



## Refusal of licence to run a betting business was valid

In today's **Chamber** judgment<sup>1</sup> in the case of **Versaci v. Italy** (application no. 3795/22) the European Court of Human Rights held, by 5 votes to 2, that there had been:

**no violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights.

The case concerned the refusal by the head of the Reggio Calabria police authority (*questore*) to issue the applicant with a licence (*licenza di pubblica sicurezza*) to carry out bookmaking activities on behalf of a foreign company because he did not fulfil the "good character" requirement set out in Royal Decree no. 773 of 18 June 1931 on public order.

Although the Court noted that the reasoning of the decision lacked some detail, it accepted that the *questore* had based his refusal on an adequate assessment of the facts, and his decision had been adequately reviewed by the Regional Administrative Court and the Council of State.

### Principal facts

The applicant, Emanuele Sebastiano Bruno Versaci, is an Italian national who was born in 1985 and lives in San Luca (Italy).

In October 2014 Mr Versaci set up a business taking bets in Italy on behalf of an Austrian bookmaking company. In Italy, a public security licence must be obtained (section 1(643) of Law no. 190/2014) to lawfully carry out bookmaking activities on behalf of a foreign company. Public security licences are regulated by Royal Decree no. 773 of 18 June 1931 on public order (*Testo Unico delle Leggi di Pubblica Sicurezza* (TULPS)).

On 8 January 2015 the Austrian bookmaking company applied for Mr Versaci's situation to be regularised and he, in turn, applied to the head of the Reggio Calabria police authority for a licence. The police headquarters asked for further documentation, which he produced in early August 2015.

The following January, the *questore* notified Mr Versaci that his application was going to be refused because he did not meet the TULPS "good character" requirement. The reason given was that his brother was involved in judicial proceedings concerning drug trafficking and had been subjected to a police caution and special police supervision, and because Mr Versaci regularly frequented people with criminal and police records – for offences that went from handling stolen goods to kidnapping, drug trafficking, and manslaughter. The *questore* considered that Mr Versaci could not have the high moral standards required by law for the public security licence. In particular, he was concerned about criminal infiltration or that Mr Versaci might use the bookmaking activities to launder money from illegal activities.

Mr Versaci challenged the notification, claiming, amongst other things, that the character assessment had to be based on his own conduct and not the conduct of others. On 3 February 2016 the *questore* refused the applicant's licence application.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

Mr Versaci appealed to the Calabria Regional Administrative Court and asked for the refusal to be provisionally lifted, as his bookmaking activities were the main source of income for his family. He submitted that, given that he had no criminal or police record himself, the refusal of his application had not been based on relevant or proper reasons. Moreover, the refusal had been based on “the results of the inquiries undertaken” without describing what those inquiries had consisted of or what conclusions had been drawn.

The Administrative Court dismissed his application. That decision was confirmed in July 2016 by the Council of State, which found that it was not possible to dispel the doubts raised by the applicant’s connections with individuals who had serious criminal and police records.

At the end of December 2017, Mr Versaci received a copy of a police report dated 2 October 2015 from the police headquarters, which concluded that, notwithstanding some problematic association with individuals with criminal and police records, he did not appear to be “unsuitable or a habitual offender”.

In December 2019 Mr Versaci filed further pleadings with the Regional Administrative Court, to no avail. He then lodged an appeal with the Council of State in October 2020, submitting that the Administrative Court’s decision should be reviewed because it referred to circumstances that had not figured in the *questore*’s refusal of his application, notably that his brother was under special police supervision and that his mother had personal connections with a family which was under police investigation. He stated that his brother had been acquitted of the drug trafficking charges since then, and his mother had no criminal or police record. The circumstances referred to by the tribunal were too generic and vague to conclude that he lacked the required “good character”; he had never been prosecuted for any criminal offence and no explanation had been given as to how the fact that, years earlier, he had often been found in the company of persons with criminal and police records justified the finding that he was not “of good character”.

On 24 June 2021, the Council of State dismissed the applicant’s appeal and confirmed the refusal of the licence. It clarified that the police authority had wide discretion in assessing character and that its judgment could not be questioned by the judicial authorities unless it was arbitrary or obviously unreasonable, which it did not deem to be the case here.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Mr Versaci complained that the refusal to grant him a public security licence had been unlawful, as the concept of good character was too vague to be able to define the amount of say the *questore* had in the matter. He argued that the legal framework did not provide the requisite guarantees against arbitrariness and that the refusal had not been proportionate or “necessary in a democratic society”, as the reasons given had not been relevant or sufficient and the national courts had not thoroughly reviewed that lack of reasoning. Relying on Article 6 § 1 of the Convention (right to a fair trial), he also complained that he had not been given opportunities to defend his interest during the administrative and judicial stages of the national proceedings and that the refusal of the licence had not been subjected to sufficient judicial review.

The application was lodged with the European Court of Human Rights on 22 December 2021.

Judgment was given by a Chamber of seven judges, composed as follows:

Ivana Jelić (Montenegro), *President*,  
Alena Poláčková (Slovakia),  
Péter Paczolay (Hungary),  
Gilberto Felici (San Marino),  
Erik Wennerström (Sweden),  
Raffaele Sabato (Italy),

Alain Chablais (Liechtenstein),

and also Liv Tigerstedt, *Deputy Section Registrar*.

## Decision of the Court

### Article 8

The Court noted that the case-law of the Constitutional Court and the Council of State recognised that the “good character” concept gave wide discretion to the police authority. To dispel any uncertainty and difficulties in the way it was interpreted, the Ministry of the Interior had adopted and published Circular no. 1763/2996 in order to clarify the concept and how it was to be assessed. Additional clarifications had subsequently been provided in the guidance on administrative practice, and in the national case-law. In particular, the Council of State had given further clarifications and indications of what should be considered in the assessment. The Court concluded that, while the provision could be taken to be vague and ambiguous, clarifications had been provided which made the “good character” concept sufficiently clear and predictable. The measure was therefore lawful in that respect.

Nevertheless, such wide discretion given to a *questore* to decide on whether to grant or refuse a licence had to be subject to comprehensive judicial review by the administrative courts to guard against arbitrary interference by the authorities. The Court noted that the decision had been appealed against before the Regional Administrative Court and then before the Council of State, both of which were impartial and independent tribunals with the power to carry out thorough reviews. The reasons given by the *questore* had been challenged before each instance, and the reasons given by the Administrative Court had been challenged before the Council of State. Therefore, the judicial review in place had been sufficient to guard against arbitrary interference with Mr Versaci’s fundamental rights. In that respect also, the disputed measure was “in accordance with the law”.

In determining whether the measure had been “necessary in a democratic society”, the Court had already held that it was legitimate for national authorities to take measures to prevent certain individuals from exercising certain sensitive professions, subject to compliance with a number of requirements. In particular, the risk had to be sufficiently established, and the risk analysis had to take into account the nature of the role in question, the personal situation of the individual concerned, the context in general and even the potential scale of the consequences if the risk were not eliminated in time. Lastly, the assessment of the reality, nature, scale and immediacy of that risk had to be reviewable by an independent judicial authority.

In assessing whether the reasons given by the *questore* to justify the refusal of Mr Versaci’s application for a public security licence had been relevant, sufficient, and subject to sufficient judicial review, the Court found that the specific regional context meant that the authorities had to ensure that a public security licence was only granted to trustworthy people to avoid the risk of money laundering or other crimes being committed. Furthermore, the refusal to grant a public security licence to Mr Versaci had only affected his private life in so far as it had been based on reasons linked to his private life, and notably because he had previously frequented persons with criminal and police records. Nevertheless, the Court found that the reasoning was quite short and superficial and could have been more detailed and specific. At the same time, the decision had been based on questions concerning Mr Versaci’s character and his overall social and family environment, and the reasoning in the decision had covered the specific risks in the geographical area where his bet-taking activity would be carried out. The Court recognised that the national authorities were better placed than an international court to evaluate local needs and conditions. The decision had mentioned the facts that had been ascertained and had concluded that there was a real risk that the public security licence would be used for other purposes. In that light, although the Court would have wished for more detailed reasoning, it accepted

that the *questore* had based the refusal on an adequate assessment of the facts and had given relevant and sufficient reasons for finding that the applicant did not have the required “good character”.

As to whether the refusal had been subjected to sufficient judicial review, the Court noted that the decision had been judicially reviewed at two levels of jurisdiction, in proceedings in which Mr Versaci had been represented by a lawyer and had been able to publicly defend his case.

In particular, the Court noted that the Regional Administrative Court had taken into account the applicant’s arguments but had found that they did not dispel the serious doubts raised by his frequenting persons with criminal and police records. The Council of State had held that the numerous criminal offences committed by people close to the applicant had justified the refusal, since arranging, collecting and managing sports betting with electronic pay-outs could easily be used for laundering money from organised crime. The Court could not discern any flagrant arbitrariness in the review and found that the refusal had been “necessary in a democratic society”.

The Court held, by 5 votes to 2, that there had been no violation of Article 8 of the Convention.

### Article 6 § 1

Having already concluded that there had been a sufficient judicial review, the Court rejected this complaint as manifestly ill-founded.

### Separate opinion

Judge Sabato expressed a partly dissenting, partly concurring opinion. Judge Felici expressed a partly dissenting opinion, joined by Judge Paczolay. These opinions are annexed to the judgment.

*The judgment is available only in English.*

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