



## Grand Chamber hearing in the case of Berlusconi

The European Court of Human Rights is holding a **Grand Chamber**<sup>1</sup> hearing today **Wednesday 22 November 2017 at 9.15 a.m.** in the case of **Berlusconi v. Italy** (application no. 58428/13).

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

*The hearing will be broadcast from 2.30 p.m. on the Court's Internet site ([www.echr.coe.int](http://www.echr.coe.int)). After the hearing the Court will begin its deliberations, which will be held in private. Its ruling in the case will, however, be made at a later stage.*

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

On 28 November 2012 the Anti-Corruption Act (Law no. 190 of 6 November 2012, known as the "Severino Act" after the Minister of Justice) entered into force. On 31 December 2012 the executive adopted Legislative Decree no. 235 codifying the provisions governing disqualification from standing for election (*incandidabilità*) and disqualification from holding elected and government office (*divieto di ricoprire cariche elettive e di Governo*) following final convictions for certain offences. The Decree came into force on 5 January 2013. Section 1 provides, among other things, that no one who has been sentenced in a final judgment to a term of more than two years' imprisonment for an offence committed with malicious intent may stand for election or hold office as a member of the Senator or the Chamber of Deputies. Parliament is responsible for verifying the credentials of its members and examining any grounds for disqualification from or ineligibility for elected office (Article 66 of the Constitution). The duration of the disqualification from standing for election is equivalent to double the ancillary penalty that can be imposed by courts of law, and in any event not 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 October 2012 and sentenced to four years' imprisonment (reduced to one year as a result of a remission 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 of the suspension of its execution pending a possible request for an alternative to imprisonment. Before that, in February 2013, Mr Berlusconi had been elected to the Senate. The official proclamation had taken place the following month.

On 2 August 2013, under sections 1 and 3 of Legislative Decree no. 235/2012, the public prosecutor transmitted an extract of 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 for determination of the matters within its remit. On 8 August 2013 the chair of the Committee initiated the procedure potentially leading to a declaration of removal from office, informing

<sup>1</sup> Under Article 30 of the European Convention on Human Rights, "Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects."

Mr Berlusconi that following the referral of the matter to the Committee, he had the opportunity to file observations within 20 days and to consult the relevant documents.

In the allotted time, Mr Berlusconi submitted his observations to the Committee, appending *pro veritate* opinions seeking to show, in particular, that Legislative Decree no. 235/2012 was unconstitutional. On 7 September 2013 he provided the Committee with a copy of the application he had just lodged with the European Court of Human Rights.

On 28 September 2013, in advance of the hearing scheduled for 4 October, Mr Berlusconi filed submissions in which he asked the Committee to suspend the procedure pending the European Court's decision.

Following the scheduled public hearing (broadcast live on the Senate's satellite and online television channels), the Committee 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 Committee set out the procedure followed and the questions considered: (1) the nature of the Committee and of its functions; (2) the alleged non-retroactivity of Legislative Decree no. 235/2012 and the question of its constitutionality; (3) the content of the deliberations and the different views expressed; (4) Law no. 190/2012; (5) the ground for disqualification from standing for election (*incandidabilità*); (6) relevant precedents; (7) the application to 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 Committee on Rules decided that the plenary Senate'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 that the applicant had forfeited his office.

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 Legislative Decree no. 235/2012 (leading to his removal from elected office), following his conviction for acts committed before the entry into force of the Legislative Decree, in breach of the principles of legality, foreseeability and proportionality of criminal penalties;
- 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 his disqualification 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 his removal from office breached both his right to hold office and the electorate's legitimate expectation that he 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 Legislative Decree no. 235/2012 with the Convention and (2) the Senate's decision to remove him from office.

## Procedure

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

On 5 July 2016 it was [communicated](#)<sup>2</sup> to the Italian Government, together with questions from the Court.

<sup>2</sup> In accordance with Rule 54 of the Rules of Court, a Chamber of seven judges may decide to notify a Contracting State's Government that an application against that State has been lodged with the Court (the "communication procedure"). Further information about the procedure after a case is communicated to a Government can be found in the Rules of Court.

On 6 June 2017 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber.

The European Commission for Democracy through Law was granted leave to submit comments in writing as an *amicus curiae*.

## Composition of the Court

The case will be heard by a 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 **Motoc** (Romania),  
Yonko **Grozev** (Bulgaria),  
Mārtiņš **Mits** (Latvia),  
Gabriele **Kucsko-Stadlmayer** (Austria),  
Pauliine **Koskelo** (Finland),  
Jovan **Ilievski** (“the former Yugoslav Republic of Macedonia”), *judges*,  
Ida **Caracciolo** (Italy), *ad hoc judge*,  
Ksenija **Turković** (Croatia),  
Marko **Bošnjak** (Slovenia),  
Krzysztof **Wojtyczek** (Poland), *substitute judges*.

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

## Representatives of the parties

### Government

Paola **Accardo** and Maria Giuliana **Civinini**, *Co-Agents*,  
Stefania **Feriozzi**, Valérie **De Martin** and Giulio **Veggi**, *Advisers*;

### Applicant

Prof. Bruno **Nascimbene**, Prof. Andrea **Saccucci**, Edward **Fitzgerald** QC and Steven **Powles**, *Counsel*,  
Franco **Coppi**, Niccolò **Ghedini**, Giulia **Borgna** and Fabrizio **Ciancio**, *Advisers*.

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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.