteria.

39. The Constitutional Court held that the legislative provisions about the "good character" requirement had to be strictly interpreted in the light of the relevant constitutional values, and that they had not been declared unconstitutional principally because the exercise of such a broad administrative discretion was subject to judicial scrutiny by the administrative courts.

40. It further observed that the criteria with which the concept of "good character" had been clarified were capable of leading to "zones of complete uncertainty" (*zone di assoluta incertezza*) for the public administration when it had to decide whether the requirement had been satisfied. In the court's view, such uncertainty was even more serious where the legislative provision was not limited to a requirement of "good character" but also imposed the burden of proving it on the individual concerned. The Constitutional Court considered that it was unreasonable to impose the burden of proving his or her own "good character" on an individual.

41. As regards the scope of the judicial review exercised by the administrative courts over the administrative decisions in this sphere, the Constitutional Court observed that the individual could challenge administrative decisions which were based on incorrect facts or on assessments where discretionary powers had demonstrably been exercised in an illogical or irrational way. However, the Constitutional Court found that this review did not appear "comprehensive" (*non appare esauriente*). In particular, it observed that an individual could not bring new evidence before the administrative courts in order to challenge an assessment made by an administrative authority (*resta inibita l'allegazione di un fatto dimostrativo capace di neutralizzare il giudizio formulato dalla pubblica autorità*) and could not challenge the assumptions or judgment of the administrative authority (*non essendo comunque possibile all'interessato contestare in via giurisdizionale nè i presupposti nè le valutazioni compiute dall'autorità amministrativa*).

42. In conclusion, the Constitutional Court held as follows:

> "... while the refusal [to grant a public security licence] must state reasons, and the individual concerned can challenge in a court any decision which was based on incorrect facts or on assessments arising from the demonstrably illogical or irrational exercise of discretionary powers, this does not appear to provide a full safeguard where the individual concerned – because of the generic nature and variable content of the notion [of 'good character'] – is prevented from raising facts in order to challenge the assessment made by the administrative authority.
>
> ...
>
> But what the legislation in question lacks is precisely the practical feasibility of such review, since the individual concerned is not allowed to challenge before a court either the assumptions made or the assessments carried out by the administrative authority. This also has a consequential impact for the principle of impartiality because the checks carried out by the administration are not always anchored to precise interpretative criteria and there is therefore a risk that – as the referring judge feared – they will be based on the personal opinions of the decision-takers.
>
> The second paragraph of Article 11 of the Royal Decree no. 773 of 18 June 1931, where it provides that security licences can be denied to those who cannot show good character, must therefore be declared unconstitutional because it does not comply with Articles 3 and 97 of the Constitution ..."

2. Judgment no. 108 of 31 March 1994

43. In its judgment no. 108 of 31 March 1994, the Constitutional Court declared unconstitutional a legislative provision that excluded individuals from seeking employment in the police force unless the Ministry of the Interior, whose assessment could not be challenged in court, held that they came from a "family of undisputed moral esteem" (*famiglia di estimazione morale indiscussa*).

44. The Constitutional Court observed that the legislative provision entailed an arbitrary presumption that the conduct of family members should be automatically attributed to the individual concerned. It therefore constituted an unreasonable limit to eligibility for employment in the police force, in breach of the principle of equality.

45. The Constitutional Court held that it was not unreasonable to assess the morality of an individual on the basis of his or her conduct in the context of social and family life. However, it was arbitrary to presume that behaviour attributable to a family as a whole or to specific members of the family could automatically be attributed to another individual.

46. The Constitutional Court further held that it was unreasonable for the decision to be taken on the basis of information gathered by the administrative and police authorities and an unchallengeable assessment by Ministry officials. In its view, the decision had to be an impartial assessment based on specific and objectively verifiable facts (*valutazioni imparziali aventi ad oggetto fatti specifici ed oggettivamente verificabili*), which had to be reflected in the reasoning of the decision in order to allow it to be judicially reviewed. If these conditions were not satisfied, there would be a breach of the constitutional requirement for administrative authorities to make assessments which were neither excessively broad nor indeterminate.

3. Judgment no. 311 of 25 July 1996

47. In its judgment no. 311 of 25 July 1996, the Constitutional Court declared a legislative provision which required an applicant for the position of security guard to be a "person of excellent political and moral conduct" (*persona di ottima condotta politica e morale*) to be unconstitutional.

48. The Constitutional Court recognised that concepts such as "good character" and being a "person of excellent political and moral conduct" had created uncertainty and problems of interpretation, given the ill-defined character of the requirement (*carattere indefinito del requisito*) and the consequent broad discretion (*larghezza di margine di apprezzamento discrezionale*) conferred on the administrative authorities concerned.

49. Although the "good character" requirement for the purposes of eligibility for employment in the civil service (see paragraphs 22 and 38 above) had been withdrawn in order to overcome the problems of interpretation raised by such a concept, the Constitutional Court held that that

legislative provision had not had the effect of withdrawing the same requirement for obtaining a public security licence.

50. However, in the Constitutional Court's view, the use of similar concepts in legislation required a better clarification of their content where it concerned what could be legitimately considered in an administrative assessment.

51. The Constitutional Court held that, for the purposes of eligibility for public functions or obtaining public security licences, it was acceptable to impose conditions requiring the suitability of the individual concerned (*requisiti ... di affidabilità*) to the relevant function or activities to be shown. The satisfaction of those conditions could be inferred from conduct of the individual concerned which, although it might not constitute a criminal offence, was relevant to the function or activities for which the licence had been sought. Whether those conditions were satisfied had to be impartially and reasonably assessed by the administrative authorities and had to be subject to judicial review.

52. The Constitutional Court further held that, in order for the process to be constitutionally legitimate, the scope of the conduct to be taken into account had to be set out. It was necessary, firstly, that the conduct should be attributable to the individual concerned. Secondly, it was necessary to exclude behaviour of an ideological, political or religious character. Thirdly, it was not possible to consider conduct which merely concerned the individual's private life and had no effect on the activities concerned. Lastly, conduct that, given the passage of time or because of its isolated nature, could not be reasonably considered to affect the person's suitability to hold a licence should not be taken into account.

53. In the judgment, the Constitutional Court expressed its wish for legislative reform of the conditions of eligibility for public service positions and obtaining public security licences, so as to bring legislation passed before the entry into force of the Constitution into line with its parameters.

B. Administrative courts

1. The assessment of "good character"

54. The *Consiglio di Stato* has held several times that the *questore* has a "broad discretion" (*ampio margine di discrezionalità*) as regards the concept of "good character" (see *Consiglio di Stato*, Fourth Section, judgment no. 4078 of 21 July 2000), limited only by the need to avoid arbitrariness (see *Consiglio di Stato*, Fourth Section, judgment no. 1466 of 19 March 2003).

55. The *Consiglio di Stato* has also held that a person could justifiably be found to be not "of good character" on the basis of facts and circumstances which did not entail criminal offences but which could found a "predictive judgment" based on probability (*giudizio prognostico di tipo probabilistico*; see *Consiglio di Stato*, Fourth Section, judgment no. 3709 of 5 July 2000,

Consiglio di Stato, Fourth Section, judgment no. 1502 of 23 March 2004, and *Consiglio di Stato*, Third Section, judgment no. 7206 of 17 August 2022).

56. The *Consiglio di Stato* has further held that, for the purpose of issuing public security licences, the police authority can legitimately take into account an individual's family background and the fact that family members of the individual requesting the licence had been convicted of crimes related to the activities for which the licence was requested (see *Consiglio di Stato*, Sixth Section, judgment no. 3094 of 20 May 2009). The administrative authority's assessment could not be limited to ascertaining that the individual concerned would not commit crimes on a habitual basis; it had to assess the individual's suitability in full (*piena affidabilità*), and the authority had to be sure that an applicant's family relationships, friendships and local community did not raise fears that bookmaking activities would be used for unlawful ends (see *Consiglio di Stato*, Third Section, order no. 3028 of 20 July 2017).

57. In particular, the *Consiglio di Stato* found that the administrative authority had to assess whether associates of the individual concerned had committed criminal offences that would have a negative influence on the "good character" of the individual concerned (see, for example, *Consiglio di Stato*, judgment no. 4229 of 12 October 2016).

58. The *Consiglio di Stato* further held that the administrative authority could take into account the fact that members of the family of the individual concerned had criminal records, irrespective of whether the individual concerned had a criminal record himself or herself (see *Consiglio di Stato*, judgment no. 2517 of 25 March 2021). As regards whether the criminal records of family members were relevant, case-law had clarified that they were not sufficient in themselves to justify finding a risk of abuse of the public security licence. The *questore* had therefore to assess whether there was such a risk, and would have to demonstrate that the crimes committed by the family member entailed, on the basis of a predictive assessment, a risk of abuse of the public security licence (see *Consiglio di Stato*, Sixth Section, judgment no. 1722 of 23 March 2009).

59. In its more recent case-law, the *Consiglio di Stato*, although it confirmed that the *questore* enjoys a broad discretion, held as follows (see *Consiglio di Stato*, judgments no. 2517 of 25 March 2021; no. 3154 of 28 May 2018; no. 5522 of 4 December 2015; and no. 1867 of 3 April 2013):

> "The absence of 'good character' ... cannot be based on ... discrediting a person's associates or characterising the lifestyle of the individual concerned as reckless or, more generally, conduct unbecoming the holder of a public security licence; [the 'good character' assessment] must consist in a reasoned and reasonable assessment of the likelihood of specific acts, facts or relationships which, by virtue of their nature, characteristics, gravity or context may raise fears that a public security licence might be abused or, even worse, used unlawfully by its owner or by third parties, or even by persons linked to criminal organisations.
>
> In the field of public security licences ... the suitability and good character of the individual concerned can be assessed against significant criteria, in particular if those

> criteria are connected with the type of activity for which the public security licence is required; however, it must be clear that the assessment has to be carried out with the purpose of reaching a reasonable assessment of the relevance of those criteria, so that any conclusion that there is a danger that the individual has been guilty of poor conduct (*cattiva condotta*) and that he or she is unsuitable to carry on the activity concerned and, therefore, that there is a risk of abuse of the public security licence, must be serious and not just a remote possibility."

2. The scope of the judicial review of the police authority's assessment

60. As regards the scope of the administrative courts' judicial review of the "good character" assessment, the *Consiglio di Stato* has held that because of the broad discretion of the administrative authorities it had to be limited to the mere absence of illogical reasoning, distortion of the purposes of the law or misinformation (see *Consiglio di Stato*, Fourth Section, judgment no. 1502 of 23 March 2004).

61. The *Consiglio di Stato* has further held that where the public administration had found "atypical circumstances" (*circostanze atipiche*) and this appeared to have led to the refusal of an application for a public security licence, that refusal could be challenged before the administrative courts only on the grounds of irrationality, arbitrariness or incoherence (see *Consiglio di Stato*, Sixth Section, judgments no. 3227 of 25 June 2008 and no. 3094 of 20 May 2009, and *Consiglio di Stato*, Third Section, judgment no. 1867 of 3 April 2013).

62. More recently, the *Consiglio di Stato* has also held that judicial scrutiny of the exercise of administrative discretion in this sphere was limited to ascertaining illogical reasoning, failure to satisfy required conditions and misuse of powers (*vizi di illogicità, assenza dei presupposti e sviamento di potere*; see *Consiglio di Stato*, Third Section, judgment no. 4213 of 1 June 2021).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

63. The applicant complained about a violation of his right to respect for his private and professional life as provided for in Article 8 of the Convention. He argued that the refusal to grant him a public security licence had not been "in accordance with the law", as the concept of "good character" was too vague and unforeseeable and therefore incapable of sufficiently defining the scope of the discretion conferred on the *questore*, and that the legal framework did not provide the requisite guarantees against arbitrariness, particularly as it did not allow a full judicial review of the administrative decision complained about. He further argued that the refusal had not been "necessary in a democratic society" or proportionate, as there had been no relevant and sufficient reasons for it and the domestic courts had not reviewed

that lack of reasoning in a thorough manner. Article 8 reads, in so far as relevant, as follows:

> "1. Everyone has the right to respect for his private ... life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. Exhaustion of domestic remedies

(a) The parties' submissions

64. The Government objected that the complaint under Article 8 was inadmissible for failure to exhaust domestic remedies, as the applicant had neither explicitly nor implicitly raised a complaint in the domestic courts concerning interference with his private life. He had therefore not raised the present complaint "at least in substance", as required by the Court's case-law on Article 35 § 1 of the Convention. In the Government's view, the applicant had only mentioned an interference with his right to private and family life in his application for the refusal of the licence to be temporarily suspended, which did not constitute raising the present complaint with the appropriate domestic authorities.

65. The applicant contested the Government's position. He asserted that he had raised the complaint in substance. In particular, the immediate consequence of the refusal of his application for a public security licence was that he could not exercise his professional activities. By his challenge to that refusal, he had implicitly complained of the violation of his right to respect for his private and professional life. In the applicant's view, he had given the domestic authorities the opportunity to redress that violation, thereby complying with Article 35 § 1 of the Convention.

(b) The Court's assessment

66. The Court reiterates that the purpose of the exhaustion rule is to afford a Contracting State the opportunity of addressing, and thereby preventing or putting right, the particular Convention violation alleged against it. It is true that under the Court's case-law it is not always necessary for the Convention to be expressly invoked in domestic proceedings, provided that the complaint is raised "at least in substance". This means that the applicant must raise legal arguments to the same or like effect on the basis of domestic law, in order to give the national courts the opportunity to redress the alleged breach. However, as the Court's case-law bears out, to genuinely afford a Contracting State the opportunity of preventing or redressing the alleged violation

requires taking into account not only the facts but also the applicant's legal arguments for the purposes of determining whether the complaint submitted to the Court has indeed been raised beforehand, in substance, before the domestic authorities. That is because it would be contrary to the subsidiary character of the Convention machinery if an applicant, ignoring a possible Convention argument, could rely on some other ground before the national authorities for challenging an impugned measure, but then lodge an application before the Court on the basis of the Convention argument (see, among many other authorities, *Humpert and Others v. Germany* [GC], nos. 59433/18 and 3 others, § 151, 14 December 2023). It is therefore the Convention complaint which must have been aired at national level for there to have been exhaustion of "effective remedies" (see, among others, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 75, 25 March 2014).

67. In the present case, the applicant challenged the refusal of his application for a public security licence in the TAR (see paragraph 13 above) and the *Consiglio di Stato* (see paragraph 19 above).

68. As regards the substance of the arguments raised in the domestic courts, the Court notes that the applicant complained that the criteria used by the *questore* to assess "good character" had not been supported by any evidence, that the criteria established in the relevant case-law had not been respected, that the refusal had not been based on relevant and sufficient reasons, and that there had been a breach of his right to a fair hearing (see paragraphs 13 and 19 above).

69. The Court, reiterating that for the purposes of the exhaustion of domestic remedies it must take into account not only the facts but also the legal arguments presented domestically (see *Fu Quan, s.r.o. v. the Czech Republic* [GC], no. 24827/14, § 171, 1 June 2023), considers that the applicant raised the Convention complaints brought before the Court in the present case, and specifically the same legal arguments, with the domestic authorities, at least in substance.

70. Moreover, in so far as the applicant complained about the lack of clarity and foreseeability of the relevant domestic provisions and the lack of sufficient guarantees against arbitrariness in the domestic legal framework, the Court considers that the only body competent to rule on such an issue would have been the Constitutional Court. In this respect, the Court refers to the principles established and the conclusions reached in previous case-law (see *Parrillo v. Italy* [GC], no. 46470/11, § 101, ECHR 2015, with further references, and *Fizgejer v. Estonia* (dec.), no. 43480/17, 2 June 2020).

71. In any event, the Court notes that the Constitutional Court had already ruled on the matter and invited the legislator to make legislative reforms so as to remedy the shortcomings it had identified (see paragraph 53 above). In this regard, the Court reiterates that the rationale behind the exhaustion rule is to afford the Contracting States the opportunity to prevent or put right the

violations alleged against them before those allegations are taken to the Convention institutions (see, among others, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). In the light of the above, the Court considers that the domestic authorities were afforded the opportunity to remedy the violation alleged by the applicant. The Court considers that, in such circumstances, requiring him to use this remedy by asking the domestic courts to raise an issue of constitutionality to reiterate the same conclusions would amount to excessive formalism. The applicant therefore did not have to use that particular avenue of redress (see, *mutatis mutandis*, *Lakićević and Others v. Montenegro and Serbia*, nos. 27458/06 and 3 others, § 51, 13 December 2011, and *Sofri and Others v. Italy* (dec.), no. 37235/97, 4 March 2003).

72. It follows from the above that the Government's preliminary objection concerning non-exhaustion of domestic remedies must be dismissed.

2. *Applicability* ratione materiae *of Article 8 of the Convention*

(a) The parties' submissions

(i) The Government

73. The Government objected to the applicant's complaint on the basis that the facts of the present case fell outside the scope of the right to respect for private life guaranteed by Article 8 as interpreted in the Court's case-law.

74. In particular, a reason-based approach was inappropriate in the present case, where the reason for refusing to grant the applicant a public security licence did not concern an aspect of his private life as such. Instead, the reasoning of the domestic authorities focused on an assessment of the risk that the activity of arranging betting could be used for laundering money deriving from unlawful activities. The mere fact that some of the reasons given by the domestic authorities involved aspects of the applicant's private life, such as his family ties and habitual associates, did not mean that they constituted the only reasons for the refusal. On the contrary, the refusal to grant a licence was based on the need to prevent unlawful activities, which could not be a protected aspect of the applicant's private life.

75. The Government further submitted that a consequence-based approach would also not be appropriate in the present case. In their view, based on the pleadings in the domestic courts and the complaint before the Court, the applicant had not demonstrated that he had suffered any adverse consequences as a result of the contested measures or that any such consequences had reached the threshold of severity established in the Court's case-law.

(ii) The applicant

76. The applicant submitted that he had suffered an interference with his right to respect for his private life within the meaning of Article 8. He relied,

in this regard, on the reason-based approach developed in the Court's case-law, since in his view the decision to refuse his application for a public security licence was based on reasons linked to his private life.

77. In particular, the applicant observed that the refusal had been based on the following reasons: (i) he had previously associated with persons with criminal and police records; (ii) his brother had been prosecuted for drug-related crimes and although he had been acquitted he was under special police supervision; and (iii) some of his relatives had relationships with convicted individuals.

78. According to the applicant, the decisive grounds for the refusal were issues in his family and private life, on the basis of which the domestic authorities had made a negative assessment of his character.

(b) The Court's assessment

(i) General principles

79. The Court reiterates that, while no general right to employment or to the renewal of a fixed-term contract, right of access to the civil service or right to choose a particular profession can be derived from Article 8, the notion of "private life" does not exclude, in principle, activities of a professional or business nature (see *Guliyev v. Azerbaijan*, no. 54588/13, § 40, 6 July 2023, and *Ballıktaş Bingöllü v. Turkey*, no. 76730/12, § 56, 22 June 2021). It observes that it is in the course of their working lives that the majority of people have a significant, if not the greatest, opportunity to develop relationships with the outside world (see *Bărbulescu v. Romania* [GC], no. 61496/08, § 71, 5 September 2017).

80. The general principles regarding the applicability of Article 8 to employment-related disputes were summarised by the Court in *Denisov v. Ukraine* ([GC], no. 76639/11, 25 September 2018) as follows:

> "115. The Court concludes from the above case-law that employment-related disputes are not *per se* excluded from the scope of 'private life' within the meaning of Article 8 of the Convention. There are some typical aspects of private life which may be affected in such disputes by dismissal, demotion, non-admission to a profession or other similarly unfavourable measures. These aspects include (i) the applicant's 'inner circle', (ii) the applicant's opportunity to establish and develop relationships with others, and (iii) the applicant's social and professional reputation. There are two ways in which a private-life issue would usually arise in such a dispute: either because of the underlying reasons for the impugned measure (in that event the Court employs the reason-based approach) or – in certain cases – because of the consequences for private life (in that event the Court employs the consequence-based approach)."

(ii) Application of the above principles to the present case

81. In the light of the Government's objection, the Court is required to determine how an issue as to the applicant's private life may have arisen in the present case: whether because of the underlying reasons for the disputed

measure or because of the consequences for the applicant's private life (see *Mile Novaković v. Croatia*, no. 73544/14, § 47, 17 December 2020).

82. As regards the reason-based approach, the Court notes that the reason for refusing the applicant a public security licence was that (i) he had previously associated with persons with criminal records; and (ii) his brother had been involved in criminal proceedings for drug offences and had already been given an oral caution by the *questore* and subjected to the preventive measure of special police supervision (see paragraphs 10, 12, 18 and 20 above). The domestic authorities had therefore inferred a risk that the bookmaking activities for which the applicant was seeking a public security licence would be used for unlawful purposes.

83. The Court further reiterates that Article 8 protects the right to personal development, whether in terms of personality or of personal autonomy, which is an important principle underlying the interpretation of the Article 8 guarantees. It encompasses the right for each individual to approach others in order to establish and develop relationships with them and with the outside world, that is, the right to a "private social life" (see *Altay v. Turkey (no. 2)*, no. 11236/09, § 49, 9 April 2019, and *National Federation of Sportspersons' Associations and Unions (FNASS) and Others v. France*, nos. 48151/11 and 77769/13, § 153, 18 January 2018).

84. In the specific circumstances of the case, and while reiterating that Article 8 does not confer any general right to choose a particular profession (see paragraph 79 above), the Court considers that the reasons for refusing the applicant's request for a public security licence were so directly related to the sphere of his private life as to engage that provision. In particular, the domestic authorities based their decision on conduct which was not directly attributable to the applicant, but rather to other individuals with whom the applicant had social or family connections, in order to conclude that the applicant was not of "good character". Indeed, the report by the *Carabinieri* of 2 October 2015 concluded that the applicant did not appear to be "unsuitable or a habitual offender" (see paragraph 16 above).

85. In the light of the above, the Court is satisfied that the underlying reasons for the disputed measure were linked to the applicant's private life so that Article 8 is engaged in the present case, under its reasons-based approach. The Court therefore does not need to examine whether Article 8 is also engaged under the consequence-based approach.

86. It follows that the Government's preliminary objection in this respect must also be dismissed.

3. Overall conclusion on admissibility

87. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

88. The Court reiterates that the essential object of Article 8 is to protect the individual against arbitrary action by public authorities (see, for example, *Jansen v. Norway*, no. 2822/16, § 88, 6 September 2018) and that an interference with an individual's right to private and family life will give rise to a breach of Article 8 of the Convention unless it can be justified under its paragraph 2 as being "in accordance with the law", pursuing one or more of the legitimate aims in that Article and being "necessary in a democratic society" in order to achieve the aim or aims concerned (see, among other authorities, *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 167, 24 January 2017).

1. Whether the measure was "in accordance with the law"

(a) The parties' submissions

(i) The applicant

89. The applicant submitted that the legal basis for the refusal of his application for a public security licence, specifically Article 11(2) of the TULPS, did not comply with the quality requirements of the Convention, as it was not foreseeable and accessible and compatible with the rule of law.

90. The applicant asserted that the requirement to be "of good character" was vague and unclear. In his view, the clarifications of the concept in the domestic case-law did not sufficiently define the scope of the discretion conferred on the *questore*.

91. The applicant pointed to the Constitutional Court's observation that the concept of "good character" entailed a subjective assessment, aimed not at verifying past compliance with domestic provisions but rather at evaluating whether, in future, the individual would refrain from certain types of behaviour. The Constitutional Court had found it unreasonable and at odds with the principle of impartiality in the public administration to impose the burden of demonstrating "good character" on the individual concerned.

92. In the applicant's view, notwithstanding the indications provided by the Constitutional Court, the concept of "good character" remained unclear and indefinite, therefore conferring an indefinite power of discretion on the domestic authorities.

93. The applicant noted that the case-law of the *Consiglio di Stato* (see judgments no. 4078 of 21 July 2000, no. 1466 of 19 March 2003, no. 1502 of 23 March 2004, and no. 3094 of 20 May 2009) set out principles of interpretation which remained unclear and could not prevent decisions being made arbitrarily.

94. As regards defining the scope of the discretion conferred on the *questore*, the applicant submitted that the *Consiglio di Stato* had observed that in the domain of public security licences the domestic authorities retained a

broad discretion and that the concept of "good character" entailed the assessment of atypical behaviour which could not be specified in advance, and which had to be assessed on a case-by-case basis. The *Consiglio di Stato* acknowledged that the breadth of the discretion varied according to the dangerousness of the activity for which a public security licence had been requested. It said that a "good character" assessment did not refer exclusively to past illegal conduct, but to the probability of its occurring in the future. The *Consiglio di Stato* further held that the domestic authorities could limit themselves to observing that an individual had been charged with a criminal offence or subjected to preventive measures, or even that there was a criminal complaint against him or her.

95. As regards the question of whether the measure was subject to sufficient judicial review, the applicant noted that, under the *Consiglio di Stato*'s case-law, a *questore*'s assessment could not be challenged by the judicial authorities except where it was manifestly unreasonable, arbitrary or incoherent. The judicial authorities could merely assess whether the measure had been taken on the basis of insufficient information or was based on illogical reasoning.

96. The applicant further submitted that Ministry's Circular no. 1763/1996 (see paragraphs 24-34 above), which was cited by the Government, was not sufficiently accessible as it had not been referred to by the *questore* in his case. The applicant claimed that in any case that the circular did not clarify the concept of "good character", as the parameters that it indicated remained vague.

(ii) The Government

97. The Government submitted that the contested measure had a sufficient legal basis, taking into account both the relevant domestic provision and the well-established interpretation of that provision by the administrative courts.

98. The legal basis of the measure was Articles 11(2) and 88 of the TULPS (see paragraph 21 above), in the interpretation given in Constitutional Court judgment no. 440/1993 (see paragraphs 35-38 above) and in the case-law of the *Consiglio di Stato* (see paragraphs 54-56 above). These provisions were all published and were therefore accessible.

99. The Government pointed out that the aim of the process for issuing a public security licence was to protect public security and public order. In the national legal system, enforcing public security was regarded as being objectively in the public interest as contributing to well-ordered and peaceful coexistence, a necessary condition for exercising other fundamental rights. On the one hand, public security limits the exercise of freedoms and, on the other, it requires the public authorities to carry out regulatory and administrative tasks. Article 1 of the TULPS makes the public security authority responsible for the maintenance of public order, citizens' safety and well-being and the protection of property. The function of the police is to

protect the community and its members against threats to their physical integrity, to property and to a peaceful social order. In that context, the police function was distinct from criminal law, as it was aimed at the prevention rather than the curtailment of dangerous behaviour. The use of police power did not depend on whether an offence had been committed but was rather aimed at preventing threats to public safety and eliminating disturbances of public order.

100. In the Government's view, the actions of the State in this field had to be based on the principle of putting a stop to any potential threat to fundamental legal values or the vital public interest before any harm actually materialised. The wide range of potentially harmful situations did not allow the details of police decisions to be specified in the legislation. The principle of prevention entailed giving the public authority discretion in assessing whether it should take action and allowing it to choose the action to be taken in each case. The police's discretion in exercising their power was limited by the need to take into account the dangerousness of a situation and the appropriateness of the means to be used to avert the threat.

101. The Government said that how a public authority should exercise its discretionary powers could not be strictly defined in law. The assessment of risk required consideration of a range of social or technical, rather than legal, information. The legislator could merely limit the executive's discretion by suggesting indicators of dangerousness, such as criminal convictions, which would circumscribe a subjective assessment. However, much of the decision-making could only be based on an assessment of the person concerned, that is, her or his past conduct and her or his future conduct in so far as that could be predicted. The law therefore conferred a broad discretion on the decision-taker to allow for an overall assessment of the matters to be taken into account in reaching a judgment about the unsuitability or dangerousness of a given person.

102. The Government relied on the judgment issued in the case of *De Tommaso v. Italy* ([GC], no. 43395/09, § 107, 23 February 2017), in which the Court held that "whilst certainty is highly desirable, it may bring in its train excessive rigidity, and the law must be able to keep pace with changing circumstances" with the result that "many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice".

103. They submitted that, when granting public security licences, the administrative authorities retained a broad discretion in assessing potential risk. In particular, Article 11 of the TULPS required the public security authority to take into account: (i) criminal convictions for certain offences indicating a risk of dangerous behaviour; and (ii) whether the individual could show "good character" and "suitability" to hold a licence. Although the public authority was given substantial discretion, in the Government's view this provision did not constitute a "blanket rule" or an arbitrary delegation of

authority or the conferment of an unforeseeable and unreviewable administrative discretion. The discretion was limited by the obligation to state reasons and to comply with the conditions established for the exercise of discretion in the case-law of the administrative courts (see paragraphs 54-56 above) and in Circular no. 1763 of 30 October 1996 of the Ministry of the Interior (see paragraph 24 above).

104. As regards defining the scope of the discretion conferred on the authorities, the Government submitted that the individual would know from the domestic case-law that a "good character" and "reliability" assessment entailed an evaluation of a person's family and social context, as well as who the person associated with. The decision was left to the discretion of the police authority and had to be based on an overall picture and provide sufficient justification for the conclusions reached, enabling the person concerned to exercise the right to defend him- or herself against an adverse outcome.

(b) The Court's assessment

105. The Court notes that the parties did not dispute that the contested measure, namely the refusal to grant the applicant a public security licence, was provided for by Article 11(2) of the TULPS, as referred to in Article 88 of the TULPS, which was in turn referred to in section 1(643) (a) of Law no. 190/2014. The parties' disagreement concerned whether that provision complied with the quality requirements under Article 8 of the Convention, particularly whether it was sufficiently foreseeable and capable of defining the scope of discretion conferred on the domestic authorities, and whether it provided sufficient guarantees against arbitrariness.

106. The general principles concerning the "quality of the law" under Article 8 of the Convention were recently summarised in *Giuliano Germano v. Italy* (no. 10794/12, §§ 91-95, 22 June 2023).

107. The Court further reiterates that it has always understood the term "law" in its "substantive" sense, not its "formal" one: it includes both "written law", encompassing enactments of lower ranking statutes and regulatory measures taken by professional regulatory bodies under independent rule-making powers delegated to them by Parliament, and unwritten law. "Law" must be understood to include both statutory law and judge-made "law". In sum, the "law" is the provision in force as the competent courts have interpreted it (see, among others, *Pařízek v. the Czech Republic*, no. 76286/14, § 43, 12 January 2023, and *Ólafsson v. Iceland*, no. 58493/13, § 35, 16 March 2017).

108. The requirements of "lawfulness" can be met if points which cannot be satisfactorily resolved on the basis of substantive law are set out in secondary enactments (see *Gorlov and Others v. Russia*, nos. 27057/06 and 2 others, § 89, 2 July 2019). Where the wording of a provision might give rise to uncertainty and ambiguity, the Court must examine whether its meaning

has been clarified through consistent interpretation by the domestic authorities (see, *mutatis mutandis*, *Žaja v. Croatia*, no. 37462/09, §§ 97-98, 4 October 2016). An interpretation capable of clarifying the meaning of an otherwise insufficiently clear provision which serves as the legal basis for measures affecting rights guaranteed under the Convention must, in order to comply with the "quality of the law" requirement, be the result of consistent case-law and practice by the domestic authorities. That is so because inconsistent case-law lacks the required precision to avoid all risk of arbitrariness (ibid., § 103).

109. Looking at the applicant's complaints, and having regard to the general principles reiterated above, the Court considers that the present case raises two different issues regarding the "quality of the law": (i) whether the domestic law, particularly the notion of "good character", was sufficiently foreseeable and capable of defining the scope of the discretion conferred on the *questore*, and (ii) whether the measure was amenable to sufficient judicial review to guarantee against arbitrary interferences by the domestic authorities.

(i) Whether the concept of "good character" was sufficiently foreseeable and capable of defining the scope of the discretion conferred on the questore

110. The Court must first assess whether the legal basis determined in a sufficiently clear and foreseeable manner the conditions under which the *questore* was entitled to refuse an application for a public security licence. In this connection, the Court will focus on the clarity and foreseeability of the "good character" requirement.

111. It notes from the outset that the case-law of the Constitutional Court (see paragraph 36 above) and the *Consiglio di Stato* (see paragraph 54 above) recognised that the concept of "good character" conferred a broad discretion on the police authority. The Court's role is to ascertain whether the broad discretion thus conferred on the *questore* was compatible with the Convention.

112. In this regard, the Court reiterates that domestic law must indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities so as to ensure that individuals have the minimum degree of protection to which individuals are entitled under the rule of law in a democratic society (see, among other authorities, *Lia v. Malta*, no. 8709/20, § 56, 5 May 2022, and *Ahmadov v. Azerbaijan*, no. 32538/10, § 47, 30 January 2020, with further references). The law must indicate the scope of any such discretion conferred on the relevant authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question (see *Vig v. Hungary*, no. 59648/13, § 51, 14 January 2021).

113. In the present case, the Court observes that, according to the Constitutional Court, the concept of "good character" required an assessment

of behaviour that had an "indicative value" (*valore sintomatico*) for the individual's "subjective lifestyle" (*modo di essere soggettivo*) with a view to preventing possible future misconduct being carried out through the activity for which a public security licence had been sought (see paragraph 36 above).

114. The Court further notes that the Constitutional Court, in 1993, found that concepts such as "good character" were vague and indefinite and capable of leading to "zones of complete uncertainty" (*zone di assoluta incertezza*) as regards the parameters within which the public administration had to operate when ascertaining whether the requirements had been satisfied (see paragraph 40 above).

115. The Constitutional Court further observed, in a judgment of 1996, that the concept of "good character" created uncertainty and difficulties of interpretation, given the vague character of the requirement (*carattere indefinito del requisito*) and the consequent broad discretion (*larghezza di margine di apprezzamento discrezionale*) conferred on the domestic authorities concerned (see paragraph 48 above). For those reasons, it recommended legislative reform, to make the system for obtaining public security licences more compatible with the relevant constitutional principles (see paragraph 53 above).

116. Following the Constitutional Court judgments cited above, the Ministry of the Interior adopted and published Circular no. 1763/1996 with the purpose of clarifying the concept of "good character" and restricting the scope of the discretion conferred on the police authority (see paragraph 24 above). The Court notes that the Ministry's Circular expressly aimed to set out "unequivocal criteria capable of guaranteeing full transparency" as to how "good character" was assessed (see paragraph 25 above). It gave a non-exhaustive list of circumstances that would justify the conclusion that an applicant was not of "good character" (see paragraph 28 above). In addition to the examples provided in that list, the Ministry's Circular indicated further criteria for the assessment of "good character".

117. Additional clarification was provided by subsequent administrative case-law. In particular, the *Consiglio di Stato* gave further clarifications and indications of what should be taken into account in the assessment of "good character" (see paragraphs 55-58 above), reiterating several of the points set out in the Ministry's Circular.

118. Thus, the *Consiglio di Stato* held that: (i) an assessment of "good character" should not be limited to the character and record of an applicant's associates or whether the individual concerned had a reckless lifestyle; (ii) on the contrary, it had to be a reasoned and reasonable assessment of specific acts, facts or relationships which, by virtue of their nature, characteristics, gravity or context raised the possibility that a public security licence would be abused or, even worse, used by its owner or by third parties, including those linked to criminal organisations, to further unlawful purposes; (iii) a person could be found to be not "of good character" in the appropriate

circumstances, in particular if they had connections with the type of activities that public security licensing was supposed to ensure did not happen; and (iv) those circumstances had to be assessed so as to identify a serious risk, and not a remote one, that the applicant was an unsuitable candidate for a licence or had been shown to have committed misconduct (*cattiva condotta*) in the sphere of the relevant activities (see paragraph 59 above).

119. The Court appreciates the clarification provided by the Ministry's Circular and by the subsequent administrative case-law. It also acknowledges that, having regard to the specific purposes of the contested power and in particular the prevention of the potential abuse of a public security licence and of other unlawful conduct, absolute certainty cannot be expected (see, *mutatis mutandis*, *Slivenko v. Latvia* [GC], no. 48321/99, § 107, ECHR 2003-X). In this regard, the Court reiterates that, however clearly drafted a legal provision may be, in any system of law there is an inevitable element of judicial interpretation (see *Tuleya v. Poland*, nos. 21181/19 and 51751/20, § 446, 6 July 2023). The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 91, ECHR 2005-XI).

120. The Court concludes that while, on the one hand, the provision being discussed in the present case was formulated so as to give rise to uncertainty and ambiguity (see paragraphs 114-115 above), on the other hand, clarifications were provided in the guidance on administrative practice and in the domestic case-law which made the concept of "good character" sufficiently foreseeable.

(ii) Whether the measure was amenable to sufficient judicial review as a guarantee against arbitrary interference with fundamental rights by the domestic authorities

121. Having regard to the applicant's complaints, the Court will further assess whether the measure was amenable to a sufficient judicial review.

122. In this connection, the Court reiterates that the procedural safeguards available to an individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (see *Connors v. the United Kingdom*, no. 66746/01, § 83, 27 May 2004). The concepts of lawfulness and the rule of law in a democratic society require that measures affecting human rights must be subjected to some form of adversarial proceedings before an independent body that has the power to review the reasons for the decision and the relevant evidence. The individual must be able to challenge the executive's assertions. Failing such safeguards, the police or other State authority would be able to encroach arbitrarily on rights protected by the Convention (see, *mutatis*

mutandis, *Liu v. Russia (no. 2)*, no. 29157/09, § 87, 26 July 2011, and *Pişkin v. Turkey*, no. 33399/18, § 227, 15 December 2020).

123. What is required by way of safeguard will depend, to some extent at least, on the nature and extent of the interference in question (see *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 170, ECHR 2013). In cases brought under Article 6, the Court has held that, in relation to administrative appeals, the question of whether the extent of the judicial review carried out was "sufficient" may depend not only on the discretionary or technical nature of the subject matter of the decision appealed against and the particular issue that the applicant wishes to have discussed by the courts as the central issue for him or her, but also, more generally, on the nature of the "civil rights and obligations" at stake and the nature of the policy objective pursued by the underlying domestic law (see *Ramos Nunes de Carvalho e Sá v. Portugal*, nos. 55391/13 and 2 others, § 180, 6 November 2018).

124. As regards the subject matter of the present case, the Court has already observed that the regulation of gambling, because of the nature of the industry, calls for particular monitoring and entails a classic exercise of administrative discretion. However, as noted by the Constitutional Court in its judgment of 1993, in order to be compatible with the relevant constitutional principles, a vague and unspecified concept such as "good character" had to be subjected to the comprehensive judicial scrutiny of the administrative courts (see paragraph 39 above).

125. While this was before the Ministry's Circular and the *Consiglio di Stato*'s case-law clarifications of the notion of "good character", the Court would agree that judicial scrutiny was necessary, because of the broad scope of discretion conferred on the *questore* to decide whether or not to grant a security licence.

126. In this respect, the Court notes that the *questore*'s decision could be appealed against to an administrative court and further to the *Consiglio di Stato*, both of which are impartial and independent tribunals according to the Court's case-law (see *A. Menarini Diagnostics S.r.l. v. Italy*, no. 43509/08, § 60, 27 September 2011, and *Predil Anstalt S.A. v. Italy* (dec.), no. 31993/96, 8 June 1999). Before each instance, the applicant could challenge the reasons given by the *questore* – and before the *Consiglio di Stato* also the reasons given by the administrative court – and submit his arguments. Both judicial instances had the power to carry out a review which was not limited simply to legality (see paragraphs 60-62 above). It follows that the judicial review in place was sufficient to guarantee against arbitrary interference with fundamental rights by the *questore.*

(c) Conclusions as to whether the measure was "in accordance with the law"

127. In the light of the findings set out above (see paragraphs 120 and 126 above), the Court finds that the disputed measure was "in accordance with the law", within the meaning of Article 8 of the Convention.

2. Whether the measure pursued a "legitimate aim"

128. The Government argued, and the applicant did not contest, that the interference with the applicant's right to respect for his private life pursued the aim of preventing disorder and crime, within the meaning of Article 8 § 2 of the Convention. The Court finds no reason to hold otherwise.

3. Whether the measure was "necessary in a democratic society"

(a) The parties' submissions

(i) The applicant

129. The applicant argued that the refusal of his request for a public security licence was neither necessary in a democratic society nor proportionate, since the domestic authorities did not give relevant and sufficient reasons for their refusal and the decision-making process was unfair and did not appropriately protect his interests.

130. Firstly, the applicant argued that, in his case, the reference to the concept of "good character" was unforeseeable and made it impossible for him to defend his interests. In his view, the domestic authorities had applied a "presumption of bad character" and shifted the burden of proving that he was indeed of "good character" onto him. However, the authorities did not take into account any of the evidence and arguments submitted by him, making the discharge of that burden of proof impossible.

131. Secondly, the applicant argued that he had not been in a position to know the basis of the refusal. In particular, the *questore* had mentioned "other inquiries undertaken by the police forces" which had led the administrative authority to conclude that the applicant was not "of good character". The applicant therefore considered that the domestic authorities had based their refusal on vague and unspecified matters of which the applicant was not aware and had not allowed him access to the documents on which the decision had been based.

132. Thirdly, the applicant submitted that the administrative courts had also based their decisions on vague and unspecified matters and, in particular, on conduct which was not attributable to him. According to the applicant, the administrative courts had failed to comply with the case-law of the Constitutional Court, which required them to put forward specific circumstances, attributable to the applicant, capable of demonstrating a risk of the abuse of a public security licence.

133. Finally, the applicant considered that the disputed measure had not been subjected to sufficient judicial scrutiny, since the administrative courts had taken their decisions on the basis of the practice established by their case-law, under which the scope of their review was limited to instances of irrationality, thereby preventing a thorough review of the critical aspect of the case. In the applicant's view, the administrative courts had limited themselves to checking the formal legality of the disputed measure.

(ii) The Government

134. The Government submitted that the interference at issue was necessary in a democratic society and proportionate, within the meaning of Article 8 § 2 of the Convention in both its substantive and its procedural limbs.

135. As regards the substantive limb, the Government argued that the inference with the applicant's right to private life was not serious. By contrast, the measure at issue pursued a "pressing social need", that is, preventing the gambling industry from being infiltrated by criminals. In balancing the applicant's right against the general interest, the general interest should prevail. In the Government's view, there was no less intrusive and equally effective means of fulfilling the aim pursed by the measure in question,

136. As regards the procedural limb of Article 8, the Government submitted that the applicant had been sufficiently involved in the decision-making process. In particular, on 24 December 2015 the applicant had been informed by the *questore* of the institution of administrative proceedings against him and of the reasons why he was considering refusing the applicant's application for a public security licence. The applicant was informed of his right to intervene in the procedure, and he was given, in accordance with the relevant domestic provisions, a ten-day time-limit to examine the documents and submit his observations. He did not make use of his right to examine the relevant documents, but submitted his observations to the *questore*, who recorded it and took the applicant's points into account when he made his decision to refuse the applicant's application.

137. As to whether the measure was subjected to sufficient judicial scrutiny, the Government referred to cases in which the Court had found that the jurisdiction exercised by the administrative courts in the Italian legal system was sufficient for the purposes of the requirements of Article 6 § 1 of the Convention (see *A. Menarini Diagnostics S.R.L.*, cited above, §§ 64-66, and *Edizioni Del Roma Societa Cooperativa A.R.L. and Edizioni del Roma S.R.L.*, cited above, § 93). In the Government's view, the Court has previously accepted that there are certain specialised fields of law in which domestic courts have limited jurisdiction with respect to fact-finding but can revoke decisions of administrative authorities which are based on arbitrary or irrational findings of fact, provided that the court is competent to re-examine the points which are fundamental to the applicant's case.

138. Relying on those principles, the Government submitted that the administrative courts' reviews of administrative decisions on the granting and refusal of public security licences had been full and effective. In their view, notwithstanding general statements concerning the limiting of judicial review to instances of irrationality, the administrative courts court had undertaken a full judicial review of the factual and legal issues in the present case.

139. In the Government's view, the mere fact that the outcome of the judicial proceedings was unfavourable to the applicant did not mean that there

had not been sufficient judicial review. The Government submitted that the administrative courts had duly taken into account the applicant's objections that the facts as found could not lead to the conclusion that he lacked the requisite "good character". In particular, they observed that the fact that the applicant had been found on many occasions to be keeping company with persons with serious criminal and police records was sufficient to conclude that he did not meet that requirement.

(b) The Court's assessment

(i) General principles

140. In determining whether the impugned measures were "necessary in a democratic society", the Court has to consider whether, in the light of the case as a whole, the reasons adduced to justify them were relevant and sufficient and whether the measures were proportionate to the legitimate aims pursued (see *Pişkin*, cited above, § 212).

141. In this connection, the Court reiterates the fundamental importance of the obligation to state the reason for administrative acts affecting individual interests (see *Giuliano Germano*, cited above, § 132). However, while it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention (see *Ghailan and Others v. Spain*, no. 36366/14, § 62, 23 March 2021, and *Naumenko and SIA Rix Shipping v. Latvia*, no. 50805/14, § 50, 23 June 2022).

142. The Court has to satisfy itself that the national authorities have applied standards which were in conformity with the principles embodied in the Convention and, moreover, that they have based their decisions on an acceptable assessment of the relevant facts (see *Guliyev and Sheina v. Russia*, no. 29790/14, § 52, 17 April 2018).

143. As regards, the review carried out by the domestic courts, it should be pointed out that, while Article 8 contains no explicit procedural requirements, the Court cannot satisfactorily assess whether the reasons adduced by national authorities to justify their decisions were "sufficient" for the purposes of Article 8 § 2 without at the same time determining whether the decision-making process, seen as a whole, provided the applicant with the requisite protection of his interests, as safeguarded by that Article (see, among others, *Lazoriva v. Ukraine*, no. 6878/14, §§ 62-63, 17 April 2018; *Wałęsa v. Poland*, no. 50849/21, § 287, 23 November 2023; and *Ţîmpău v. Romania*, no. 70267/17, § 213, 5 December 2023).

144. Although in a different context, the Court has already held that national authorities may legitimately take measures which prevent certain individuals from exercising certain sensitive professions, subject however to compliance with a number of requirements (see *Advisory opinion as to*

whether an individual may be denied authorisation to work as a security guard or officer on account of being close to or belonging to a religious movement [GC], request no. P16-2023-001, the *Conseil d'État* of Belgium, §§ 84-85 and 92, 14 December 2023). In particular, the Court has held that the risk analysis that the domestic authorities must carry out should take account of the nature of the specific role in question (ibid., § 93), and that the risk must be the subject of an individual and detailed assessment carried out in the light of the personal situation of the individual concerned (ibid., § 100), although without entirely disregarding the general context (ibid., § 101). The Court has further clarified that, regardless of the nature of the right or interest that a preventive measure seeks to protect, there must be a real risk, in other words one that is sufficiently established. The containment of a mere speculative danger, presented as a preventive measure for the protection of democracy and its values, cannot be seen as meeting a pressing social need. For the adoption of preventive measures to be legitimate, it may be necessary for the authorities to make specific estimations of the potential scale of the consequences that the realisation of the risk would entail if it were not to be eliminated in time. In addition, the risk that the authorities' preventive action seeks to avert must be serious and even carry a certain gravity, without which any limitations of the rights and freedoms of others may not be legitimate (ibid., §§ 103-104). Lastly, the Court held that both the personalised assessment of the existence of a risk and the assessment of the reality and scale of that risk by the appropriate national authorities must be amenable to review by an independent judicial authority (ibid., §§ 101 and 105). Such authority must be able to perform an effective review of the disputed measure, and that review, in order to meet Convention requirements, must concern the reality of the risk identified, its scale, its nature and its immediacy (ibid. § 112).

(ii) Application of the above principles to the present case

145. Having regard to the applicant's complaints, the Court considers that it is required to assess whether the reason adduced by the *questore* to justify the refusal of the applicant's application for a public security licence were relevant and sufficient, and whether such refusal was subjected to a sufficient judicial review, within the meaning of the Court's case-law. In so doing, the Court will take into account that the national authorities are accorded a certain margin of appreciation, the scope of which will depend on factors such as the nature and seriousness of the interests at stake and the gravity of the interference (see, *mutatis mutandis*, *L.B. v. Hungary* [GC], no. 36345/16, § 118, 9 March 2023).

146. The Court reiterates that Article 8 of the Convention does not recognise, as such, a right to obtain a gambling licence. Also, the Court has found that the refusal to grant a public security licence to the applicant in the present case affected his private life only insofar the decision of the domestic

authorities to refuse a public security licence was based on reasons linked to his private life (see paragraphs 84-85 above) and notably because he had previously associated with persons with criminal and police records who, according to the same applicant, were not people particularly close to him (see paragraphs 17 and 19 above). The Court is aware of the specific regional context and need for the domestic authorities to ensure that a public security licence is only granted to individuals who may be trusted to avoid risk of money laundering or other crimes being committed within the gambling enterprise.

147. For all these reasons, the Court considers that in the present case the authorities enjoyed a wide margin of appreciation.

(α) Whether the *questore* provided relevant and sufficient reasons for the refusal

148. As to whether the *questore* provided relevant and sufficient reasons for refusing the applicant's application for a public security licence, the Court observes that, in the notification of the intention to refuse the applicant's request, the *questore* had stated that (i) a close relative of the applicant was involved in judicial proceedings concerning drug trafficking and had been given a police caution by the *questore* and was subject to the preventive measure of special police supervision; (ii) the applicant had been frequently found to be keeping company with persons with serious criminal and police records. The *questore* therefore argued that he could not be sure the applicant would not use the bookmaking activities as a vehicle to launder money deriving from unlawful activities, or that there would not be criminal infiltration into the applicant's own activities (see paragraph 10 above).

149. In the subsequent decision refusing the applicant's application, it was stated that he had been "found on many occasions to be keeping company with people with serious criminal and police records", that the assessment had to take into account an applicant's family environment and his or her personal relationships if those could affect how the activities to be licensed might be carried out, and that "the results of the inquiries undertaken support the assessment that those issues might affect the exercise of the activities" that the applicant intended to carry out (see paragraph 11 above). In the Court's view, this reasoning was quite short and would have benefitted from more details, such as specific acts, facts or relationships which, by virtue of their nature, characteristics, gravity or context may have raised fears that the public security licence could be abused.

150. That said, the Court notes that the decision of the *questore* was based on inquiries about the circumstances concerning the applicant's character and his overall social and family environment, and that the reasoning in the decision covered the specific risks in the geographical area where the applicant intended to undertake the activity in question. The decision mentioned the facts that had been ascertained by the making of appropriate inquiries and concluded that, on the basis of an overall assessment of the

relevant circumstances, there was a specific risk of abuse of the public security licence for which the applicant had applied.

151. Having regard to the specific nature of the activity in question and the relevance of the specific geographical area in the domestic authority's assessment, the Court cannot but reiterate the fundamentally subsidiary role of the Convention system and recognise that the national authorities have direct democratic legitimation in so far as the protection of human rights is concerned. Moreover, by reason of their direct and continuous contact with the vital forces of their countries, they are in principle better placed than an international court to evaluate local needs and conditions (see *Nurcan Bayraktar v. Türkiye*, no. 27094/20, § 49, 27 June 2023).

152. In the light of the foregoing, while the Court would have wishes for a more detailed reasoning as mentioned above (see paragraph 149), it accepts that the *questore* based the refusal on an adequate assessment of the facts and gave relevant and sufficient reasons for finding that the applicant did not have the required "good character".

(β) Whether the refusal was subjected to a sufficient judicial review

153. As regards the question whether the refusal was subjected to a sufficient judicial review, the Court reiterates from the outset that in previous cases, concerning different issues, it has found that the judicial review undertaken by the administrative courts in the Italian legal system was sufficient for the purposes of Article 6 § 1 of the Convention (see *A. Menarini Diagnostics S.R.L.*, §§ 64-66, and *Edizioni Del Roma Societa Cooperativa A.R.L. and Edizioni del Roma S.R.L.*, § 93, both cited above).

154. In the present case, the Court notes that the decision contested by the applicant was judicially reviewed at two levels of jurisdiction, in proceedings in which the applicant was represented by a lawyer and could raise arguments in support of his case, which were also publicly discussed in a hearing and were duly taken into account by the appropriate courts.

155. In particular, the Court notes that the TAR took into account the applicant's arguments, but found that he had not been capable of dispelling the serious doubts which the frequent associating with persons with criminal and police records raised as to the risk of abuse of the public security licence (see paragraph 18 above).

156. The *Consiglio di Stato* examined the applicant's claim that the fact of having been found on many occasions in the company of persons with serious criminal and police records was insufficient to show a risk of abuse of a public security licence. In reply to that argument, the *Consiglio di Stato* held that the numerous criminal offences committed by people close to the applicant were relevant to the decision, as they constituted "general and consistent circumstantial circumstances capable of justifying the contested refusal, the express reasons for which arose from the conduct of the applicant (and not from that of his relatives and work colleagues) and which, when seen

in the context of the specific risks undeniably connected with the activities of arranging, collecting and managing sports betting which has cash winnings that are paid out electronically, a channel which can be used – and which has not infrequently been used – for the purpose of 'laundering' 'dirty' money obtained from illegal activities managed by organised crime" (see paragraph 20 above).

157. In so far as both the TAR's and the *Consiglio di Stato*'s judgments included an assessment of the critical aspect of the case as raised in the applicant's complaints, notably whether there was a risk of abuse of a public security licence, the Court can only reiterate that it is not its role to act as a court of appeal or, as it is sometimes called, a court of fourth instance, for decisions taken by domestic courts (see *Putistin v. Ukraine*, no. 16882/03, § 43, 21 November 2013). The scope of the Court's task is subject to the limits inherent in the subsidiary nature of the Convention, and it cannot question the way in which the domestic authorities have applied national law, except in cases of flagrant non-observance or arbitrariness (see *Algirdas Butkevičius v. Lithuania*, no. 70489/17, § 92, 14 June 2022, and *Elita Magomadova v. Russia*, no. 77546/14, § 59, 10 April 2018).

158. The Court cannot however discern any flagrant non-observance or arbitrariness in the present case, where the domestic judicial authorities examined the reasons given by the *questore* in the light of the applicant's complaints, and concluded that there had been relevant and sufficient reasons for refusing the applicant's application for a public security licence.

(c) Conclusions as to whether the measure was "necessary in a democratic society"

159. In the light of the above, the Court considers that the *questore* gave relevant and sufficient reasons for refusing the applicant's application for a public security licence and that the refusal was subjected to sufficient judicial review by the TAR and the *Consiglio di Stato*. In this context, and having regard to the State's wide margin of appreciation (see paragraph 147 above), the Court finds that the measure was "necessary in a democratic society", within the meaning of Article 8 § 2 of the Convention.

160. Accordingly, there has been no violation of Article 8 of the Convention in the specific circumstances of the present case.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

161. The applicant further complained that he had not been given opportunities to sufficiently defend his interests during the administrative and judicial stages of the domestic proceedings and that the refusal of the licence had not been subjected to sufficient judicial review, in breach of the right to a fair trial as guaranteed by Article 6 § 1 of the Convention, which, in its relevant parts, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

162. In so far as the applicant argued that he had suffered a breach of his right to a fair hearing in the administrative phase of the proceedings, the Court reiterates that even where an administrative body determining disputes over "civil rights and obligations" does not comply with Article 6 § 1 in some respect, no violation of the Convention can be found if the that body's decision-making processes are subject to a subsequent review by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 § 1, that is, if any structural or procedural shortcomings identified in the decision-making of an administrative authority are remedied in the course of the subsequent review by a judicial body that has full jurisdiction (see *Ramos Nunes de Carvalho e Sá*, cited above, § 132).

163. The applicant argued that the subsequent judicial review in his case had not been sufficient. However, the Court has already concluded that the disputed measure was subjected to a sufficient judicial review and had satisfied the requirements of its case-law (see paragraphs 153-159 above).

164. The Court finds that the applicant has not shown that, in the proceedings in the domestic administrative courts, there was any breach of his right to a fair hearing.

165. In the light of the above, the Court concludes that the complaint under Article 6 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT,

1. *Declares*, by a majority, the complaint under Article 8 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds*, by five votes to two, that there has been no violation of Article 8 of the Convention;

Done in English, and notified in writing on 15 May 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court

{signature_p_2}

Liv Tigerstedt	Ivana Jelić
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Partly dissenting, partly concurring opinion of Judge Sabato;
(b) Partly dissenting opinion of Judge Felici joined by Judge Paczolay.

PARTLY DISSENTING, PARTLY CONCURRING OPINION OF JUDGE SABATO

I. INTRODUCTION

1. The majority have held that: (a) the applicant exhausted domestic remedies in compliance with Article 35 § 1 of the Convention with regard to his complaint under Article 8 and therefore that the Government's preliminary objection for failure to exhaust such remedies had to be dismissed (see paragraphs 66-72 of the judgment[1]); (b) under a reason-based approach, the disputed measure was linked to the applicant's private life so that Article 8 of the Convention was applicable *ratione materiae*, without its being necessary to adopt a consequence-based approach (see paragraphs 79-85 of the judgment). I respectfully consider that both these findings by the majority are incorrect and in contradiction with the Court's well-established case-law. I voted against the admissibility of this complaint and feel compelled to differentiate my position from the majority's by clarifying the reasons for my dissent.

2. Based on their finding of admissibility, the majority went on to examine the merits of the complaint under Article 8 and concluded – by five votes to two – that there had been no violation; the remainder of the application, including the complaint under Article 6 § 1, was declared inadmissible. As to these findings, I voted with the majority, although it of course remains the case that, in my view, the application was inadmissible in its entirety: indeed, along with many of my colleagues at the Court, I follow the practice whereby judges who do not agree with the majority's finding on admissibility (in this instance, under Article 8) should nonetheless, in all cases, vote on the merits *as though the claim were admissible in their view*. To proceed otherwise would be to distort the development of the Court's case-law, depriving judgments on the merits of input from judges who would have preferred to stop at the admissibility stage but might nonetheless have views on the merits.

3. The above does not imply that – apart from concurring with the operative part – I fully endorse the reasoning provided by the majority in support of their finding of no violation of Article 8 (and their rejection of the complaint under Article 6). I must therefore offer some critical or additional reflections on the reasoning supporting those findings.

4. In order to enhance the clarity of my opinion, I shall defer addressing the preliminary questions of admissibility until I have presented my views on the merits, preceded by some general considerations on the significance of the subject matter of the case, namely: the fight against crime in the economic domain (Part II); the legal framework in the respondent State under domestic

[1] In the interests of clarity, I will henceforth refer to the majority's judgment as "the *Versaci* judgment", with a few exceptions where the reference is obvious.

and European Union (EU) law (Part III); the requirement of "good character" as an essential component of risk assessments and checks of the integrity and reliability of applicants for licences to operate in this or similar economic sectors, which are particularly vulnerable to criminal infiltration (Part IV); and the essential role of review by courts with full jurisdiction, such as administrative courts in States inspired by the French model (Part V). After that, supporting the view that, had the complaint been admissible, there would have been no violation of Article 8 (and that the complaint under Article 6 would in any event have been manifestly ill-founded), I shall outline a few considerations concerning the fact that, regardless of the important issues at stake, Article 8 was at any rate inapplicable *ratione materiae* (Part VI) and the domestic remedies had not been exhausted (Part VII), with inadmissibility as a consequence in either case. A short conclusion will be given in Part VIII.

II. THE FIGHT AGAINST CRIME IN THE ECONOMIC DOMAIN: BACKGROUND TO THE REGULATION OF THE BETTING INDUSTRY IN THE WAKE OF OTHER SECTORS

5. The vast scale (and profitability) of betting and gambling activities across European countries is well known. This market is characterised by the coexistence of physical venues (such as casinos and bookmakers) and online betting platforms, often operating from outside Europe. An intermediate category consists of betting agencies – sometimes operating independently, sometimes within retail outlets, department stores, tobacconists, etc. – which collect bets not on their own behalf, but on behalf of global operators active online, from consumers who are either unable or unwilling to access these platforms directly, often paying in cash.

6. From a legal perspective, as noted by the Court of Justice of the European Union (CJEU) with reference to EU member States (though the point applies equally across wider Europe), "legislation on games of chance is one of the areas in which there are significant moral, religious and cultural differences between the ... States. ... It is for each Member State to determine in those areas, in accordance with its own scale of values, what is required in order to ensure that the interests in question are protected"[2].

7. Legal frameworks span the spectrum between two purely theoretical extremes – complete prohibition and total *laissez-faire* – but, in practice, various intermediate systems exist, ranging from State monopolies to regulated markets where operators must be licensed. Certain forms of gambling may be reserved for State control, even where a regulated private

[2] CJEU, judgment of 8 September 2009, *Liga Portuguesa de Futebol Profissional and Bwin International*, C-42/07, EU:C:2009:519, § 57, with further references; see also, e.g., the CJEU's judgments of 8 September 2010, *Carmen Media Group*, C-46/08, EU:C:2010:505, § 59, and 28 February 2018, *Sporting Odds Ltd*, C-3/17, EU:C:2018:130, §§ 20-21.

market exists for others. What matters most is that, in all systems, the black market is substantial. Indeed, both legal and illicit markets involve large inflows and outflows of cash, which are inherent in the very nature of gambling. This facilitates extensive use of this industry for the purpose of tax evasion, the laundering of the proceeds of domestic and transnational crime and the financing of other criminal activities, such as human, drug and arms trafficking[3].

8. The fact of having briefly emphasised the crucial role of regulating betting and gambling in Europe will, in a moment, allow me to focus more closely on the situation in the respondent State, and then on the essential risk assessments and checks of the integrity and reliability of applicants for licences to operate in this sector, which is particularly vulnerable to criminal infiltration. But before zooming in, I must widen the lens further in order to acknowledge that similar issues to those raised by the betting industry are also present in other sectors of the economy that likewise involve substantial inflows and outflows of cash and which, under older political models, were – like betting – under strict supervision, when they were not outright sovereign monopolies, before being opened to market participation: I refer, in particular, to banking and financial services, but also to public procurement. In these sectors, too, State regulation remains essential[4].

9. From just such a holistic perspective, the Council of Europe – the international organisation under the umbrella of which the Court operates, albeit independently – has for many years now engaged in intensive standard-

[3] See, e.g., United Nations Office on Drugs and Crime, *Casinos, Money Laundering, Underground Banking, and Transnational Organized Crime in East and Southeast Asia: A Hidden and Accelerating Threat*, January 2024, https://www.unodc.org/roseap/uploads/documents/Publications/2024/Casino_Underground_Banking_Report_2024.pdf (last accessed 5 May 2025).

[4] For a comparative review of regulatory frameworks and practices designed to prevent mafia-type infiltrations into public procurement, by way of controls to access of tenderers and their exclusion, see Swiss Institute of Comparative Law, *Legal opinion on the prevention of infiltration of organised crime in public procurement*, 21 December 2023, https://www.isdc.ch/media/2547/23-124-e-17e-avis-20231221_20250123.pdf (last accessed 5 May 2025). It is interesting to note that this comparative study was prepared in order to allow the Swiss Federal Council to examine a parliamentary "postulate" submitting that Switzerland should request Italy-based tenderers to produce anti-mafia documentation as provided for by Italian law when bidding for public procurement contracts in Switzerland. At its meeting of 6 December 2024 the Swiss Federal Council adopted a report which, although sharing the goals of Italian legislation aimed at preventing infiltration, held that it would be impracticable to add to the local requirements (registration in a database and self-declaration) the requirements of the country of origin. However, the Council noted that the Swiss legal framework for procurement allows Swiss entities, having a "wide" discretionary power, to liaise with the relevant Italian authorities on a case-by-case basis in order to obtain the relevant anti-mafia documents. The report, in French, but also available in the other national languages, can be found at https://www.parlament.ch/centers/eparl/curia/2022/20223658/Bericht%20BR%20F.pdf (last accessed 5 May 2025).

setting activities in the form of treaty law[5] and "soft law" instruments, in addition to monitoring member States' compliance, notably through the Group of States against Corruption (GRECO) and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). This approach is further supported through cooperation and technical assistance programmes run by the Economic Crime and Cooperation Division (ECCD), the achievements of which have been substantial[6]. Particularly relevant are the activities aimed at assessing money laundering risks and, in general, risks associated with organised crime[7].

III. THE LEGAL FRAMEWORK IN THE RESPONDENT STATE UNDER DOMESTIC AND EU LAW

10. It is within this perspective, aimed at giving the importance they deserve to the Convention principles at issue in this case – the intersection of human rights and the need to monitor the risk of criminal infiltration in economic activities – that I can now focus once more on the specific issues at the heart of the matter at hand.

11. I must begin with the fact that, when it comes to gambling and betting, the respondent State is a "prohibitionist" country, where gambling and betting are offences under the Criminal Code and, according to the Civil Code, the

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[5] It may be noted that on 1 September 2019, albeit within the context of fighting sports manipulation, the Council of Europe Convention on the Manipulation of Sports Competitions (CETS No. 215), signed in Macolin / Magglingen on 18 September 2014, entered into force.

[6] See, e.g., the latest available ECCD Report for 2023: https://rm.coe.int/eccd-in-2023/1680acb25d (last accessed 5 May 2025). In the specific area of online gambling, the Pompidou Group – a Council of Europe body providing support and solutions for drug policies – has also published two important documents in 2024, referenced at https://www.coe.int/en/web/pompidou/-/strategies-and-regulatory-options-aimed-at-reducing-risks-and-harms-related-to-online-gaming-and-online-gambling (last accessed 5 May 2025). For EU countries, see the Commission's relevant web page and the information referenced to therein: https://single-market-economy.ec.europa.eu/sectors/online-gambling_en (last accessed 5 May 2025).

[7] In parallel with the above, several tools have been developed or are being developed at the EU level based, in particular, on what is now Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast). In a nutshell, the Commission has had an "Early Detection and Exclusion System" (EDES) and an inter-institutional panel in force since 2016, which are entitled to exclude economic operators from EU resources and the validity of which has been upheld by the CJEU. In a report of 2022 the European Court of Auditors (ECA) did, however, call for a wider and more effective use of "blacklisting", in particular by extending the range of exclusions, to prevent untrustworthy individuals or entities from receiving funds: see ECA, "Protecting the EU budget – Better use of blacklisting needed", ECA Special report no. 11/2022, 23 May 2022, https://eca.europa.eu/Lists/ECADocuments/SR22_11/SR_Blacklisting_economic_operators_EN.pdf (last accessed 5 May 2025).

relevant transactions do not grant those who nonetheless take part in gambling and betting any right to claim winnings, except in the case of State-regulated games and bets.

12. Until recently, most legal gambling and betting operations were subject to a State monopoly (for example, sports betting), managed through tobacconists' shops overseen by the monopoly authorities, with a grand total of four casinos, all State-controlled and located near borders or in an exclave territory beyond the country's northern border[8].

13. With the advent of the internet, the situation changed: extensive litigation was initiated concerning the possibility for bookmakers and the operators of gambling establishments in other EU countries to operate indirectly in Italy. These operators had been gaining access to the Italian market through the intermediary of "data transmission centres", which offered their services in premises open to the public, where bettors were provided with internet access to the servers of foreign bookmakers, thereby unlawfully bypassing the national system managed by the Italian Agency for Customs and Monopolies.

14. Italy's position (and that of other prohibitionist States) that such services were illegal until brought under the control of local authorities was essentially upheld by the CJEU, which clarified that "the objective of combating criminality linked to betting and gaming [was] capable of justifying restrictions on fundamental freedoms ..., provided that those restrictions compl[ied] with the principle of proportionality and in so far as the means employed [were] coherent and systematic"[9]. The CJEU found that the aim of combating crime linked to gambling could justify restrictive measures, thus legitimising the so-called "dual authorisation" system. It affirmed that EU law had to be interpreted as not precluding national legislation requiring companies wishing to carry out gambling-related activities to obtain a local public security licence in addition to an authorisation granted by the State of origin to operate such activities. It further held that the member State where the betting activity was to be carried out was not obliged to recognise the licences or authorisations issued by the member State in which the economic operator was established, given that there was currently no obligation of mutual recognition in this area.

15. This approach – according to which gambling regulation falls within the sphere of "public security" – explains the licensing framework set out in Royal Decree no. 773 of 18 June 1931 concerning "public security" (mentioned in paragraph 21 of the *Versaci* judgment). The "public security"

[8] One of the two enclaves in geographical Italy, the independent Republic of San Marino, had closed its casino at the end of World War II under an agreement with Italy not to encourage gambling. A gambling facility was nonetheless reopened amid controversy in 2007.

[9] See, among other authorities, CJEU, judgment of 12 September 2013, *Biasci and Others*, Joined Cases C-660/11 and C-8/12, EU:C:2013:550, § 23.

scope of that legal framework was recently reaffirmed, in particular, by the Italian Constitutional Court in its judgment no. 27 of 27 February 2018, by the *Consiglio di Stato* in its judgment no. 1279 of 10 July 2020 and by the Court of Cassation in its ruling no. 3865 of 8 February 2022.

16. This last ruling explicitly dealt with the scope of section 1(643) of Law no. 190 of 23 December 2014 (mentioned in paragraph 6 of the *Versaci* judgment), a piece of legislation enacted soon after the CJEU's judgment of 12 September 2013. According to the Court of Cassation "the complex provisions of section 1 (643) ... pursue the objective of ... regularising and bringing to light unlawful activities so that they may henceforth be conducted lawfully"[10].

17. It is therefore a missed opportunity that, with regard to the context outlined above, the majority, despite ample indirect references in the case file, chose not to address any general issues. As will be seen, beyond a few references to the risks of money laundering (see, for example, paragraph 146 *in fine* of the *Versaci* judgment) and the use of the term "regularisation" (which appears in paragraphs 6 and 23 of the judgment), nothing is said about the case-law of the CJEU, for example, or the Council of Europe's intense activities aimed at safeguarding the integrity of the economic system (in areas such as betting, banking and financial activities and public procurement), particularly to prevent mafia infiltration.

IV. THE REQUIREMENT OF "GOOD CHARACTER" AS AN ESSENTIAL COMPONENT OF RISK ASSESSMENTS AND CHECKS OF THE INTEGRITY AND RELIABILITY OF APPLICANTS FOR LICENCES TO OPERATE IN THIS OR SIMILAR ECONOMIC SECTORS, WHICH ARE PARTICULARLY VULNERABLE TO CRIMINAL INFILTRATION

18. Owing to this failure to consider the context mentioned above, when reading the majority's text the reader may be left with the impression that the applicant sought to obtain a licence akin to other commercial licences. However, an online betting centre is not a small delicatessen!

19. It is also not evident, as a result of the majority's omissions, that the applicant, rather than maintaining "good conduct"[11], initially began operating

[10] Parallel developments took place in other countries. In Germany, for example, a new State Treaty on Gambling (*Staatsvertrag zur Neuregulierung des Glücksspielwesens* –GlüStV) was enacted in 2021 to unify and modernise the regulation of gambling across the country by breaking some State monopolies and offering centralised licences to German operators. Likewise, in France, where there was a monopoly on sports betting until 2010, the *Autorité de régulation des jeux en ligne* (ARJEL) was created, replaced in 2019 by the *Autorité nationale des jeux* (ANJ), which issues official licences to operators.

[11] This is the literal translation of the requirement imposed on applicants by Italian law, and by other countries' laws, to be assessed by the authorities before granting a licence to open an online betting facility. I will, however, for reasons I will explain in the footnote

a "data transmission centre" which connected to a foreign platform that was authorised only in the country in which it was based, without seeking any licence in Italy – in other words, an activity that, as mentioned above, was illegal in the respondent State. The unlawfulness of this type of business was upheld by the highest domestic and European judicial authorities (see Part III above).

20. Turning to the (other) facts on which the authorities based their decision that the applicant fell short of the "good character" requirement, I note that the majority separate (in paragraph 148 of the judgment) their examination of the notice of the "intention to refuse" (an administrative act described, unfortunately without textual citations, in paragraph 10 of the judgment) from that of the final "refusal" decision (in paragraph 149, following a description – this time with citations – in paragraph 11).

21. The majority – while concluding (in paragraph 152 of the judgment) that the reasons for the refusal were nonetheless sufficient – understandably criticise the refusal decision for being "quite short": it is indeed. They state, however, that the Court "would have benefitted from more details" (see paragraph 149) and express their wish for "more detailed reasoning" (paragraph 152).

22. Had the notice of the "intention to refuse" been translated, it would have been clear to the majority – as is crystal clear to me – that, at the outset, this first administrative act in the chain of two refers to section 10 *bis* of the Italian Administrative Procedure Act (Law no. 241 of 1990), as amended by Law no. 15 of 2005. This is the provision which, in Italy, requires that reasons be included in the notice of the "intention to refuse" and not in the final decision, where it is even prohibited, as a rule, to introduce new reasons: the only "additional reasons to oppose" that may be included are those arising from the observations of the notified party.

23. In brief, therefore, in Italy, administrative rejection decisions are reasoned by reference to the previously issued notice of the "intention to refuse". It is a pity that this fact was neglected, for it alone – as is, again, clearly evident from the case file – explains the challenge raised by the applicant before the TAR (which deemed it unfounded) and referred to in the final part of paragraph 13 of the *Versaci* judgment. Why complain that the final decision should not have contained new reasons (which it did not contain!), unless the requirement was that the reasons were to be given in the previous notice? I regret that the reasoning of the majority, on this matter, makes little sense.

24. Now that we know that the authorities provided extensive reasons (see paragraph 10 of the *Versaci* judgment), such that an international Court need not wish for more detail, I also have to note that the majority have,

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immediately below, align my usage with the majority's choice to use the standard English term "good character".

unfortunately, fallen into multiple additional confusions regarding the domestic framework, which have led them to conclude that the internal regulation on "good character" is "formulated so as to give rise to uncertainty and ambiguity" (see paragraph 120 of the judgment) and that the foreseeability of this legal concept is wholly dependent on the "clarifications ... provided in the guidance on administrative practice and in the domestic case-law" (see paragraph 120, referring to the Circular mentioned in paragraph 116 and to the case-law cited in paragraph 118, which the majority claim to "appreciate" in paragraph 119 of the judgment).

25. In this regard, the majority have made significant errors in reading the precedents of the Constitutional Court. As indicated in paragraphs 113 and 114 of the *Versaci* judgment, the majority assume that the Constitutional Court was criticising the current concept of "good character" as being "indicative ... [of an individual's] subjective lifestyle" with "zones of complete uncertainty" in the assessment; so much so that it considered the requirement of "good character" to be a "vague" concept and recommended "legislative reform" (as stated by the majority in paragraph 115 of the *Versaci* judgment).

26. These premises are, with due respect, entirely mistaken, as is the collage of citations through which they are presented.

First, regarding the statements contained in paragraphs 113 and 114, they can indeed be found in the 1993 judgment of the Constitutional Court but, in employing these expressions, the Constitutional Court was not criticising the current legal framework governing public security licences, as the majority suggest, but rather the previous framework. Indeed, in Italy, as in many countries, the Constitutional Court provides reasoning for its declarations of unconstitutionality and in 1993 (see paragraphs 35-42 of the *Versaci* judgment), in order to examine and find unconstitutional the pre-existing concept of "good character" required to obtain a public security licence, the Constitutional Court considered that, at that time, imposing an obligation for the applicant to prove his or her "good character", a notion that was "indicative ... [of an individual's] subjective lifestyle" with "zones of complete uncertainty", was incompatible with the Constitution since that which the applicant had the burden of proving was completely uncertain. As a result, the Constitutional Court reversed the burden of proof, requiring the administration to adduce objective facts from which bad conduct could be definitively inferred.

Thus, the Circular on which the majority rely merely explains what was already laid out in the Constitutional Court's judgment.

27. Having clarified the above, it is obvious that there is no reason for the Court to cite expressions from the 1993 judgment as if they referred to the present "objective" notion of good character, given that it is now the authorities which bear the burden of proof of bad character.

Those expressions were used to justify the finding of unconstitutionality, which has since dispelled any uncertainty.

28. Second, the majority have erroneously merged the aforementioned phrases – which, in themselves, should not have been cited – with another expression taken from a very different judgment from 1996 (cited in paragraphs 47-53 of the *Versaci* judgment). This other judgment concerned a stricter requirement ("excellent conduct") for access to certain types of employment. In this case as well, the relevant provision was declared unconstitutional and the authorities were ordered to apply it in accordance with the new interpretation provided by the Constitutional Court.

29. It is noteworthy that this 1996 judgment concluded its reasoning, as it was the last in a series of rulings, with an invitation to the legislature to intervene. However, this was not – as the majority suggest – because the regulatory framework remained "uncertain" after the constitutional rulings, but for the purposes of legislative "restatement" and "reordering" (thus, the word "reform" used in paragraph 53 of the *Versaci* judgment is inappropriate and its equivalent does not appear in the original Italian).

30. Indeed, the ruling, following the invitation to "restate" the concepts surrounding "good character", closed with a reassuring statement, which the majority have omitted, to the effect that, even in the absence of legislative interventions, according to the Constitutional Court, the system was still capable of functioning in a constitutionally legitimate manner. It is so unfortunate that the precise language is not reproduced in paragraph 53 of the *Versaci* judgment that I feel the obligation to cite it here:

> "In the absence of new legislative interventions, the competent administrative authorities, under the supervision of the judicial authorities, will apply the provision declared unconstitutional with the normative content that remains following this judgment of unconstitutionality."

31. It is also a fact that, since the 1990s, the concept of "good character" has no longer been found problematic by the Constitutional Court. The majority, relying on their collage of sentences taken out of context, seem not to have considered the implications of the passage of such a long period of time.

32. In sum, one can conclude with an optimistic observation: in the light of the above, in sectors involving access to economically and socially sensitive activities – such as gambling, banking and public procurement – the State cannot limit itself to merely formal criteria for the eligibility of operators; instead, it must carry out reliability and integrity assessments, including by means of discretionary checks based on concepts such as "good character", which has met with success all over Europe[12].

[12] I have aligned my linguistic usage with that of the majority and with standard English. However, it should be noted that, in Italian and in several romance languages, the concept is that of "*buona condotta*" (litt. "good conduct"; in French "*bonne conduite*"), which is more

V. THE ESSENTIAL ROLE OF REVIEW BY COURTS WITH FULL JURISDICTION, SUCH AS ADMINISTRATIVE COURTS IN STATES INSPIRED BY THE FRENCH MODEL

33. The above raises the question of the role of judicial review in such matters. The majority deal with this issue in paragraph 153 by referring to the Court's relevant, country-specific case-law (see *A. Menarini Diagnostics S.R.L. v. Italy*, and *Edizioni Del Roma Società Cooperativa A.R.L. and Edizioni del Roma S.R.L. v. Italy*, both cited in the *Versaci* judgment), noting that domestic review comprised two levels of jurisdiction and – in some detail (see paragraphs 155-158) – that all the relevant points of fact and law were examined.

34. Therefore, the majority understandably conclude – and I completely concur in this – that there was sufficient judicial review for the purposes of both the complaint under Article 8 (paragraph 159) and the one under Article 6 (paragraph 165). After pointing out, in paragraph 162, that – even

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objective and refers to concrete behaviour. This is a concept which is common in Europe: see, e.g., Germany's *Staatsvertrag zur Neuregulierung des Glücksspielwesens* of 2021, at section 4a 2a, requires the equivalent of "impeccable business conduct" (*einwandfreies Geschäftsverhalten*).

In this regard, it may be also worth noting that the majority have rightly referred, in paragraph 144 of the *Versaci* judgment, to the fact that, although in the context of Article 9 of the Convention, the Grand Chamber (in the *Advisory opinion as to whether an individual may be denied authorisation to work as a security guard or officer on account of being close to or belonging to a religious movement* [GC], request no. P16-2023-001, the *Conseil d'État* of Belgium, 14 December 2023) has already had occasion to establish some principles concerning the question whether Contracting States may adopt measures aimed at preventing individuals from practising certain sensitive professions based on conduct requirements. However, while assessing the requirement of "good character" under Italian legislation, the majority have failed to draw all the necessary inferences from the fact that the Grand Chamber has accepted that, provided that measures are taken "in the light of conduct or acts of the individual concerned" (see Point no. 2 of the operative part of the *Advisory Opinion* cited above), the risk assessment may well include "conduct in society in general" (see paragraph 97 of the *Advisory Opinion*) and the use of that notion is Convention-compliant. In particular, the Grand Chamber considered that, under Belgian legislation, the requirement included not only "integrity, loyalty and discretion", but also "an absence of suspicious links with the criminal underworld" (paragraph 59 of the *Advisory Opinion*). In other words, Belgian legislation, in the reading that the Grand Chamber suggested to the *Conseil d'État,* almost entirely overlaps with the reading that the Italian Constitutional Court has given to the requirement of *buona condotta.*

The reference to "links with the criminal underworld" also speaks to a similarity between the keeping of "bad company" in the *Versaci* judgment and the concept of "conduct in society" in the *Advisory Opinion*. The link between keeping "bad company" and a person's character is well-established in European culture. An iambic trimeter reflecting a popular saying from a comedy by Menander (Thais) is even cited by Paul in 1 Corinthians 15:33 (μὴ πλανᾶσθε: Φθείρουσιν ἤθη χρηστὰ ὁμιλίαι κακαί - "Do not be misled: 'Bad company corrupts good character'", where one may note the use of the word "homilia" which means both merely communicating and being closely associated with another person).

assuming that the administrative determination of disputes had violated Article 6 § 1 (as was the case in the cited precedents of *Menarini* and *Edizioni Del Roma*, but not here, in *Versaci*, where there was no administrative determination of a dispute: whence my failure to understand the relevance of the reference) – review by a judicial body that has "full jurisdiction" is a remedy for such violations at the previous stage, the majority end their reasoning.

35. Whatever the above may mean, I am interested in underlining that, both by way of the citation of *Menarini* and *Edizioni del Roma* (in paragraph 153) and by the use of the term "full jurisdiction" (in paragraph 162), the *Versaci* judgment (with which, again, I concur in this part) has clearly responded, albeit cursorily, to the applicant's submission referred to in paragraph 95, which it dismisses.

36. Indeed, the applicant submitted that, "under the *Consiglio di Stato*'s case-law, a *questore*'s assessment [of "good character"] could not be challenged by [before?] the judicial authorities except where it was manifestly unreasonable, arbitrary or incoherent"; "[t]he judicial authorities", for their part, according to the applicant, "could merely assess whether the measure had been taken on the basis of insufficient information or was based on illogical reasoning" (see paragraph 95 of the judgment).

37. One should also consider the communication of the complaint to the Government: specific questions were asked by the Court in the above regard, both under Article 8 (as to whether the domestic framework "enabl[ed] the domestic courts to review the legality, necessity and proportionality of the decisions adopted by the public security authority") and under Article 6 § 1 (as to whether the reviewing courts were courts with "full jurisdiction")[13]. Because these questions had been raised, the parties discussed the point extensively.

38. Therefore, although, as I have mentioned above, the matter received cursory but clear treatment in the judgment, where it is shown that the Italian administrative courts provided review with full jurisdiction, these are reasons to believe that it deserved more extensive coverage in the majority's text.

39. On the other hand, the majority themselves have coupled a collection of the objective criteria which the *Consiglio di Stato* requires for the administrative courts' review, notwithstanding the *questore*'s "broad discretion" in assessing "good character" (paragraphs 54-59), with a (smaller) collection of judgments in which the same *Consiglio di Stato* states that judicial review must be limited to the mere absence of illogical reasoning, distortion of the purposes of the law or misinformation; irrationality, arbitrariness or incoherence; or illogical reasoning, failure to satisfy required conditions and misuse of powers (paragraphs 60-62). After presenting such a wealth of material, it is a pity that the majority, although they have taken a

[13] https://hudoc.echr.coe.int/eng?i=001-226265

clear position on the fullness of jurisdiction of the Italian administrative courts, have not elaborated on this point.

40. I feel the obligation to point out, at least, that the administrative courts' full jurisdiction is in no way limited by the categories of defects affecting administrative acts mentioned in the previous paragraph. The tradition in continental systems inspired by the French model of the Second Republic (for instance, Italy, Belgium, the Netherlands and Greece) is in essence that, when the executive branch exercises ordinary "administrative discretion", administrative courts can be approached with complaints that typically correlate with "violations of law", "*excès de pouvoir*" and the like. When it comes to "broad discretion", similar criteria apply under different labels, such as the absence of illogicality, *détournement de pouvoir* and non-arbitrariness.

History shows that these parameters are linked to the separation of powers and to the fact that the subject of the judgment is an administrative act, not the relationship between the individual and the administration; but they most definitely include the review of lawfulness, necessity and proportionality.

41. As the Government demonstrated in their submissions, the existence of the above parameters as avenues through which challenges can be brought before the administrative courts in the Italian and other similar systems does not prevent judges from fully examining the issues raised, as the present case shows. As the majority accept, the fact that judges thoroughly examined all the relevant points demonstrates that the criteria for reviewing administrative discretion are not in contradiction with "full jurisdiction".

42. The "full jurisdiction" of Italian administrative courts has been upheld by the Court in the past, based on applications that raised similar doubts. In my view, the subject is therefore closed at this point. Reopening this discussion, based on the "historical" concepts of the avenues giving rise to complaints concerning administrative acts in the French model, would destabilise the systems of several countries. But, if only for the sake of completeness, I will take the liberty of pointing out that, in the *Menarini* judgment, cited in the *Versaci* judgment, the facts and the Court's reasoning were as follows (and corresponding language may be found, almost literally, in *Edizioni Del Roma*, §§ 78 et seq., also cited in the *Versaci* judgment):

> "17. The applicant company argued that the TAR, by confining itself to a review of the lawfulness of the AGCM's act, had failed to assess the conduct on the part of the applicant company on which the AGCM had imposed a sanction. ... Lastly, it complained that the national system of administrative courts lacked 'full jurisdiction'.
>
> 18. In a judgment of 16 March 2006 the *Consiglio di Stato* dismissed the applicant company's appeal. It observed that the jurisdiction of the administrative courts was limited to a review of lawfulness but that access to a court was not thereby restricted, since the administrative courts could assess the evidence gathered by the AGCM [*Autorità Garante della Concorrenza e del Mercato* – Italian regulatory authority for competition and the market]. Moreover, the *Consiglio di Stato* pointed out that where the administrative authorities had discretionary power, the administrative courts did not

have the power to substitute themselves for the independent administrative authorities. They could, however, verify whether the authorities had made appropriate use of their powers. As to the sanction, the *Consiglio di Stato* pointed out that it had full jurisdiction in so far as it could verify whether the sanction was appropriate in relation to the offence committed and, if necessary, replace it.

...

61. The Court reiterates, firstly, that only an institution that has full jurisdiction and satisfies a number of requirements, such as independence of the executive and also of the parties, merits the designation 'tribunal' within the meaning of Article 6 § 1 ...

...

63. The Court notes that in the present case the administrative courts examined the applicant company's various factual and legal allegations. They therefore examined the evidence gathered by the AGCM. Moreover, the *Consiglio di Stato* pointed out that where the administrative authorities had discretionary power, even though the administrative courts did not have the power to substitute themselves for the independent administrative authorities, they could nevertheless verify whether the authorities had made appropriate use of their powers.

64. Accordingly, the Court notes that the jurisdiction of the administrative courts was not limited to a mere review of lawfulness. The administrative courts were able to verify whether, in the particular circumstances of the case, the AGCM had made appropriate use of its powers. They were able to examine the merits and proportionality of the AGCM's decisions and even to verify its technical assessments.

65. Furthermore, the sanction was subject to full jurisdictional supervision in so far as the TAR and the *Consiglio di Stato* were able to verify whether it was appropriate in relation to the offence committed and, if necessary, to replace it...

66. In particular, the *Consiglio di Stato*, by going beyond an 'external' review of the logical consistency of the AGCM's reasoning, carried out a detailed analysis of the appropriateness of the sanction with regard to the relevant parameters, including its proportionality."

43. The above attests that the administrative courts in Italy are able to assess whether there was a legal basis for the measure in question, whether the aims pursued were legitimate and whether a given interference with individual rights was proportionate to the legitimate aim or aims pursued. Thus, when access to a certain economic activity is refused on grounds of public interest – such as preventing criminal infiltration – the reasoning of the administrative act is based on factual elements that are susceptible to a full judicial re-examination.

VI. NONETHELESS, BY REASON OF INAPPLICABILITY *RATIONE MATERIAE* OF ARTICLE 8, THE COMPLAINT IS INADMISSIBLE

44. The foregoing considerations expressed my conviction that, even assuming that the complaint under Article 8 was admissible, it was in any event ill-founded as there was no violation, while the complaint under Article 6 (again, based on an alleged insufficiency of judicial review) was

manifestly ill-founded: a finding with which, as I have stated, I concur. However, rather than deeming the complaint under Article 8 merely ill-founded, I consider it, in reality, to have been inadmissible.

45. The primary reason for inadmissibility, in my view (and on this point – I repeat – I dissent from the majority), is that Article 8 is inapplicable *ratione materiae*. As is well known, following the *Denisov* judgment of 2018 (§§ 115-117, cited in the *Versaci* judgment), Article 8 will generally only be engaged where a person has lost his or her employment on account of something he or she has done in his or her private life (reason-based approach) or when the loss of employment has had an impact on private life (consequence-based approach). The majority have chosen to build on the reason-based approach and to rely on one of the few precedents in which such an approach was used, *Mile Novaković v. Croatia* of 2020 (cited in paragraph 81 of the *Versaci* judgment), where the applicant was dismissed from his post at a secondary school for failing to use the standard Croatian language when teaching, a reason closely related to his Serbian ethnic origin and his age and therefore sufficiently linked to his private life. In particular, the majority have attempted to equate the above engagement of a human being's ethnic and age features, which were affected by the interference in *Mile Novaković*, to the fact that the reasons given in the above-mentioned administrative act refusing to grant a public security licence to the applicant, Mr Versaci, were that "he had previously associated with persons with criminal records" and that "his brother had been involved in criminal proceedings for drug offences and had already been given an oral caution by the *questore* and subjected to ... special police supervision" (paragraph 82 of the *Versaci* judgment).

46. Leaving aside the fact that, after judicial review, the reason concerning his brother's having been involved in criminal proceedings was no longer material (see the reasoning of the *Consiglio di Stato* in paragraph 20 of the *Versaci* judgment), one must wonder whether the reasons on which the authorities relied were really "linked to the applicant's private life" coming under the protection of Article 8. The same majority reiterate that Article 8 protects the right to private life, including the right "to establish and develop relationships ... that is, the 'right to private social life'", in which the State should not intrude without good cause.

47. As the Grand Chamber pointed out in the *Denisov* judgment, "[c]omplaints concerning the exercise of professional functions have been found to fall within the ambit of 'private life' when factors relating to private life were regarded as qualifying criteria for the function in question and when the impugned measure was based on reasons encroaching upon the individual's freedom of choice in the sphere of private life" (§ 103); and § 104 provides examples of discharge from public office "on the sole ground of ... sexual orientation", "close private relationships, ... clothes and make-up", or "the applicant's beliefs and his wife's clothing".

48. The majority seem to confuse the type of relationships that belong to the protected sphere of private life and those which do not. The Court's case-law has always been clear in stating that Article 8 covers "multiple aspects of the person's physical and social identity" (see *Denisov*, cited above, § 95), in which the individual has freedom of choice. There is no such freedom of choice outside of private relationships and the conduct of persons in public can be (and indeed is) regulated and assessed by the State.

49. If the majority's approach is taken to its extreme, any administrative act and any judicial decision (since such measures generally contain reasoning that evaluates conduct that is mostly public but not without social elements) would, according to the reason-based approach, trigger the protection of Article 8. So, how do we distinguish between "private" social conduct and conduct which is not private? If one carefully examines the above-mentioned case-law it becomes evident that the only protected relationships are those that are "close", in which there is the freedom to establish significant relationships within the personal sphere. Protected conduct is not, at any rate, that consisting in associating with individuals who have police records or criminal backgrounds (a risk assessment which, as I have mentioned, is absolutely necessary in a democratic society wishing to prevent the infiltration of crime into the economy).

50. The reason-based approach, if correctly understood, having thus led to the inapplicability *ratione materiae* of Article 8, it may rapidly be pointed out that the consequence-based approach also brings us no closer to applicability. As the Government rightly suggested, based on the pleadings, there is no indication that the applicant suffered any adverse consequences (again, in the private sphere) as a result of the measure, or that any consequences it may have had reached the threshold of severity established in the Court's case-law (paragraph 75 of the *Versaci* judgment).

51. As regards the applicant's expectations of earnings based on the licence he had hoped might be granted, in paragraphs 79, 84 and 146 of the judgment, the majority correctly refer to the fact that, particularly under Article 8, the Convention does not recognise any general right to employment or to choose a profession. It thus remains difficult for me to understand – under both the reason-based and the consequence-based approaches – how future relationships arising from the granting of a licence can have been considered relevant to "private life" by the majority. In order to confirm that business relationships, especially future ones, do not form part of the rights protected by the Convention, one can also establish a parallel with the Court's settled case-law within the different scope of Article 1 of Protocol No. 1, according to which "future income" can only constitute a "possession" to the extent that it has already been earned, or is definitively payable (for citations and an analysis of the issue, I would refer to the interesting concurring opinion of my esteemed colleague Judge Koskelo in what is one of the few cases the Court has examined regarding public procurement, *Kurban*

v. Turkey, no. 75414/10, 24 November 2020; the majority in that judgment distanced themselves on this point from the established case-law, without giving specific reasons). On this matter, it should also be noted here, incidentally, that the applicant, Mr Versaci, also submitted, in the application form, a complaint under Article 1 of Protocol No. 1: however, as noted in the introductory remarks preceding paragraph 1 of the *Versaci* judgment, it was not communicated, meaning that it must have been declared inadmissible in the decision referenced therein, in accordance with established case-law, unlike in the *Kurban* case, which is something I agree with.

VII. LAST BUT NOT LEAST, THE ARTICLE 8 COMPLAINT IS ALSO INADMISSIBLE FOR FAILURE TO EXHAUST DOMESTIC REMEDIES

52. As mentioned above, I can now conclude with the argument that, logically and legally, should have been the first point discussed, given my decision to dissent also from the majority's finding of admissibility, concerning the requirement to exhaust domestic remedies.

53. As the majority point out (paragraph 64 of the *Versaci* judgment), the Government strongly objected in their first observations that the complaint under Article 8 was, in their view, inadmissible for failure to exhaust domestic remedies: the applicant had neither explicitly nor implicitly raised a complaint of interference with his private life in the domestic courts. In replying to the applicant's submission that he had raised that complaint "in substance" (paragraph 65 of the *Versaci* judgment), the Government (see paragraphs 12 et seq. of their second observations) called the Court's attention to recent, more rigorous developments in the area of this admissibility requirement, which – as is well known – is a visible feature of the subsidiarity of the Convention, a value which must be preserved in order to allow domestic judges to remedy the impugned state of affairs directly (see, very recently, the Grand Chamber's reiteration of the main concepts in *Mansouri v. Italy* [GC] (dec.), no. 63386/16, § 84, 29 April 2025).

54. The majority, in my humble view, have completely disregarded the Government's argument, which I think should have been upheld. The *Versaci* judgment (paragraph 68) merely confines itself to saying:

> "As regards the substance of the arguments raised in the domestic courts, the Court notes that the applicant complained that the criteria used by the *questore* to assess 'good character' had not been supported by any evidence, that the criteria established in the relevant case-law had not been respected, that the refusal had not been based on relevant and sufficient reasons, and that there had been a breach of his right to a fair hearing..."

55. Based on this, the majority "conside[r] that the applicant raised the Convention complaints brought before the Court ..., and specifically the same legal arguments, with the domestic authorities, at least in substance" (paragraph 69). In a nutshell, because some of the domestic "arguments" or

"submissions" (allegations of insufficient reasoning as to lack of good character, lack of evidence, procedural shortcomings) resembled those put forward before the Court in support of the allegation of a violation of the "right" protected by Article 8, it follows – according to the majority – that "the applicant raised [also domestically] the Convention complaints brought before the Court ..., and specifically the same legal arguments" (emphasis added).

56. This sentence probably contains the most flagrant mistake made by the majority in a judgment which, as I have mentioned, contains other flaws. Indeed, the Court's case-law is clear in the opposite direction, namely, that similarity of "arguments" or "submissions" is not enough:

(a) It is not sufficient that the applicant may have exercised a remedy which could have overturned the impugned measure on other grounds not connected with the complaint of a violation of a Convention "right", since it is the Convention complaint which must have been aired at national level for there to have been exhaustion of "effective remedies" (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153 and 29 others, § 75, 25 March 2014, and *Nicklinson and Lamb v. the United Kingdom* (dec.), nos. 2478/15 and 1787/15, § 90, 16 July 2015). In sum, the mere fact that an applicant has submitted his or her case to the relevant court does not of itself constitute compliance with the requirements of Article 35 § 1.

(b) The Court has no power to substitute itself for the applicant and formulate new complaints simply on the basis of the "arguments" and "facts" advanced (see *Grosam v. the Czech Republic* [GC], no. 19750/13, § 91, 1 June 2023).

(c) Thus, in order properly to exhaust domestic remedies it is not sufficient for a violation of the Convention to be "evident" from the "facts" of the case or the applicant's "submissions". Rather, the applicant must actually have complained (expressly or in substance) about the violation of the Convention "right" in a manner which leaves no doubt that the same complaint that was subsequently submitted to the Court had indeed been raised at the domestic level (see *Peacock v. the United Kingdom* (dec.), no. 52335/12, § 38, 5 January 2016; *Farzaliyev v. Azerbaijan*, no. 29620/07, § 55, 28 May 2020; *Grosam v. the Czech Republic*, cited above, § 90; and *Fu Quan, s.r.o. v. the Czech Republic* [GC], no. 24827/14, §§ 145 and 172, 1 June 2023).

57. The above would suffice, since it is the same reasoning by the majority that reveals their defective approach. But, to be on the safe side, I reread all the documents in the case file and found that a possible threat to "private life" (or, most probably, to "possessions") – in other words, to a Convention right – had been mentioned domestically only once, and cursorily at that (the Government used the expression: in a "fleeting" manner), in the applicant's request for provisional measures lodged on the same day as the first domestic claim was filed with the TAR. In that document, which was

also spotted by the Government, the applicant mentioned that the lack of a licence would have left him without income (and, as mentioned above, the majority acknowledge as much in paragraph 14 of the *Versaci* judgment).

58. This, however, whatever my distinguished colleagues of the majority may hold, does not constitute a complaint (also because it is mentioned only in a preliminary request, and not reiterated in the merits); it merely points to the "serious and irreparable prejudice" the avoidance of which, allegedly, constituted grounds for an interim measure (which was denied – see paragraph 15 of the *Versaci* judgment).

59. Throughout the remainder of the domestic proceedings, the grievances refer to the above-mentioned points (allegations of insufficient reasoning as to lack of good character, lack of evidence, procedural shortcomings). The applicant, being aware of this, argued that we should look at the underlying need to protect private life (see paragraph 65 of the *Versaci* judgment). However, in the face of the Government's penetrating observations, the Court could never have been certain that the complaint had been brought before the domestic courts "in a manner that [left] no doubt" (*Grosam*, cited above, § 90).

VIII. CONCLUSION

60. To conclude, the Court has missed an opportunity to apply the needed rigour and declare inadmissible an application which had no prospect of success. This could have been an occasion to clarify the proper way to present domestic courts, and subsequently the Court, with complaints engaging "private life" under Article 8, after distinguishing what constitutes "private life" from that which does not and relates only to other spheres. To quote once more my distinguished colleague Judge Koskelo in her separate opinion in the *Kurban* case (cited above), albeit in connection with Article 1 of Protocol No. 1 in the area of public procurement, "the implications could be considerable, including for the Court's caseload and case-processing time, as well as for legal certainty".

61. Even assuming that the Court was right to examine the merits, it has missed the opportunity to clarify the role of authorities in regulating activities – such as gambling, but also banking, financial services and public procurement – involving large cashflows and complex networks of operators, which all present opportunities for laundering illicit profits and generating new revenue susceptible to reinvestment in criminal activities.

62. In this specific context, the European legal systems have developed a number of preventive mechanisms aimed at excluding individuals and entities considered "at risk" from participating in certain sectors. These mechanisms are not punitive in nature, but rather preventive and administrative, designed to reduce the opportunity for criminal exploitation. The notion of a "risk-based approach" is now well established in both domestic and international

practice. It allows public authorities to take precautionary action even where there is no definitive proof of criminal conduct, as long as the decision is reasoned and subject to appropriate safeguards: the aim is not to punish but to protect the public interest, in line with the principles of good governance and the rule of law. The use of the notion of "good character" is one of those tools, based on an assessment of the applicant's integrity and reliability that is adequately reasoned, supported by factual elements and subject to meaningful judicial scrutiny.

PARTLY DISSENTING OPINION OF JUDGE FELICI, JOINED BY JUDGE PACZOLAY

1. With all due respect to my colleagues in the majority, I am unable to concur either with their reasoning or their conclusion that there has been no violation of Article 8.

2. The applicant complained of a violation of his right to respect for his private and professional life, as provided for in Article 8 of the Convention. He argued clearly that the refusal to grant him a public security licence had not been "in accordance with the law", as the concept of "good character" was too vague and unforeseeable and therefore incapable of sufficiently defining the scope of the discretion conferred on the *questore*; the legal framework did not provide the requisite guarantees against arbitrariness, particularly as it did not allow a full judicial review of the administrative decision complained of. He further argued that the refusal had not been "necessary in a democratic society" or proportionate, as it had not been justified by relevant and sufficient reasons and the competent domestic courts had not thoroughly reviewed the reasons that had been given.

3. The notion of "private life" does not exclude, in principle, activities of a professional or business nature (see *Guliyev v. Azerbaijan*, no. 54588/13, § 40, 6 July 2023, and *Ballıktaş Bingöllü v. Turkey*, no. 76730/12, § 56, 22 June 2021). It is in the course of their working lives that the majority of people have a significant, if not the greatest, opportunity to develop relationships with the outside world (see *Bărbulescu v. Romania* [GC], no. 61496/08, § 71, 5 September 2017).

Having regard to these general principles, the reasoning developed by the judgment in paragraphs 82-85 is impeccable, highlighting a clear link between the disputed measure and the applicant's private life so that Article 8 was engaged in the present case under the Court's reasons-based approach.

Moreover, it is certain that the applicant exhausted the available domestic remedies. Accordingly, I fully agree with the majority that the complaint is admissible, although I would specify that the interference in issue in this case did not concern the denial of the licence in itself. Nor was there any right to obtain a licence that the Court might have recognised as such.

4. I also agree with the judgment's conclusions (paragraphs 110-120) as to the concept of "good character", namely, that this concept was sufficiently foreseeable and capable of defining the scope of the discretion conferred on the *questore*. It cannot be said, however, that the measure was amenable to sufficient judicial review to guarantee against arbitrary interference with fundamental rights by the domestic authorities.

5. The Constitutional Court (judgment no. 440 of 2 December 1993) found that, in order to be compatible with the relevant constitutional principles, a vague and unspecified concept such as "good character" had to

be subjected to the full judicial scrutiny of the administrative courts (see paragraph 35-42 of the judgment).

The case-law of the *Consiglio di Stato* established that the scope of the relevant judicial review of the police authority's assessment was limited to the absence of illogical reasoning, distortion of the purposes of the law, or misinformation (see *Consiglio di Stato*, Fourth Section, judgment no. 1502 of 23 March 2004); to irrationality, arbitrariness or incoherence (in the public administration's assessment of "atypical circumstances" (*circostanze atipiche*); see *Consiglio di Stato*, Sixth Section, judgments nos. 3227 of 25 June 2008 and 3094 of 20 May 2009, and *Consiglio di Stato*, Third Section, judgment no. 1867 of 3 April 2013); or to illogical reasoning, failure to satisfy required conditions and misuse of powers ("*vizi di illogicità, assenza dei presupposti e sviamento di potere*"; see *Consiglio di Stato*, Third Section, judgment no. 4213 of 1 June 2021).

The broad discretion conferred on the *questore* by the very vague and unspecified concept of "good character" required a thorough judicial review, as established by the Constitutional Court's ruling cited above. However, such a "full" (*esauriente*) judicial review does not appear to have been available, in a general manner, from the administrative case-law.

6. Turning to the review that was in fact carried out in the applicant's case, the TAR and the *Consiglio di Stato* limited themselves to a purely formal examination of the *questore*'s decision, observing that the broad discretion conferred on the police authority could only be challenged in case of arbitrariness or manifest unreasonableness. The domestic administrative courts did not have the power to review the factual foundations or the legality, necessity and proportionality of a refusal of a public security licence (see, *a contrario*, *Giuliano Germano v. Italy*, no. 10794/12, § 118, 22 June 2023).

7. The principle of "full jurisdiction" has been clarified in a number of places in the Court's case-law, where the Court has often interpreted it in a flexible manner, particularly in administrative-law cases where the jurisdiction of the appellate court was restricted on account of the technical nature of the dispute's subject matter (see *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], no. 5809/08, § 130, 21 June 2016). There are some specialised areas of the law where the courts have limited jurisdiction as to the facts, but may overturn the administrative authorities' decision if it was based on an inference from facts which was perverse or irrational. In these types of cases, the Court has placed particular emphasis on the respect which must be accorded to decisions taken by the administrative authorities on grounds of expediency and which often involve specialised areas of law (see *Ramos Nunes de Carvalho e Sá v. Portugal*, nos. 55391/13 and 2 others, § 178 6 November 2018). The fact that the regulation of gambling, due to the nature of the industry, calls for particular monitoring and entails a classic exercise of administrative discretion does not dispense

with the requirement that administrative decisions must be subjected to "subsequent control by a judicial body that has full jurisdiction" (see *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 32, ECHR 2002-IV). While it is plausible that a "specialised area of law", in particular the regulation of the gambling industry, was at issue, the domestic authorities' decision was not characterised by its "technical nature". By contrast, the case raised a question as to the assessment of the facts, namely, whether there were specific risks involved in the activities subject to the public security licence, in particular, "specific acts, facts or relationships which, by their nature, intensity, characteristics, or environmental context [might have] raise[d] fears that the public security licence might [have been] abused or, even worse, unlawfully used by its owner or by third parties, or even persons linked to criminal organisations" (see paragraph 59 of the judgment). It follows that the scope of the judicial review exercised by the administrative courts in the present case was neither appropriate nor sufficiently thorough and, therefore, was not capable of preventing arbitrariness. The measure at issue was, in my opinion, in breach of the principles of lawfulness and of the rule of law and was thus "not in accordance with the law".

8. Even if one were to shift the focus from the perspective adopted above to one concerned with ascertaining whether the measures, as concretely applied in the specific circumstances of the case, were "necessary in a democratic society", the finding of a violation of Article 8 would remain unchanged.

9. Having regard to the applicant's complaints in this respect (see paragraph 2 above), the principle of subsidiarity and the need to avoid the appearance of a fourth instance review prescribe a "process-based review".

It is of fundamental importance that the national authorities state the reason for administrative acts affecting individual interests (see *Giuliano Germano*, cited above, § 132): it is for the national authorities to make the initial assessment of necessity, while the final evaluation as to whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention (see *Ghailan and Others v. Spain*, no. 36366/14, § 62, 23 March 2021, and *Naumenko and SIA Rix Shipping v. Latvia*, no. 50805/14, § 50, 23 June 2022). Moreover, the national authorities must apply standards which are in conformity with the principles embodied in the Convention and base their decisions on an acceptable assessment of the relevant facts (see *Guliyev and Sheina v. Russia*, no. 29790/14, § 52, 17 April 2018).

The Court has previously held that national authorities may legitimately take measures which prevent certain individuals from practising certain sensitive professions, subject, however, to compliance with a number of requirements (see *Advisory opinion as to whether an individual may be denied authorisation to work as a security guard or officer on account of*

being close to or belonging to a religious movement [GC], request no. P16-2023-001, the *Conseil d'État* of Belgium, §§ 84-85 and 92, 14 December 2023). In particular, the Court has held that the risk analysis that the domestic authorities must carry out should take account of the nature of the specific role in question (ibid., § 93) and that this assessment must be individual, detailed, and carried out in the light of the personal situation of the individual concerned (ibid., § 100), without entirely disregarding the general context (ibid., § 101). Regardless of the nature of the right or interest that a preventive measure seeks to protect, there must be a real risk, in other words one that is sufficiently established. The containment of a mere speculative danger, presented as a preventive measure for the protection of democracy and its values, cannot be seen as meeting a pressing social need. Both the personalised assessment of the existence of a risk and the assessment of the reality and scale of that risk by the appropriate national authorities must be amenable to review by an independent judicial authority (ibid., §§ 101 and 105). The relevant authority must be able to perform an effective review of the disputed measure, and that review, in order to meet Convention requirements, must concern the reality of the risk identified, its scale, its nature and its immediacy (ibid. § 112).

10. The *questore*'s measure was based, in essence, on the fact that the applicant had been subjected to checks on many occasions while in the company of persons with serious criminal and police records. While I acknowledge that this circumstance might be regarded as relevant in the abstract, the measure did not contain (as is self-evident, see paragraph 12 of the judgment) any assessment as to whether it could also be considered sufficient, since the applicant's meetings with these individuals were described in an extremely generic fashion, without providing details as to their circumstances, the activities engaged in, whether they were illicit or amounted to ordinary meetings , whether and in what way the size of the city had affected their frequency, the timeframe taken into consideration (around ten years), or whether they were mostly among peers. Nor did it give any explanation as to why the fact of having met with those individuals would in practice have had an impact on the exercise of the activity at issue. The measure thus lacked any detailed, individualised assessment of the existence of a real risk, relying simply on a speculative danger instead.

Before the TAR (see paragraphs 13 and 17 of the judgment) and the *Consiglio di Stato* (see paragraph 19 of the judgment), the applicant raised detailed complaints concerning the *questore*'s failure both to conduct an individualised assessment of his character and to indicate circumstances specifically attributable to him, and concerning the *questore*'s reliance on the unspecified "bad company" he kept, which, on account of its nature, the infrequency of the meetings and the passage of time, was not reasonably capable of justifying the finding that the he was unreliable. Both the TAR and the *Consiglio di Stato* replied that the keeping of such "company" was

sufficient to justify the conclusions reached by the *questore*, without engaging with the critical aspect of the applicant's complaints, namely, the question whether these meetings, in the light of the specific circumstances of the case, were capable of justifying the finding that there was a risk of abuse of the public security licence. The administrative courts thus confined themselves to confirming the reasonableness of the conclusions reached by the *questore*, without conducting a proper assessment of the reality of the risk identified, its scale, its nature and its immediacy, as required by the Convention (see paragraph 9 above).

The interference with the applicant's right to private life cannot therefore be said to have been "necessary in a democratic society" within the meaning of paragraph 2 of Article 8 of the Convention, given both the measure's failure to give sufficient reasons to justify the refusal and the severe limitations of the safeguards in place (in view of how the administrative courts carried out their review of the matter, not fulfilling the "full" judicial review requirement, in particular as to the requisite standard/intensity).