



Press Office of the Constitutional Court

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## “SEVERINO LAW”: THE AUTOMATIC SUSPENSION OF A REGIONAL COUNCILLOR WHOSE CRIMINAL CONVICTION HAS NOT YET BECOME FINAL DOES NOT VIOLATE THE ECHR

The automatic suspension from office provided for under the “Severino Law” (Legislative Decree no. 235 of 2012) of persons convicted of particularly serious offences or of offences against the public administration whose criminal conviction has not yet become final does not violate Article 3 of the Additional Protocol to the ECHR on protection for the right to vote and the right to stand as a candidate in elections, as interpreted by the Strasbourg Court.

This ruling is contained in [Judgment no. 35](#), filed today (author of the judgment Daria de Pretis), by which the Court ruled unfounded certain questions concerning the constitutionality of Article 8(1)(a) of the “Severino Law” raised by the Court of Genoa before which a measure suspending from office a member of the Liguria Regional Council, who had been convicted at first instance of embezzling public assets, had been challenged.

According to the case law of the European Court of Human Rights, national lawmakers have a wide margin of appreciation in regulating the right to stand as a candidate in elections, in particular when the specific need to guarantee the stability and efficacy of a democratic system is engaged, with reference to the concept of a “democracy capable of defending itself”. This is the case under the contested provision which, in laying down certain prerequisites of probity for elected officials,

seeks to guarantee the integrity of the democratic process as well as the transparency of and protection for the image of the administration.

Therefore, the provision stipulating the automatic application of the measure does not violate Article 3 of the Additional Protocol to the ECHR solely on the grounds that it does not grant national courts the power to decide whether to apply it under the specific circumstances of the individual case. In fact, according to the case law of the Strasbourg Court, contracting states may choose whether to allow the courts to assess the proportionality of the measure or to incorporate such an assessment into the text of the law through an *ex ante* balancing of the interests in play.

In the judgment the Court also held that the principle of loyal cooperation between the State and the regions had not been violated due to the existence of regional competence over the ineligibility and incompatibility of regional councillors pursuant to Article 122 of the Constitution. The essential core of the legislation on suspension contained in Legislative Decree no. 235 of 2012 falls to be classified, with reference to the criterion of predominance, under the area of “public order and security” over which the State has exclusive competence (Article 117(2)(h) of the Constitution). The situation does not therefore involve an inextricable overlap of different areas of the law, which alone would require the prior involvement of the regions.

Rome, 11 March 2021