

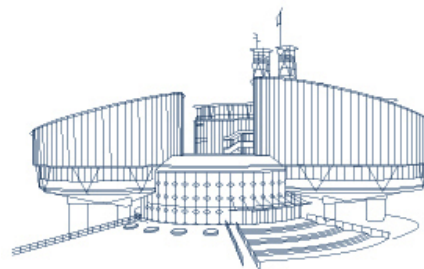
PRESS RELEASE

COURT OF CASSATION DID NOT LACK IMPARTIALITY IN SILVIO BERLUSCONI'S CONVICTION PROCEEDINGS

Berlusconi v. Italy

ECHR 262 (2026) 22.10.2026

Press release issued by the Registrar of the Court



The case of [Berlusconi v. Italy](#) (application no. 8683/14) concerned Silvio Berlusconi's complaint of unfairness regarding his criminal conviction for a tax evasion scheme implemented through Mediaset S.p.A. and other companies in the same group, in connection with the purchase of television rights.

In today's **Chamber** judgment¹ in the case, the European Court of Human Rights held, unanimously, that there had been **no violation of Article 6 (right to a fair trial)** of the European Convention on Human Rights, in respect of the complaint that the Court of Cassation had lacked impartiality.

The Court found that Mr Berlusconi had not shown that the bench of the Court of Cassation dealing with his case, and in particular the President of the Division to which the case had been allocated, had lacked impartiality.

The Court rejected Mr Berlusconi's other complaints as being either manifestly ill-founded or out of time.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

PRINCIPAL FACTS AND COMPLAINTS

The applicant was Silvio Berlusconi.

On 26 October 2012 Mr Berlusconi was convicted by the Milan District Court and sentenced to four years' imprisonment for complicity in tax evasion for the years 2002 and 2003. The sentence, which was later reduced to one year, was accompanied by ancillary penalties including a ban on holding public office. After the Milan Court of Appeal upheld the judgment in full, Mr Berlusconi appealed on points of law to the Court of Cassation.

On 9 July 2013, noting that the limitation period would expire on 1 August 2013, the judge tasked with a preliminary examination of the appeal declared the case "very urgent" and allocated it to the "Vacation" Division of the Court of Cassation, presided over by Judge Esposito. Judge A.F. was appointed as reporting judge.

On 1 August 2013 the Court of Cassation delivered the operative provisions of the judgment, upholding Mr Berlusconi's conviction and the main sentence. However, it remitted the case to the Milan Court of Appeal as regards the determination of the ancillary penalty. The reasoning of the judgment, signed by all the judges of the bench, was deposited in the registry on 29 August 2013.

In the meantime, on 5 August 2013 Judge Esposito had given an interview to the *Il Mattino* daily newspaper.

On 19 October 2013 the Milan Court of Appeal ruled on the ancillary penalty, reducing the ban on holding public office from five years to two. Mr Berlusconi, who had been allowed to perform community service as an alternative to imprisonment, was nevertheless unable to stand for election and had to forfeit his seat as a senator on 27 November 2013.

Subsequently, the case caused controversy in the media on several occasions, in particular on account of Judge Esposito's interview to *Il Mattino* before the publication of the reasoning of the judgment. Disciplinary proceedings were, moreover, brought against that judge before the National Legal Service Commission (*Consiglio Superiore della Magistratura* – CSM), which dismissed all the complaints against him. Although it considered that the interview had been inappropriate, it noted that the judge had stated only general principles and information that was clearly set out in the operative provisions of the judgment delivered on 1 August 2013.

Later, articles published in *Il Giornale* – another daily newspaper, owned by a member of the applicant's family – alleged that Judge Esposito had made hostile remarks about Mr Berlusconi on various occasions, as reported by people present.

In 2016 Mr Berlusconi's lawyers informed the European Court of the existence of a recording containing remarks made by Judge A.F. during a private conversation with Mr Berlusconi. In the recording Judge A.F. alleged that Judge Esposito had been biased, that the applicant's conviction had been a miscarriage of justice and that he was very upset that he had been persuaded to take part in such a scheme. The recording was sent to the Court in 2020 following the death of Judge A.F.

In addition, the media reported allegations that Judge A.F. had recorded the proceedings at the Court of Cassation and that an outsider had entered the deliberations room.

Before the European Court Mr Berlusconi, who died on 12 June 2023 and whose heirs wished to pursue the application, relied on several Convention Articles, including Article 6 (right to a fair trial), to complain mainly that the Court of Cassation had lacked impartiality.

OUTCOME

REASONING OF THE COURT

The Court considered that the applicant's complaint concerning the Court of Cassation's lack of impartiality was based on the following four arguments, which it addressed in turn.

1. Judge Esposito's statements to *Il Mattino*: The Court noted that the statements had been made after the delivery of the operative provisions at a public hearing on 1 August 2013, when a final decision had already been adopted. There was nothing in the newspaper article to suggest that Judge Esposito had approached the proceedings with a preconceived idea of Mr Berlusconi's guilt. Nor did it make any specific reference to the facts of the case or to the evidence on which the conviction had been based.

Admittedly, a judge's decision to give an interview to the press about a judgment to which he had contributed as a member and president of the bench concerned could give rise to a number of questions, particularly in view of the duty of discretion judges were required to uphold in order to safeguard the fairness guaranteed by Article 6 of the Convention. That was especially true where the interview took place before the reasoning of the judgment in question had been published. However, the *Il Mattino* interview did not disclose any bias on the judge's part

concerning the case or give rise to any objectively justified doubts as to the Court of Cassation's impartiality.

2. The hostile remarks attributed to Judge Esposito, as reported by third parties: The Court found that there was insufficient evidence that the remarks had actually been made. It had also not been established that the judge had displayed any bias or prejudice before the proceedings that might have affected his impartiality.

3. Judge A.F.'s remarks: The Court found that Judge A.F.'s remarks were not evidence of a lack of impartiality at the Court of Cassation. They were, moreover, general and inconsistent with his conduct during and after the proceedings. As to the alleged attempt to record the private deliberations, the Court considered that even if it were to be proved, it would not demonstrate that the other judges had behaved inappropriately. The Court was thus unable to find, on the basis of the remarks attributed to Judge A.F., that the Court of Cassation had not been impartial.

4. The alleged anomalies concerning the adoption of the judgment and its content: The Court pointed out that speedy proceedings were not an indication of a lack of impartiality. Regarding the complaints concerning the conduct of the deliberations, it first referred back to its findings above on the attempted recording and then noted that the supposed participation of a third party in the deliberations was an allegation made by *Il Giornale* with no supporting evidence.

With regard to the anomalies complained of in the cassation proceedings, the Court saw no indication of partiality on the part of the judges in any of the circumstances referred to by the applicant. It also found no evidence that Judge Esposito or the other members of the bench had sought to be assigned the case, or that its allocation had been motivated by a desire to have specific individuals try Mr Berlusconi. Furthermore, the allocation of the case to the "Vacation" Division had been based on predetermined criteria used to organise work during the summer period. Lastly, the adoption of an unfavourable judgment could not in itself be an indication of a lack of impartiality, especially since the length of the deliberations and the scope of the reasoning of the judgment in the case at hand suggested that it had been examined in depth.

Consequently, the Court found that Mr Berlusconi had not shown that the bench of the Court of Cassation dealing with his case, and in particular Judge Esposito, had lacked impartiality. **There had therefore been no violation of Article 6 § 1 of the Convention.**

As regards the applicant's other complaints, the Court held that those concerning the refusal to transfer the proceedings to a different jurisdiction and the other complaints as to the unfairness of the criminal proceedings under Article 6 of the Convention were manifestly ill-founded. It also considered ill-founded the complaints under Article 7 (no punishment without law) concerning the foreseeability of the offence and the retrospective application of the criminal law, and the complaint under Article 4 of Protocol No. 7 (right not to be tried or punished twice).

The Court further held that the following complaints had been raised out of time: the allegation that the President of the District Court had performed his duties in breach of the limits and criteria laid down by the CSM, the complaint concerning the allocation of the case to the "Vacation" Division and the complaint that there was no remedy in respect of the Court of Cassation's lack of impartiality.

PROCEDURE AND COMPOSITION OF THE COURT

The application was lodged with the European Court of Human Rights on 28 December 2013.

Judge Esposito was granted leave to intervene and submitted written comments.

Judgment was given by a Chamber of seven judges, composed as follows:

Ivana Jelić (Montenegro), *President*,
Erik Wennerström (Sweden),
Gilberto Felici (San Marino),

Frédéric Krenc (Belgium),
Davor Derenčinović (Croatia),
Alain Chablais (Liechtenstein), ad hoc judge,
Anna Adamska-Gallant (Poland),

and also Ilse Freiwirth, Section Registrar.

The judgment is available only in French.

The Court's judgments finding a violation are binding on the State concerned. The [Committee of Ministers](#) of the Council of Europe, the executive body of the Council of Europe, supported by the [Department for the Execution of Judgments of the European Court of Human Rights](#), is responsible for supervising their implementation.

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Press contacts

✉ echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Media enquiries are welcome by email or phone.

Inci Ertekin (tel.: +33 3 90 21 55 30)

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1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.