



Conviction in San Marino bribery case was founded in law

In today's **Chamber** judgment¹ in the case of [Berardi and Mularoni v. San Marino](#) (application nos. 24705/16 and 24818/16) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 7 (no punishment without law) of the European Convention on Human Rights.

The case concerned criminal proceedings for bribery, the first of their kind in San Marino. It involved two Government officials who had allegedly received money in return for not carrying out their professional duties with respect to safety on construction sites, and the legitimacy of their subsequent conviction and imprisonment.

The Court found that the law had not been applied retroactively to the applicants' disadvantage. In particular, the relevant domestic law had provided, both before and after changes to San Marino's Criminal Code in 2008, that the applicants' actions were criminal and susceptible to the punishment that had been applied.

Principal facts

The applicants, Paolo Berardi and Davide Mularoni, are nationals of San Marino. They were born in 1963 and 1965, and live in Dogana and Faetano (both San Marino), respectively.

In 2008 San Marino's Criminal Code was adjusted to update the law on bribery.

In 2011 Parliament set up a commission of inquiry to investigate organised crime in San Marino. It instructed the commission to investigate, among other things, the possible existence of collusion between politicians and the F. company, which could be traced back to B., a notary and lawyer.

In December 2012 Mr Berardi and Mr Mularoni, along with several others, were charged with bribery. They were accused of accepting bribes from various construction companies in return for omitting to carry out onsite safety inspections and failing to sanction the companies for violations and irregularities. They were found guilty in September 2014. The first-instance judge sentenced them both to five-and-a-half years in prison, banned them from public office for four years, and fined them 25,000 euros.

They appealed in early 2015. Specifically, they maintained that before 2008 there had been no law in San Marino which criminalised the acceptance of money in return for an act of omission. They argued that, in line with the principle of "no crime without law" (*nullem crimen sine lege*), they could not be given a sentence for a crime which had not existed at the time of their impugned actions. Thus, they could not be found guilty in respect of payments which they were accused of having accepted in return for omitting to perform certain duties prior to the 2008 amendments to the Criminal Code.

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.

The Judge of Criminal Appeals upheld the judgment of the lower court, slightly amending the sentence. He ruled that the fact that Mr Berardi and Mr Mularoni had accepted money in exchange for refraining from exercising their discretionary powers, or in exchange for using them in an aberrant way, meant that they had indeed engaged in acts contrary to their duties, a crime already provided for at the time of the relevant acts.

Complaints, procedure and composition of the Court

Relying on Article 7 § 1 (no punishment without law) of the European Convention, the applicants complained that they had been found guilty of bribery in accordance with the wording of a criminal provision that had not been in force at the time of the relevant acts. The law had thus been applied retroactively to their disadvantage, in violation of their rights.

The application was lodged with the European Court of Human Rights on 26 April 2016.

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

Linos-Alexandre **Sicilianos** (Greece), *President*,
Aleš **Pejchal** (the Czech Republic),
Krzysztof **Wojtyczek** (Poland),
Armen **Harutyunyan** (Armenia),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** (the former Yugoslav Republic of Macedonia),
Gilberto **Felici** (San Marino),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

Article 7

The Court had to decide whether the domestic law had been worded in such a way that the applicants could reasonably have known that their actions would make them criminally liable in the way that they were subsequently found to be. In order to do this, the Court had to answer two questions: firstly, whether, when the applicants had performed the acts for which they were subsequently convicted, a legal provision had been in force which made those acts punishable; and secondly, whether the punishment imposed had exceeded the limits fixed by any such provision.

The Court stressed that the domestic criminal classification of the applicants' acts was a task for the national courts. It was, however, for the Court to examine whether there was a contemporaneous legal basis for the applicants' conviction and that the decision reached by the relevant domestic courts was compatible with Article 7 of the Convention.

In the case at hand, the domestic courts at every level had found that the applicants' criminal conduct had amounted to acts contrary to their official duties, which in the Court's view was a reasonable assessment.

The Court held that a legal provision had indeed been in force at the time of the applicants' actions which had made those actions punishable. Even before changes to the law on bribery in 2008, the Criminal Code had included the crime of a government official accepting money in exchange for actions contrary to his official duties. The punishment imposed had been in line with that provision.

The Court rejected the applicants' argument that the absence of any precedent in their trial, arising from the fact that these were San Marino's first criminal proceedings for bribery, made the domestic courts' interpretation of the crime of bribery unforeseeable at the time of their actions. It

considered that the consequences of the applicants' decision to act contrary to their official duties had been foreseeable, not only with the assistance of legal advice but also as a matter of common sense.

The Court concluded that there had been no violation of Article 7.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

Press contacts

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

Patrick Lannin (tel: + 33 3 90 21 44 18)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

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

Somi Nikol (tel: + 33 3 90 21 64 25)

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.