



The Berlusconi case is struck out of the list

In its decision in the case of [Berlusconi v. Italy](#) (application no. 58428/13) the Grand Chamber of the European Court of Human Rights has decided, by a majority, to strike the application out of its list of cases. The decision is final.

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

Mr Berlusconi complained 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, had 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.

Taking account of the facts of the case as a whole, in particular the applicant's rehabilitation on 11 May 2018 and his wish to withdraw his application, the Court concluded that no special circumstances relating to respect for human rights required it to continue the examination of the application in accordance with Article 37 § 1. It decided to strike the case out of the list.

Principal facts

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. Article 3 of the Legislative Decree specifies that 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 in the meantime.

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

Complaints, procedure and composition of the Court

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

Relying on Article 7 (no punishment without law), 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, 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 submitted that the disqualification provided for by the Decree in question 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.

Relying on Article 13 (right to an effective remedy), the applicant complained of the lack of an accessible and effective remedy in domestic law by which to contest the compatibility of the Legislative Decree with the Convention and to challenge the Senate's decision of 27 November 2013.

Relying on Article 3 of Protocol No. 1 in conjunction with Article 14 (prohibition of discrimination), he stated that he had been barred from standing for election for six years, on an equal footing to a person who had been given a more severe ancillary penalty of disqualification from public office than he had, and argued on that account that there had been a violation of the Articles in question.

The decision was given by the Grand Chamber of 17 judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,
Linos-Alexandre **Sicilianos** (Greece),
Ganna **Yudkivska** (Ukraine),

Helena Jäderblom (Sweden),
Robert Spano (Iceland),
Ledi Bianku (Albania),
Nebojša Vučinić (Montenegro),
Paulo Pinto de Albuquerque (Portugal),
Helen Keller (Switzerland),
Faris Vehabović (Bosnia and Herzegovina),
Iulia Antoanella Motoc (Romania),
Yonko Grozev (Bulgaria),
Mārtiņš Mits (Latvia),
Gabriele Kucsko-Stadlmayer (Austria),
Pauliine Koskelo (Finland),
Jovan Ilievski (the former Yugoslav Republic of Macedonia),
Ida Caracciolo (Italy), ad hoc *judge*,

and also Françoise Elens-Passos, *Deputy Registrar*.

Decision of the Court

On 27 July 2018 Mr Berlusconi 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.

Mr Berlusconi argued in particular that as a result of his rehabilitation, 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.

Taking account of the facts of the case as a whole, in particular the applicant's rehabilitation on 11 May 2018 and his wish to withdraw his application, the Court concluded that no special circumstances relating to respect for human rights required it to continue the examination of the application in accordance with Article 37 § 1.

The Court decided to strike the case out of the list.

The decision is available in English and 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.