



## The disqualification criteria for candidates in Italian regional elections, where a conviction has become final, do not breach the Convention

Today's Chamber judgment<sup>1</sup> in the case of [Miniscalco v. Italy](#) (application no. 55093/13) concerned an applicant (Marcello Miniscalco) who complained that he had been barred from standing as a candidate in the 2013 regional elections on account of a previous conviction for abuse of authority, which had become final in 2011. This disqualification arose from the entry into force, in January 2013, of Legislative Decree no. 235/2012.

Mr Miniscalco argued that the application of this decree's provisions to his candidacy had amounted to the imposition of a new penalty, over and above that entailed by his final conviction in 2011, and represented the retroactive application of a more stringent penal law. He relied in this connection on Article 7 (no punishment without law) of the European Convention on Human Rights and Article 3 of Protocol No. 1 (right to free elections) to the Convention.

The Court declared **the complaint under Article 7 (no punishment without law) inadmissible**. It considered that the disqualification from standing as a candidate in regional elections could not be regarded as equivalent to a criminal sanction within the meaning of Article 7 of the Convention.

The Court further held, unanimously, that there had been **no violation of Article 3 of Protocol No. 1 (right to free elections)**, finding that the disqualification from standing as a candidate in regional elections was not disproportionate to the legitimate aim pursued by the Italian authorities (ensuring the proper functioning of the public authorities in general).

In particular, the Court found that, in this national context, an immediate application of the disqualification from standing as a candidate in regional elections was consistent with the legislature's stated aim, namely to exclude persons convicted of serious offences from electoral procedures and thus to protect the integrity of the democratic process. The Court accepted the Italian legislature's decision to use the date on which the criminal conviction became final as the basis for applying the disqualification, rather than the date on which the offences had been committed. In applying the measure to all individuals convicted of the offences listed in Legislative Decree no. 235/2012 after the latter's entry into force, the Italian legislature had clearly intended to supplement and strengthen the legislative framework for combatting unlawful activity within the public authorities.

### Principal facts

The applicant, Marcello Miniscalco, is an Italian national who was born in 1965 and lives in Rocchetta a Volturno (Italy).

In 2013 the Regional Electoral Commission examined the list of candidates for the 2013 regional elections, on which Mr Miniscalco's name appeared. It noted that Mr Miniscalco's written affirmation that there were no grounds for barring him from standing as a candidate had not been truthful, that his criminal record indicated that he had been convicted on three occasions of abuse of

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).

authority, and that the third conviction had become final in December 2011. The Regional Electoral Commission decided to remove Mr Miniscalco's name from the list of candidates for the regional elections, in application of Article 7 of Legislative Decree no. 235/2012 (entry into force: 5 January 2013), which provided, in particular, that anyone who had been sentenced in a final judgment for, among other offences, abuse of authority (Article 323 of the Criminal Code), was disqualified from standing in regional elections. Mr Miniscalco challenged this decision, but the Italian courts rejected his appeal.

In 2017, having secured his rehabilitation, Mr Miniscalco was again able to stand as a candidate in the regional elections.

## Complaints, procedure and composition of the Court

Relying on Article 7 (no punishment without law), Mr Miniscalco complained about the removal of his name from the list of candidates in the 2013 elections in application of Legislative Decree no. 235/2012 which, in his argument, amounted to retroactive application of a more severe rule.

Relying on Article 3 of Protocol No. 1 (right to free elections), he complained that the disqualification for standing for election had unlawfully limited his passive electoral rights.

The application was lodged with the European Court of Human Rights on 2 August 2013.

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

Ksenija **Turković** (Croatia), *President*,  
Alena **Poláčková** (Slovakia),  
Péter **Paczolay** (Hungary),  
Gilberto **Felici** (San Marino),  
Erik **Wennerström** (Sweden),  
Raffaele **Sabato** (Italy),  
Lorraine **Schembri Orland** (Malta),

and also Renata **Degener**, *Section Registrar*.

## Decision of the Court

### [Article 7 \(no punishment without law\)](#)

Mr Miniscalco asserted in substance that the application of the provisions of Legislative Decree no. 235/2012 had amounted to the imposition of a new penalty, over and above that entailed by his final conviction in 2011 for abuse of authority.

The Court reiterated that, in principle, the area of political and electoral rights did not fall within the scope of Articles 6 § 1 (right to a fair hearing) and 7 of the Convention. Thus, in the majority of cases dealt with concerning disqualification to stand for election or the loss of an electoral mandate, the Convention institutions had held that neither Article 6 in its criminal aspect, nor Article 7, were applicable.

In the present case the Court noted that the prerequisite for the measure imposed on Mr Miniscalco had been his final criminal conviction in December 2011 for abuse of authority. It noted that the explanatory memoranda in respect of Law no. 190/2012 and Legislative Decree no. 235/2012 had explicitly stated that the aim of combatting corruption and illegal activities was to be pursued by means of a multidisciplinary approach whereby penalties would be only one of the methods used. The choice of a final conviction for predefined offences as a ground for disqualification from holding elected office had been based on the legislature's wish to base the matter on abstract criteria. Such

convictions corresponded to a finding that the persons concerned were irrevocably unfit to discharge office, the aim being to preserve the proper functioning and transparency of the public authorities and the free decision-making process of elected bodies. The inclusion of abuse of authority as one of the factors justifying the disqualification in question was intended to strengthen the fight against the problem of infiltration of the public authorities by organised crime. As the Constitutional Court had emphasised in its judgment no. 236/2015, restrictions on electoral rights had already been in force prior to this Legislative Decree.

The Court also attached weight to the approach taken by the Italian Constitutional Court, which had established that the contested measure was neither a penalty nor a penal effect of the conviction. It arose from loss of the subjective condition permitting access to elective office and its exercise. Candidates whose names were removed from the list of candidates following the loss of their passive electoral rights were not punished on the basis of the seriousness of the offences for which they had been charged and convicted by the criminal courts; they were removed from the list because they had lost their moral capacity, an essential condition in order to be able to hold representative electoral office.

Furthermore, the disqualification from standing as a candidate in the regional elections entailed only the loss of “passive” electoral rights, in so far as a candidacy that was lodged in spite of disqualification would be removed from the list of candidates by the relevant electoral commission. However, the active aspect of the right to vote was in no way infringed. In addition, Mr Miniscalco had been able to challenge his removal before the Electoral Commission, and subsequently in adversarial proceedings before the administrative courts.

Lastly, the loss of the right to stand as a candidate in the regional elections had had political consequences for Mr Miniscalco. However, this could not suffice for it to be classified as a criminal sanction, especially since he had been able to stand as a candidate in subsequent regional elections in 2017 after securing his rehabilitation; furthermore, his active electoral rights had not been affected.

In consequence, the Court considered that the disqualification from standing as a candidate in the regional elections could not be regarded as the equivalent of a criminal punishment within the meaning of Article 7 of the Convention. This complaint was therefore inadmissible, as being incompatible *ratione materiae* with the provisions of the Convention.

### [Article 3 of Protocol No. 1 \(right to free elections\)](#)

The Court noted that the contested measure had interfered with Mr Miniscalco’s exercise of his electoral rights, safeguarded by Article 3 of Protocol No. 1.

The purpose of the disqualification from standing as a candidate was to extend the range of restrictions on electoral rights which already existed at local level, and corresponded to the urgent need to ensure, in a general manner, the proper functioning of the public authorities, responsible for managing the *res publica*. It regulated access to public life and the free decision-making process of elected bodies. This aim was compatible with the rule of law and the general objectives of the Convention.

In addition, this measure had been surrounded by guarantees. First of all, the disqualification had as a precondition the existence of a final criminal conviction, such as that foreseen for a number of serious offences - which were strictly defined by the law. The choice of this specific prerequisite had been made on the basis of an abstract assessment, a final conviction being the condition which governed the disqualification from standing as an electoral candidate. Such disqualification was automatic, no provision being made for weighing up individual situations or using discretion. The measure complained of was not applicable to all convicted persons without distinction simply on account of their conviction, but to a predefined category of persons, and depended on the nature of

the offences. Thus, the measure in question had been applied to Mr Miniscalco on account of his final conviction in 2011 for an offence against the authorities.

As to the foreseeability of the law (given that disqualification was imposed after Mr Miniscalco's conviction for offences committed before the entry into force of the contested Legislative Decree), the Court noted that, having regard to the wide discretion ("margin of appreciation") enjoyed by the States in respect of limitations on individuals' passive electoral rights, the requirements of Article 3 of Protocol No. 1 were less strict than those concerning Article 7 of the Convention. In the present case, the State's concern had been to organise its system for combatting unlawful activity and corruption within the public authorities.

The Court found that, in this national context, the immediate application of the disqualification from standing as a candidate in regional elections was consistent with the legislature's stated aim, namely to exclude persons convicted of serious offences from electoral procedures and thus to protect the integrity of the democratic process. The Court accepted the Italian legislature's decision, in applying the disqualification, to base the measure on the date on which the criminal conviction became final, rather than the date on which the offences had been committed. In applying the measure to all persons convicted for the offences listed in Legislative Decree no. 235/2012 following the latter's entry into force, the Italian legislature had clearly intended to supplement and strengthen the legislative framework for combatting unlawful activity within the public authorities, which had been the underlying aim of the parliamentary proceedings leading to enactment of the Anti-Corruption Law (no. 190/2012).

Lastly, the Court pointed out that while it was true that the disqualification from standing as a candidate in regional elections was not subject to any time-limit, in the present case Mr Miniscalco had applied for his rehabilitation, then withdrawn the application before the 2013 elections "on the grounds that the Legislative Decree had not yet entered into force". Furthermore, the applicant had subsequently submitted a new request and secured his rehabilitation and the right to stand as a candidate in new regional elections in 2017.

In conclusion, having regard to the fact that the measure disqualifying the applicant from standing as a candidate in the regional elections had not been disproportionate, the Court found that there had been no violation of Article 3 of Protocol No. 1.

*The judgment is available only in French.*

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