



Forthcoming Grand Chamber ruling in the case of Berlusconi v. Italy

The European Court of Human Rights will be delivering a **Grand Chamber** ruling in the case of **Berlusconi v. Italy** (application no. 58428/13) in writing on 27 November 2018 at 11 a.m. in the Human Rights Building, Strasbourg.

The case concerns Mr Silvio Berlusconi, former Prime Minister of Italy.

Principal facts and complaints

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

On 28 November 2012 Law no. 190/2012 came into force. Section 1(1) of the Law provided 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”. Section 1(63) 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 the European Parliament, the Chamber of Deputies and the Senate, and disqualification from holding elected and government office.

On 6 December 2012, acting within its delegated powers, the “Monti Government” adopted Legislative Decree no. 235. Article 1 of the Decree provides 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.

On 26 October 2012, in the context of the “Mediaset trial”, the Milan District Court found Mr Berlusconi and three other individuals guilty 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. The judgment was upheld by the Milan Court of Appeal, and subsequently by the Court of Cassation in respect of the main sentence; the Court of Cassation remitted the question of the determination of the ancillary penalty to the Milan Court of Appeal.

On 19 October 2013 the Court of Appeal set the duration of the ancillary penalty at two years and refused a request by Mr Berlusconi 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.

On 25 November 2013 Mr Berlusconi appealed on points of law. The Court of Cassation upheld the Court of Appeal’s judgment.

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

In the meantime, elections to the Senate had been held on 24 February 2013. Mr Berlusconi stood as a candidate and was elected as a senator. Pursuant to Article 13 of Legislative Decree no. 235/2012,

he was disqualified from standing for election for six years with effect from 1 August 2013, the date on which his conviction became final. On 2 August 2013, in accordance with Articles 1 and 3 of the same Decree, 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.

On 4 October 2013 the Committee deliberated in private and decided, by a majority, to propose that the Senate invalidate Mr Berlusconi's election. On 27 November 2013 the Senate invalidated Mr Berlusconi's election and declared that he had forfeited his seat.

On 11 May 2018 the Milan Sentence Supervision Court granted an application by Mr Berlusconi for rehabilitation. In its decision, which became final on 29 May 2018, the court observed that he had served his sentence and had had no further convictions since then.

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

The applicant complains in particular that the application of Legislative Decree no. 235/2012, resulting in the invalidation of his election by the Senate after he had been disqualified from standing for election on account of his conviction for tax fraud, breached Article 7 (no punishment without law) of the Convention, Article 3 of Protocol No. 1 (right to free elections) and Article 13 (right to an effective remedy) of the Convention.

Procedure

The application was lodged with the European Court of Human Rights on 10 September 2013. On 6 June 2017 the Chamber relinquished jurisdiction in favour of the Grand Chamber. A hearing was held on 22 November 2017.

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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.