



Removal from office of a member of Parliament and disqualification from standing as an electoral candidate on account of a criminal conviction: application inadmissible

In its decision in the case of [Galan v. Italy](#) (application no. 63772/16) the European Court of Human Rights has unanimously declared the application inadmissible.

The case concerned the applicant's forfeiture of his electoral seat as a member of parliament on account of a finding by Parliament that there was a ground of ineligibility following a conviction for corruption.

The Court attached weight to the approach taken by the Italian Constitutional Court, which had established in its case-law that disqualification from standing for election or removal from office were neither penalties nor effects of the criminal conviction. Elected representatives who were removed from their office were excluded from the elected body to which they belonged because they had lost their moral capacity, an essential condition in order to continue to represent electors. The Court considered that the contested disqualification from standing as a candidate in elections and removal from office could not be regarded as the equivalent of a criminal punishment within the meaning of Article 7 of the Convention. This complaint was incompatible with the provisions of the Convention and had therefore to be rejected.

The Court considered that the immediate application of the disqualification from standing as an electoral candidate had been consistent with the legislature's stated aim, namely to exclude persons convicted of serious offences from Parliament and thus to protect the integrity of the democratic process. This disqualification from standing as a candidate in elections could not be regarded as arbitrary or disproportionate.

Lastly, having regard to the guarantees laid down through the "triple validation" parliamentary procedure – the Standing Committee on incompatibilities, disqualifications and removals, the Elections Board and the Chamber of Deputies –, the Court considered that the Convention did not require judicial review of a decision adopted by Parliament in the context of constitutionally reserved powers.

The decision is final.

Principal facts

The applicant, Giancarlo Galan, is an Italian national who was born in 1956 and lives in Rovolon.

Mr Galan stood as a candidate in the parliamentary elections of February 2013 and was elected and proclaimed a member of parliament on 5 March 2013.

In the context of investigations, the public prosecutor's office at the Venice Court asked the preliminary investigations judge (GIP) to place Mr Galan, President of the Veneto Region, in pre-trial detention and to order the preventive seizure of an amount equal to about 4,800,000 euros, on the ground that he was accused of having committed, among other offences, the offence of corruption between 2005 and 2011, which was punishable by a prison sentence ranging from six to ten years.

The GIP granted the request, then, on 4 June 2014, contacted the President of the Chamber of Deputies in order to obtain the Assembly's authorisation to execute the preventive measure. On

10 July 2014 the Chamber of Deputies' Authorisations Board submitted the authorisation to the Assembly, which granted it.

On 8 October 2014, after obtaining agreement from the prosecutor's office, Mr Galan asked for application of the summary procedure for imposition of a sentence at the request of the parties ("patteggiamento", provided for under Article 444 of the Code of Criminal Procedure), specifically in his case two years and ten months' imprisonment and preventive seizure of 2,600,000 euros.

On 16 October 2014 the preliminary hearings judge applied that penalty and ordered the seizure. That decision became final on 2 July 2015, the date on which the Court of Cassation rejected Mr Galan's appeal on points of law.

On 11 November 2015 the prosecutor's office transmitted to the Chamber of Deputies a copy of the GIP's judgment of 16 October 2014. The President of the Assembly then instructed the Elections Board to decide on the challenge to Mr Galan's election on the basis of the provisions of Legislative Decree no. 235/2012. On 23 February 2016 the Standing Committee decided, by a majority, to suggest to the Board that it declare that a ground of disqualification had emerged, and that Mr Galan was to forfeit his seat as a member of parliament. The Board dismissed the applicant's arguments alleging retroactive application of the Legislative Decree, holding that disqualification and removal from office were not criminal-law matters but were the consequences of the loss of an objective criterion for continuing to hold elected office.

On 8 March 2016 the Elections Board approved the Standing Committee's proposal by a majority. On 9 March, its chairperson informed Mr Galan about that decision, the fixing of 7 April as the date of the public sitting, and about the options of submitting further documents, being represented by counsel and making oral submissions. The Board made a public statement about its decision to propose that the Assembly remove Mr Galan from his seat.

On 27 April 2016 the Chamber of Deputies declared that the applicant was to forfeit his parliamentary seat with immediate effect, on account of emergence of a ground of disqualification.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 27 October 2016.

Relying on Article 7 (no punishment without law), the applicant alleged that the application of Legislative Decree no. 235/2012, which led to his disqualification from electoral office following his conviction on corruption charges, had breached the principles of lawfulness, foreseeability, proportionality and non-retroactive application of criminal penalties. Relying on Article 3 of Protocol No. 1 (right to free elections), he alleged that the disqualification measure provided for by this Legislative Decree did not comply with the principles of lawfulness and proportionality. He considered that this breached both his right to fulfil his electoral mandate and the electorate's legitimate expectation that he would serve his full term as member of parliament. He alleged discriminatory treatment under Article 3 of Protocol No. 1 taken together with Article 14 (prohibition of discrimination). Lastly, relying on Article 13 (right to an effective remedy), he complained about the lack of an accessible and effective remedy in domestic law by which to contest the compatibility of Legislative Decree no. 235/2012 with the Convention.

The decision 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)

The applicant claimed that the application of the provisions of Legislative Decree no. 235/2012 had amounted to the imposition of a penalty, over and above the main sentence resulting from his final conviction for corruption. The question before the Court was therefore whether the disqualification from standing as an electoral candidate and the forfeiture of parliamentary office fell within the scope of Article 7 of the Convention.

The Court reiterated that, in principle, the area of political and electoral rights did not fall within the scope of Articles 6 § 1 and 7 of the Convention. In order to ascertain the nature of the measures imposed on the applicant, the Court applied the criteria laid down in the [Del Río Prada](#) judgment and the case-law cited in it. The Court analysed their nature, purpose, characterisation under national law, the procedures involved in making and implementation them, and their severity.

The Court first noted that the necessary prelude to the measures imposed on the applicant had been his final criminal conviction of July 2015.

With regard to the nature and purpose of these measures, the Court noted that disqualification from standing as a candidate in elections and removal from office had been intended to strengthen the fight against the problem of infiltration of the public authorities by organised crime. The Court further noted that, in its report published on 1 July 2013, the Group of States against Corruption (GRECO) had welcomed the enactment of Law no. 190/2012 and the progress made by the national authorities in clarifying anti-corruption policies.

With regard to the characterisation of these measures under national law, the Court attached weight to the approach taken by the Italian Constitutional Court, which had established in its case-law that disqualification from standing for election or removal from office were neither penalties nor effects of the criminal conviction. Those measures arose from loss of the subjective condition permitting access to elective office and its exercise. Elected representatives who were removed from office were excluded from the elected body to which they belonged because they had lost their moral capacity, an essential condition for continuing to represent electors.

The ban on holding public office, entailed, under Article 28 of the Criminal Code, the loss of electoral rights, the right to exercise public office, the right to act as a guardian, of academic titles and of salaries, pensions and allowances payable by the State. As to the active and passive aspects of the right to vote, their loss entailed a ban on casting one's vote (active aspect) and on standing for election (passive aspect). The disqualification from standing as an electoral candidate, provided for by Article 1 of Legislative Decree no. 235/2012, entailed the loss of "passive" electoral rights, in that a candidacy which 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. This disqualification corresponded to an absolute ban on holding elected office, since it had an impact on the objective requirement of moral capacity, the absence of which meant that an individual was deprived of his or her passive electoral rights.

The Court then reiterated that the lifting of the disqualification from standing as a candidate, through the rehabilitation process, was explained by the need to eliminate this restriction on passive electoral rights, in so far as, while being necessarily based on a final conviction, the measure itself was not applied by the judicial authorities in the context of criminal proceedings and was not one of its criminal-law consequences.

With regard to the procedures involved in removing the applicant from office, the Court pointed out that this had occurred in three stages before the body to which he belonged: the first before the Standing Committee on incompatibilities, disqualifications and removals, the second before the Elections Board and the third before the Chamber of Deputies. Each stage had included deliberations in line with the specific regulations laid down by the Constitution and the Rules of the Chamber of Deputies.

Lastly, with regard to the severity of the measures, the Court noted that although the inability to hold parliamentary office and loss of the right to stand as an electoral candidate had had political consequences for the applicant, this could not suffice for it to be classified as a criminal sanction, especially since his active electoral rights had not been affected.

In conclusion, the Court considered that disqualification from standing as an electoral candidate and removal from office could not be regarded as the equivalent of a criminal punishment within the meaning of Article 7 of the Convention. In consequence, this complaint was incompatible with the provisions of the Convention and had therefore to be rejected.

Article 3 of Protocol No. 1

The Court emphasised the specific context of the case. Prior to the entry into force of Law no. 190/2012 and of Legislative Decree no. 235/2012, Law no. 50/1990 had already provided, in the context of the fight against the problem of Mafia-type infiltration into public administration, for certain restrictions of passive electoral rights, with the aim of excluding from the local authorities any person who, while holding office, could have undermined the credibility of the institutions.

The Court emphasised that disqualification from standing as an electoral candidate and removal of members of parliament from office had been introduced by the Italian legislature through Enabling Act no. 190/2012 and by the then Government, as part of its delegated powers, through Legislative Decree no. 235/2012; this had been to fill the legislative vacuum since restrictions on electoral rights had already existed at local level since Law no. 50/1990. Clearly, disqualification from standing as an electoral candidate, in the same way as removal from office, corresponded to the urgent need to ensure, in a general manner, the proper functioning of the public authorities, responsible for managing the *res publica*.

With regard to the legal framework, the Court noted that the disqualification from standing for election was surrounded by safeguards. First and foremost, the precondition for such disqualification was the existence of a final criminal conviction, such as that foreseen for a number of serious offences, strictly defined by law. The measure in question had been applied to the applicant on account of his conviction for corruption, an offence falling into the third category set out in Article 1 of Legislative Decree no. 235/2012.

With regard to the alleged breach of the principle of the foreseeability of the law on account of the applicant's conviction for offences committed prior to the entry into force of the Legislative Decree in question, 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, as rapidly as possible, its system for combatting unlawful activity and corruption within the public authorities.

The Court considered that the immediate application of the disqualification from standing as an electoral candidate was consistent with the legislature's stated aim, namely to exclude elected representatives convicted of serious offences from Parliament 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 relevant offences had been committed. The final conviction of July 2015 had been the necessary prelude to the disqualification from standing as a candidate, a

precondition provided for by Article 1 of the Legislative Decree, which had entered into force in January 2013. Lastly, the Court stressed that the contested disqualification was time-limited. Although the applicant had lost his passive electoral eligibility for six years, he had been able to submit a request for rehabilitation to the relevant court with responsibility for the execution of sentences.

In conclusion, the Court considered that the disqualification from standing as a candidate in elections could not be regarded as arbitrary or disproportionate.

[Article 3 of Protocol No. 1 taken together with Article 14](#)

The Court considered that the circumstances of the applicant's case did not raise any issues under Article 14. Legislative Decree no. 235/2012 clearly set out objective situations justifying application of the disqualification measure, depending on the offences committed and the sentences imposed. Those objective situations were the grounds for the decision to deprive the applicant of his parliamentary office, as adopted by the Chamber of Deputies in application of Article 66 of the Constitution. This complaint was ill-founded and had to be dismissed.

[Article 13](#)

The Court could not require that a national court should review the parliamentary procedure concerning the composition of Parliament – and, in particular, the elected assembly's decision to prevent a convicted member of parliament from continuing to exercise his or her functions – without considering the very nature of the constitutional right in question. The national system contained a constitutional provision with regard to Parliament's power to verify not only the credentials of its members, but also the grounds for disqualification and incompatibility that might subsequently arise. This was a general principle of the independence of Parliament in the performance of its task and the need to guarantee the effective functioning of that institution, a value of key importance for a democratic society.

Having regard to the guarantees laid down through the "triple validation" parliamentary procedure – the Standing Committee on incompatibilities, disqualifications and removals, the Elections Board and the Chamber of Deputies –, the Court considered that Article 13 of the Convention did not require judicial review of a decision adopted by Parliament in the context of constitutionally reserved powers.

The decision is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.