



Berlusconi v. Italy case relinquished to the Grand Chamber

The Chamber of the European Court of Human Rights to which the case **Berlusconi v. Italy** (application no. 58428/13) had been allocated has **relinquished jurisdiction in favour of the Grand Chamber of the Court**¹.

Principal facts

The applicant, Silvio Berlusconi, is an Italian national who was born in 1936 and lives in Rome.

On 28 November 2012 the Anticorruption Act (law no. 190 of 6 November 2012, named the “Severino Law” after the Minister of Justice) entered into force. On 31 December 2012 the executive adopted Legislative Decree no. 235 codifying norms on ineligibility (*incandidabilità*) and disqualification from holding elected and governmental office (*divieto di ricoprire cariche elettive e di Governo*) following final convictions for certain offences. This Decree came into force on 5 January 2013. Under Article 1 it is prohibited, in particular, to stand as a candidate for or hold the office of Senator or member of the lower house of parliament when the person concerned has been sentenced in a final judgment to a term of more than two years’ imprisonment for an offence committed with malicious intent. That ban is decided by Parliament (Senate or lower house). The disqualification is equivalent to double the ancillary penalty that can be imposed by courts of law and cannot be for less than six years.

Mr Berlusconi was found guilty (with three other individuals) of tax fraud in favour of Mediaset S.p.A. by the Milan District Court in 2012 and sentenced to four years’ imprisonment (reduced to one year in accordance with Law no. 241/2006), with the ancillary penalty of disqualification from public office for five years. The judgment was upheld in May 2013 by the Milan Court of Appeal, then on 1 August 2013 by the Court of Cassation (save in respect of the ancillary penalty, which was reduced to two years by the Court of Appeal after the matter had been referred back to it by the Court of Cassation).

Pursuant to Article 656, paragraph 5, of the Code of Criminal Procedure, on 2 August 2013 the public prosecutor notified Mr Berlusconi of the order to execute the sentence and the stay of execution pending any request on his part for an alternative to imprisonment. Before that, on 24 February 2013, Mr Berlusconi had been elected Senator. The official proclamation had taken place the following month.

On 2 August 2013, under Articles 1 and 3 of Legislative Decree no. 235/2012, the public prosecutor transmitted an extract of the judgment of the Milan District Court to the President of the Senate, which forwarded it on the same day to the Senate’s Commission for elections and parliamentary immunities for determination of the matters within its remit. On 8 August 2013 that Commission’s President initiated the procedure which could lead to a declaration of removal from office, informing Mr Berlusconi that the case had been referred and that he was entitled to file observations within twenty days and to consult the relevant documents.

In the allotted time, Mr Berlusconi provided the Commission with his observations, appending thereto *pro veritate* opinions seeking to show, in particular, that the Severino Act was unconstitutional. On 7 September 2013 he filed a copy of the application he had just lodged with the European Court of Human Rights.

¹ Article 30 of the European Convention of Human Rights and Article 72 of the Rules of the Court.

With a view to the hearing scheduled for 4 October 2013, on 28 September Mr Berlusconi filed a memorial in which he asked the Commission to suspend the procedure pending the European Court's decision.

Following the scheduled public hearing (broadcast live on the Senate's satellite and on-line television channels), the Commission decided, by a majority, to propose that the Senate remove the applicant from his office. In the report it submitted to the Senate on 15 October 2013, the Commission set out the procedure followed and the questions considered: (1) the nature of the Commission and its duties; (2) the question of the retroactive application of the Severino Law and its conformity with the Constitution; (3) the content of the deliberations and the different views; (4) Law no. 190/2012; (5) the source of the ineligibility (*incandidabilità*); (6) the relevant case-law; (7) the application before the European Court; (8) the question of possible referral to the Court of Justice of the European Union.

On 30 October 2013 the Senate's Commission decided that the chamber's vote on the proposal to remove the applicant from office would take place by open ballot. On 27 November 2013, after almost eight hours of debate, the Senate declared the applicant's office terminated.

Complaints and procedure

The application was lodged with the European Court of Human Rights on 10 September 2013.

In his application to the Court, Mr Berlusconi alleges that there has been a violation of:

- Article 7 (no punishment without law) of the European Convention on Human Rights, on account of the application of the Severino Act (leading to his disqualification from elective office), following his conviction for acts committed before the entry into force of that Act, in breach of the principles of legality, foreseeability and proportionality of criminal sanctions;
- Article 3 of Protocol No. 1 (right to free elections) to the Convention, separately and in conjunction with Article 14 (prohibition of discrimination), arguing that the ineligibility provided for by the Severino Act did not comply with the principles of legality and proportionality in relation to the aim pursued and that it was also discriminatory;
- Article 3 of Protocol No. 1, in that the removal from office would breach, first, the applicant's right to hold office, and secondly, the electorate's legitimate expectation that the applicant would remain in office throughout the parliamentary term;
- Article 13 (right to an effective remedy) of the Convention, as there was no accessible and effective remedy in domestic law by which to challenge (1) the incompatibility of the Severino Act with the Convention and (2) the Senate's decision to remove him from office.

On 5 July 2016 notice of the application was [given](#)² to the Italian Government, together with questions from the Court. The Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber on 6 June 2017.

Please note that under Rule 44 of the [Rules of Court](#):

"4. (a) In cases to be considered by the Grand Chamber, **[the twelve-week period for third-party intervention runs]** run from the notification to the parties of the decision of the Chamber under Rule 72 § 1 to relinquish jurisdiction in favour of the Grand Chamber ...

(b) The time-limits laid down in this Rule may exceptionally be extended by the President of the Chamber if sufficient cause is shown."

² In accordance with Rule 54 of the Rules of Court, a Chamber of seven judges may decide to bring to the attention of a Convention State's Government that an application against that State is pending before the Court. Further information about the procedure after notice of a case is given to a Government can be found in the Rules of Court.

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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.