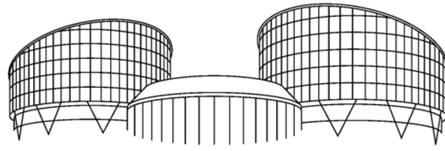

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

DECISION

Application no. 58428/13
Silvio BERLUSCONI
against Italy

The European Court of Human Rights, sitting on 30 August 2018 as a Grand Chamber composed of:
Angelika Nußberger, *President*,
Linos-Alexandre Sicilianos,
Ganna Yudkivska,
Helena Jäderblom,
Robert Spano,
Ledi Bianku,
Nebojša Vučinić,
Paulo Pinto de Albuquerque,
Helen Keller,
Faris Vehabović,
Iulia Antoanella Motoc,
Yonko Grozev,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Pauliine Koskelo,
Jovan Ilievski, *judges*,
Ida Caracciolo, ad hoc *judge*,
and Françoise Elens-Passos, *Deputy Registrar*,
Having regard to the above application lodged on 10 September 2013,
Having deliberated on 22 November 2017 and 30 August 2018, delivers the following decision:

PROCEDURE AND FACTS

1. The applicant, Mr S. Berlusconi, is an Italian national who was born in 1936 and lives in Rome. He was represented before the Court by

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Mr A. Saccucci, Mr B. Nascimbene, Mr E. Fitzgerald and Mr S. Powles, lawyers practising in Rome, Milan and London respectively.

2. The Italian Government (“the Government”) were represented by their co-Agents, Ms P. Accardo and Ms M.G. Civinini.

3. The applicant alleged, in particular, that the application of Legislative Decree no. 235/2012, resulting in the invalidation of his election to the Senate after he had been disqualified from standing for election on account of his conviction for tax fraud, had breached Article 7 of the Convention, Article 3 of Protocol No. 1 and Article 13 of the Convention.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court).

5. On 5 July 2016 the Government were given notice of the application, together with questions about the above complaints.

6. On 6 April 2017, after Guido Raimondi, the judge elected in respect of Italy, had withdrawn from sitting in the case (Rule 28), the President of the First Section appointed Ida Caracciolo to sit as an *ad hoc* judge (Rule 29).

7. On 6 June 2017 a Chamber of the First Section, composed of Linos-Alexandre Sicilianos, President, Kristina Pardalos, Ledi Bianku, Robert Spano, Pauliine Koskelo, Jovan Ilievski and Ida Caracciolo, judges, and Abel Campos, Registrar, relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected to such relinquishment (Article 30 of the Convention and Rule 72). The composition of the Grand Chamber was determined in accordance with the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

8. The applicant and the Government each filed observations on the admissibility and merits of the application. In addition, third-party comments were received from the European Commission for Democracy through Law (“the Venice Commission”), which had been given leave by the President of the Grand Chamber to intervene in the written procedure (Rule 44 § 3 (a)). The parties replied to those comments in writing (Rule 44 § 6).

9. On 31 August 2017 the President gave leave to the *Associazione Politica Nazionale Lista Marco Pannella* to intervene as a third party and to submit written comments (Rule 44 § 3 (a)). On 11 October 2017 the President decided that the comments received at the Registry on 21 September 2017 should not be included in the case file as they did not comply with the formal and substantive requirements (Rule 44 § 5).

10. A hearing took place in public in the Human Rights Building, Strasbourg, on 22 November 2017 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Ms	M.G. CIVININI,	
Ms	P. ACCARDO,	*Co-Agents*,
Ms	S. FERIOZZI,	
Ms	V. DE MARTIN,	
Mr	G. VEGGI,	*Assistants*;

(b) *for the applicant*

Mr	A. SACCUCCI,	
Mr	B. NASCIMBENE,	
Mr	E. FITZGERALD,	
Mr	S. POWLES,	*Counsel*,
Mr	F. COPPI,	
Mr	N. GHEDINI,	*Advisers*,
Ms	G. BORGNA,	
Mr	F. CIANCIO,	*Assistants*.

The Court heard addresses by Ms Civinini, Mr Fitzgerald, Mr Nascimbene and Mr Saccucci, and also their replies to questions from judges.

A. The circumstances of the case

1. The Anti-Corruption Law

11. On 28 November 2012 Law no. 190/2012 came into force (see paragraphs 42-44 below). Section 1(1) of the Law provided in particular, in accordance with Article 6 of the United Nations Convention against Corruption (see paragraph 50 below), adopted in New York on 31 October 2003 (and ratified by Italy in October 2009), and Articles 20 and 21 of the Council of Europe Criminal Law Convention on Corruption (see paragraph 51 below), adopted in Strasbourg on 27 January 1999 (and ratified by Italy in June 2013), that a National Anti-Corruption Authority was to be established and a national action plan drawn up to “monitor, prevent and combat corruption and unlawful activity within the public authorities”. As was noted in the report introducing in Parliament the Bill that was to become Law no. 190/2012, the establishment of a national anti-corruption plan had become essential, firstly in view of the conclusions of the evaluation conducted in 2008 and 2009 by the Group of States against Corruption (GRECO – see paragraph 52 below), and secondly because of the finding that most European States already had such a plan.

12. Bill no. 2156 had been put before the Senate in May 2010 by the Minister of Justice of the “Berlusconi IV Government” and, on completion

of the parliamentary procedure, had then been put before the Chamber of Deputies by the Minister of Justice of the "Monti Government" in October 2012.

13. Subsection 63 of section 1 of Law no. 190/2012 delegated powers to the government to adopt, within one year, a legislative decree consolidating in a single instrument the provisions on disqualification from standing for election (*incandidabilità*) to bodies including the European Parliament, the Chamber of Deputies and the Senate, and disqualification from holding elected and government office (*divieto di ricoprire cariche elettive e di Governo*). Subsection 64 laid down the strict framework for the criteria to be applied.

2. Legislative Decree no. 235 of 31 December 2012

14. On 6 December 2012, acting within its delegated powers, the "Monti Government", on a proposal by its Minister for the Interior, adopted Legislative Decree no. 235 ("Legislative Decree no. 235/2012" – see paragraphs 46-49 below).

15. Article 1 of Legislative Decree no. 235/2012 provides, *inter alia*, that anyone who has been sentenced in a final judgment to more than two years' imprisonment for an offence committed with malicious intent carrying a maximum sentence of at least four years' imprisonment is disqualified from standing for election or serving as a member of the Senate or the Chamber of Deputies. Pursuant to Article 3, where the ground for such disqualification arises or is established during the senator's or deputy's term of office, the house of Parliament to which he or she belongs must deliberate on the matter in accordance with Article 66 of the Constitution (see paragraph 41 below). The disqualification from standing for election provided for in Legislative Decree no. 235/2012 is valid for a duration equivalent to double the length of the ancillary penalty of temporary disqualification from public office that may be imposed by the criminal courts, and in any event not less than six years; it is applicable even if no such ancillary penalty is imposed (Article 13) and is effective from the date on which the judgment becomes final.

3. The applicant's conviction

16. On 26 October 2012, in the context of the "Mediaset trial", the Milan District Court found the applicant guilty (with three other individuals) of tax fraud for the years 2002 and 2003 and sentenced him to four years' imprisonment (reduced to one year as a result of a remission of sentence), together with an ancillary penalty of disqualification from public office for five years (entailing, among other things, a prohibition on voting and standing for election). The judgment was then upheld on 8 May 2013 by the

Milan Court of Appeal, and subsequently on 1 August 2013 by the Court of Cassation in respect of the main sentence.

17. The Court of Cassation remitted the question of the determination of the ancillary penalty to the Milan Court of Appeal.

18. On 19 October 2013 the Court of Appeal set the duration of the ancillary penalty at two years. It refused a request by the applicant for a ruling to be sought from the Constitutional Court on the alleged incompatibility of Article 13 of Legislative Decree no. 235/2012 with Article 25 § 2 of the Constitution, by which the retroactive application of criminal legislation was prohibited. The Court of Appeal found that this matter fell outside the scope of the case, which was limited to determining the duration of the ancillary penalty.

19. On 25 November 2013 the applicant appealed on points of law. In a judgment of 18 March 2014 (no. 16206/2014) the Court of Cassation upheld the judgment of the Court of Appeal.

20. On 2 August 2013 the public prosecutor had notified the applicant of the order to execute the sentence and, at the same time, the suspension of its execution pending a possible request for an alternative measure to detention.

21. On 10 April 2014 the Milan Sentence Supervision Court granted the applicant an alternative measure to detention.

22. On 9 April 2015, on completion of the alternative measure, the Sentence Supervision Court declared that the main sentence and the ancillary penalty of temporary disqualification from public office had expired. The decision was deposited with the registry on 14 April 2015. In the absence of an appeal on points of law by the public prosecutor within fifteen days, the decision became final.

4. *Procedure for removal from office as a senator*

23. On 24 February 2013 elections to the Senate had been held, with the deadline for submitting the lists of election candidates to the competent bodies set at 21 January 2013. The applicant stood as a candidate and was elected to the Senate. The official proclamation took place the following month.

24. Pursuant to Article 13 of Legislative Decree no. 235/2012, the applicant was disqualified from standing for election for six years with effect from 1 August 2013, the date on which his conviction became final (see paragraph 16 above).

25. On 2 August 2013, in accordance with Articles 1 and 3 of Legislative Decree no. 235/2012, the public prosecutor transmitted an extract from the Milan District Court's judgment to the President of the Senate, who forwarded it on the same day to the Senate's Committee on Elections and Parliamentary Immunity. Under Rule 19, paragraph 4, of the Rules of the Senate, this body is responsible for verifying senators'

credentials and any grounds for ineligibility or disqualification that may arise after their election.

26. On 8 August 2013 the chair of the Committee initiated a procedure for a possible challenge to the applicant's election, informing the latter that following the referral of the matter to the Committee, he was entitled to file observations within twenty days and to consult the relevant documents.

27. On 28 August 2013 the applicant submitted his observations to the Committee, appending six *pro veritate* opinions arguing, in particular, that Legislative Decree no. 235/2012 was unconstitutional.

28. On 7 September 2013 he submitted a copy of the application he had just lodged with the European Court of Human Rights and asked for the procedure to be suspended pending the Court's decision.

29. On 10 September 2013 the Committee's rapporteur submitted a report in which he proposed that: (1) the validity of the applicant's election be confirmed; (2) several questions of constitutionality be referred to the Constitutional Court; and (3) a question be referred to the Court of Justice of the European Union (CJEU) for a preliminary ruling.

30. On 18 September 2013 the Committee rejected the three proposals, by a majority, and declared that there was a challenge to the applicant's election. As Rule 11 of the Committee's Rules on Verification of Credentials (*Regolamento per la verifica dei poteri della Giunta*) provides that the rapporteur is to be replaced in such circumstances, the chair of the Committee decided to take over the role himself. He then set 4 October 2013 as the date of the public sitting at which the debate on the challenge to the applicant's election was to take place (in accordance with Rule 14).

31. On 28 September 2013, in advance of the sitting, the applicant filed submissions in which he reiterated his arguments.

32. On 4 October 2013, following the public sitting (broadcast live on the Senate's satellite channel and online), at which neither the applicant nor his representative had been present, the Committee deliberated in private and decided, by a majority, to propose that the Senate invalidate the applicant's election.

33. In a report submitted to the Senate on 15 October 2013, the Committee outlined the procedure that had been followed and the points raised and discussed, namely: (1) the nature of the Committee and of its functions; (2) the alleged retroactive application of Legislative Decree no. 235/2012 and the problems as to its constitutionality; (3) the content of the discussions and the different views of its members; (4) Law no. 190/2012; (5) the ground for disqualification from standing for election; (6) relevant precedents; (7) the application to the European Court of Human Rights; and (8) the possibility of referring a question to the CJEU.

34. The report noted, in particular, that since the Committee was not a judicial body, the procedure before it was not judicial in nature and was "not guided by the individual's electoral rights, but by the interest of Parliament

in ensuring that its members satisfy the requirements of lawfulness, including that of not having been convicted in a final judgment". Accordingly, the nature of the Committee did not empower it to seek a ruling from the Constitutional Court on the alleged retroactive application of the Legislative Decree in question.

35. As to how removal from office should be classified, the Committee pointed out that in *Paksas v. Lithuania* ([GC], no. 34932/04, ECHR 2011 (extracts)) the Court had ruled that a measure of this kind that had been applied to a country's president was not criminal in nature, on the grounds that, as it had found in other decisions concerning the loss of electoral rights, restrictions of this kind pursued the entirely legitimate aim of protecting democratic institutions.

36. Furthermore, the Committee observed: "[Law no. 190/2012] refers to the grounds for disqualification from standing for election, taking as its starting-point the establishment of the offence and not the time when it was committed. In short, it is the conviction which, within the law, creates the dividing line between before and after, marking the emergence of an ethical and moral incompatibility and a finding of unsuitability arising from the new development which the conviction represents."

37. On 27 November 2013 the Senate, by open ballot, rejected nine motions opposing the proposal by the Committee on Elections and Parliamentary Immunity, invalidated the applicant's election and declared that he had forfeited his seat.

38. On the same day, the Senate declared that Mr U.D.G. had been elected as a senator in place of the applicant.

5. *Recent developments*

39. On 11 May 2018 the Milan Sentence Supervision Court granted an application for rehabilitation lodged by the applicant on 8 March 2018. In its decision the court observed, in particular, that the applicant had served his sentence and that, during the period that had elapsed since the decision of 9 April 2015 (see paragraph 22 above) had become final, he had not had any further convictions and had thus displayed good behaviour. The court pointed out that, in accordance with the Court of Cassation's case-law, the fact that three sets of criminal proceedings had been brought against the applicant for acts committed after those forming the subject of his trial for tax fraud did not "in itself constitute an obstacle to granting the application for rehabilitation, on account of the presumption of innocence". The decision became final on 29 May 2018.

40. Subsequently, the applicant asked the Court for leave to submit documents relating to the rehabilitation procedure, as well as written observations on the effects of the measure on the admissibility and merits of the application. He argued that his rehabilitation demonstrated the purely criminal nature of disqualification from standing for election and was likely

to have an impact on his status as a victim. The President of the Grand Chamber granted the applicant leave to file the documents. However, she refused him leave (on two occasions: 14 June and 19 July 2018) to submit observations (Rule 38 § 1 and Rule 71 of the Rules of Court).

On 27 July 2018 the applicant informed the Court that he no longer intended to pursue his application.

B. Relevant domestic law

1. Provisions of the Italian Constitution

41. The relevant provisions of the Constitution read as follows:

Article 25

"...

2. No one may be punished except by virtue of a law that came into force before the offence was committed.

..."

Article 65

"1. The law shall determine the cases of ineligibility for and disqualification from the office of deputy or senator.

..."

Article 66

"Each of the two houses shall verify the credentials of its members and any grounds for ineligibility or disqualification that may subsequently arise."

2. Law no. 190 of 6 November 2012

42. Law no. 190/2012 was passed by the Senate on 17 October 2012 and by the Chamber of Deputies on 31 October 2012, signed by the President of the Republic on 6 November 2012 and came into force on 28 November 2012, fifteen days after its publication in the Official Gazette.

43. Section 1, subsection 64, of this Law laid down the key principles and criteria for the legislative decree to be adopted by the government (under subsection 63) with a view to consolidating within a single instrument the provisions on disqualification from standing for election to bodies including the European Parliament, the Chamber of Deputies and the Senate, and from holding elected and government office. The decree was to:

"(a) ... provide for temporary disqualification from standing for election to the Chamber of Deputies and the Senate in the case of anyone who has been sentenced in a final judgment to more than two years' imprisonment for offences referred to in Article 51, paragraphs 3 *bis* and *quater*, of the Code of Criminal Procedure [in particular, those relating to mafia-type criminal organisations and terrorism];

(b) in addition, provide for a similar disqualification for anyone who has been sentenced in a final judgment to more than two years' imprisonment for offences [against the public authorities] or for any other offences for which the law has prescribed a maximum sentence of more than three years' imprisonment;

(c) specify the duration of the disqualification;

(d) specify that it also covers situations where the sentence is imposed following an agreement between the accused and the prosecution, under Article 444 of the Code of Criminal Procedure;

(e) coordinate the provisions on disqualification from standing for election with the existing provisions on disqualification from holding public office and on rehabilitation, and with restrictions on the exercise of electoral rights;

(f) specify that the criteria for disqualification from standing for election to the Chamber of Deputies and the Senate also apply in relation to positions in the executive;

...

(m) determine the cases of automatic suspension and removal from office referred to in subsection 63 where a final conviction for an offence committed with malicious intent occurs after the person has been nominated as a candidate or has assumed office."

44. According to the explanatory report, the purpose of the Law was to prevent and punish the phenomenon of corruption by means of a multidisciplinary approach whereby penalties would be only one of the ways of fighting corruption and unlawful activity within the public authorities. The Law was underpinned by the requirements of transparency and public scrutiny and aimed to bring the Italian legal system into line with international standards. The report also stated that corruption was undermining the country's credibility and discouraging investment, including from abroad, thereby slowing down economic development.

3. Legislative Decree no. 235 of 31 December 2012

45. Legislative Decree no. 235 was adopted on 6 December 2012, signed by the President of the Republic on 31 December 2012 and came into force on 5 January 2013, the day after its publication in the Official Gazette.

46. Article 1 of the Legislative Decree provides:

"1. The following shall be disqualified from standing for election as a member of the Chamber of Deputies and the Senate and from holding such office:

(a) anyone who has been sentenced in a final judgment to more than two years' imprisonment for an offence ... referred to in Article 51, paragraphs 3 *bis* and *quater*, of the Code of Criminal Procedure;

(b) anyone who has been sentenced in a final judgment to more than two years' imprisonment for an offence [against the public authorities];

(c) anyone who been sentenced in a final judgment to more than two years' imprisonment for an offence ... committed with malicious intent for which the law prescribes a maximum sentence of at least four years ..."

47. Article 3 is worded as follows:

> "Where a ground for disqualification arises or is established during the convicted senator's or deputy's term of elected office, the house of Parliament to which he or she belongs shall deliberate on the matter in accordance with Article 66 of the Constitution. Accordingly, any final judgments referred to in Article 1 above entailing the conviction of serving deputies or senators shall be transmitted immediately by the [competent] public prosecutor's office to the house to which [the convicted person] belongs ..."

48. As to the duration of the measure, Article 13 provides:

> "... disqualification from standing for election to the Chamber of Deputies, the Senate, and the European Parliament in respect of Italy, shall apply from the date on which the conviction becomes final and shall be effective for a period equivalent to double the court-imposed ancillary penalty of temporary disqualification from public office. In any event, the duration of the disqualification shall not be less than six years, even if no ancillary penalty is imposed."

49. As regards the choice of the type of conviction giving rise to disqualification from standing for election, the explanatory report states:

> "... the existence of a conviction for clearly determined offences covering a wide range of legal interests that must be specifically identified and categorised in order to avoid any uncertainty or contradictory approach that could undermine the sphere protected by Article 51 of the Constitution has been chosen on the basis of an abstract assessment as a precondition for disqualification from holding an elected public position or office; such disqualification from access is automatic, no provision being made for weighing up individual situations or using discretion. In this connection, the Court of Cassation (judgment no. 3904/2005) has held that convictions for offences entailing disqualification from holding public office render the person concerned entirely and irrevocably unfit to discharge the relevant functions, in order to preserve 'the proper functioning and transparency of the public authorities, order and security, and the free decision-making process of elected bodies' (see also Constitutional Court, judgments nos. 407/1992, 197/1993 and 118/1994)."

C. Relevant international law

1. Combating corruption

50. Article 6 of the United Nations Convention against Corruption, adopted on 31 October 2003, provides:

> "1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:
>
> *(a)* Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;
>
> *(b)* Increasing and disseminating knowledge about the prevention of corruption.
>
> ..."

51. Articles 20 and 21 of the Council of Europe Criminal Law Convention on Corruption, adopted on 27 January 1999, read as follows:

Article 20 – Specialised authorities

> “Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. They shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks.”

Article 21 – Co-operation with and between national authorities

> “Each Party shall adopt such measures as may be necessary to ensure that public authorities, as well as any public official, co-operate, in accordance with national law, with those of its authorities responsible for investigating and prosecuting criminal offences ...”

52. In the Addendum to the Compliance Report on Italy for the Joint First and Second Evaluation Rounds (2008 and 2009 respectively), published on 1 July 2013 (Greco RC-I/II (2011)1E), the Group of States against Corruption (GRECO) issued conclusions including the following on anti-corruption measures:

> “...
>
> 76. Italy deserves recognition for the steps taken to further articulate its corruption policy; the adoption, in November 2012, of a new anticorruption framework law is a clear sign in this direction. Moreover, Italy has now ratified the Criminal Law Convention on Corruption (ETS 173) and the Civil Law Convention on Corruption (ETS 174). Several measures have been introduced to improve transparency and accountability in public administration and to better target areas of public concern including, *inter alia*, the regulation of public tenders and contracts, conflicts of interest, integrity and ethics in public administration, managerial responsibility and whistleblower protection. Likewise, an institutional framework has been established to adopt, implement, monitor and evaluate anticorruption policies. The Commission for the Evaluation, Transparency and Integrity of Public Administration [which later became the ANAC] has been designated as the national anticorruption authority with a view to implement[ing] Article 6 of the United Nations Convention against Corruption (UNCAC), as well as Articles 20 and 21 of ETS 173; administrations at national and subnational level are entrusted with key responsibilities in the development of anticorruption and integrity programmes for their respective sector of activity. Time and experience will show whether the new system efficiently serves its purpose to prevent and deter corruption. It will be crucial to ensure that all new legislative measures are coupled with effective implementation mechanisms, including guidance for those who are to abide by the law and appropriate sanctions when malpractice occurs. This calls for sustained political commitment. ...”

2. Restrictions on electoral rights (passive aspect)

53. The relevant European and international instruments concerning removal of a member of parliament all provide for the possibility of restricting the right to be elected and to hold elected office, as long as such restrictions satisfy certain requirements, at the very least in terms of lawfulness, necessity and proportionality.

54. In particular, in its report on exclusion of offenders from Parliament (Opinion no. 807/2015, CDL-AD(2015)036cor) the Venice Commission noted that restrictive measures such as removal from office pursued the legitimate aim of preserving democracy. Ineligibility to stand for election and removal from office were closely linked as they had to satisfy the same requirements: being based on precise legal rules, pursuing a legitimate aim and observing the proportionality principle.

55. The relevant passages of the report read as follows:

> "...
>
> 139. Legality is the first element of the *Rule of Law* and implies that the law must be followed, by individuals and by the authorities. The exercise of political power by people who seriously infringed the law puts at risk the implementation of this principle, which is on its turn a prerequisite of democracy, and may therefore endanger the democratic nature of the state: a person who is not eager to recognise the standards of conduct in democratic society, may be unwilling to obey the constitutional or international standards on democracy and the Rule of Law. The basis for the restriction on such a person's right to be elected or to sit in Parliament is *inter alia* the occurred violation of democratically adopted criminal law, *i.e.* of generally recognised standards of conduct.
>
> 140. According to the case-law of the European Court of Human Rights on Article 3 of [Protocol No. 1], restrictions on the right to be elected should be limited to what is necessary to ensure the proper functioning and preservation of the democratic regime. This functioning would be more seriously endangered by an elected officer than by a simple voter exercising his active electoral rights. The restrictions under consideration should not be considered as limiting democracy, but as a means of preserving it.
>
> 141. The vast majority of if not all the states addressed in this report recognise the public interest in excluding offenders from Parliament and most of them have adopted legislative measures in order to achieve this result.
>
> ...
>
> 164. The Venice Commission considers that the termination of the mandate of an MP who has been sentenced and whose conviction entered into force after elections is justified if this was a cause of ineligibility to be elected. ...
>
> ...
>
> 174. The Venice Commission considers that, if the exclusion of offenders from elected bodies does not happen by the simple functioning of the electoral mechanisms, legislative intervention becomes necessary.
>
> ...
>
> 179. Finally, the Commission finds it suitable for the Constitution to regulate at least the most important aspects of the restrictions to the right to be elected and of loss of parliamentary mandate, and indeed many states provide for such provisions."

COMPLAINTS

56. Relying on Article 7 of the Convention, the applicant complained that the application of Legislative Decree no. 235/2012, which had had the effect of disqualifying him from standing for election and removing him from office as a senator after he had been convicted of tax fraud in a final judgment, had breached the principles of lawfulness, foreseeability, proportionality and non-retroactive application of criminal penalties.

57. Relying on Article 3 of Protocol No. 1, he also submitted that the disqualification provided for by the aforementioned Legislative Decree did not comply with the principles of lawfulness and proportionality to the aim pursued, thus breaching both his right to fulfil his electoral mandate and the electorate's legitimate expectation that he would serve his term as senator.

58. Furthermore, the applicant argued that 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 and to challenge the Senate's decision of 27 November 2013 breached Article 13 of the Convention.

59. The applicant also alleged a violation of Article 3 of Protocol No. 1 in conjunction with Article 14, without providing an explanation in his initial application. Subsequently, in his memorial of 31 July 2017, the applicant stated that he had been disqualified from standing for election for six years, on an equal footing to an individual who had been given a more severe penalty of disqualification from public office than he had, for example permanently or for three years. He contended on that account that the Legislative Decree in question breached Article 3 of Protocol No. 1, in conjunction with Article 14 of the Convention.

60. In a letter of 7 May 2014, after the Court of Cassation's judgment upholding the ancillary penalty of temporary disqualification from public office had been deposited on 18 March 2014, the applicant raised two further complaints, under Article 4 of Protocol No. 7 and Article 6 § 1 of the Convention.

THE LAW

Request for the application to be struck out of the list

61. On 27 July 2018 the applicant informed the Court that he no longer intended to pursue his application and asked for it to be struck out of the list of cases. He argued in particular that as a result of his rehabilitation (see paragraph 40 above), the Court's decision on his application would serve no useful purpose, given that his disqualification from standing for election had

been lifted and that no adequate redress could be afforded either for the disqualification or for the loss of his seat in the Senate. He asked the Court to strike the case out in accordance with Article 37 § 1 (a) and (b) of the Convention.

62. On 10 August 2018 the Government stated that they would leave the matter to the Court's discretion.

63. Article 37 § 1 of the Convention provides:

> "The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application; or
>
> (b) the matter has been resolved; or
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

64. The Court notes that the applicant has explicitly stated that he does not wish to pursue his application within the meaning of Article 37 § 1 (a) of the Convention.

65. It considers that the applicant's intention to withdraw from the proceedings instituted before the Court has been unequivocally established (see *Association SOS Attentats and de Boëry v. France* [GC], (dec.), no. 76642/01, § 30, ECHR 2006-XIV). In accordance with Article 37 § 1 (a) of the Convention, the Court concludes that the applicant does not intend to pursue his application.

66. Accordingly, there is no need to ascertain whether the matter has been resolved within the meaning of Article 37 § 1 (b) of the Convention.

67. It remains to be determined whether there are special circumstances relating to respect for human rights as defined in the Convention and the Protocols thereto which require the continued examination of the application (Article 37 § 1 *in fine*).

68. To determine whether it is necessary to continue the examination of an application in accordance with Article 37 § 1 *in fine*, the Court has, *inter alia*, had regard to whether the case raises important issues providing it with an opportunity to elucidate, safeguard and develop the standards of protection under the Convention (see *Konstantin Markin v. Russia* [GC], no. 30078/06, §§ 89-90, ECHR 2012 (extracts)), or whether the impact of the case goes beyond the particular situation of the applicant (see *F.G. v. Sweden* [GC], no. 43611/11, §§ 81-82, 23 March 2016, and, conversely, *Khan v. Germany* [GC] (striking out), no. 38030/12, § 40, 21 September 2016).

69. Taking account of the facts of the case as a whole, in particular the applicant's rehabilitation on 11 May 2018 (see paragraph 39 above) and his unequivocal wish to withdraw his application, the Court concludes that no

special circumstances relating to respect for human rights require it to continue the examination of the application in accordance with Article 37 § 1 *in fine*.

70. Accordingly, the application should be struck out of the list.

For these reasons, the Court, by a majority,

Decides to strike the application out of its list of cases.

Done in English and French, and notified in writing on 27 November 2018.

Françoise Elens-Passos
Deputy Registrar

Angelika Nußberger
President