



January 2023

This Factsheet does not bind the Court and is not exhaustive

# COVID-19 health crisis

Applications relating to the Covid-19 health crisis before the European Court of Human Rights raise questions under a number of provisions of the [European Convention on Human Rights](#), in particular in terms of the right to life, the prohibition of torture and inhuman or degrading treatment, the right to liberty and security, the right to a fair trial, the right to respect for private and family life, freedom of religion, freedom of expression, freedom of reunion, the protection of property and freedom of movement.

## Victim status and admissibility criteria

### [Le Mailloux v. France](#)

5 November 2020 (decision – inadmissible)

This case concerned the applicant's objections to the handling by the French State of the Covid-19 health crisis. He complained of the failure by the State to fulfil its positive obligations to protect the lives and physical integrity of persons under its jurisdiction. He complained in particular of restrictions on access to diagnostic tests, preventive measures and specific types of treatment, and interference in the private lives of individuals who were dying of the virus on their own.

Firstly, the Court recalled that, although the right to health was not as such among the rights guaranteed under the European Convention on Human Rights and its Protocols, States had a positive obligation to take appropriate steps to safeguard the lives of those within its jurisdiction and to protect their physical integrity, including in the public-health sphere. In the present case, however, the Court considered that it did not have to determine whether the State had failed to fulfil these positive obligations, in that the application was **inadmissible**. Indeed, the Court observed that the applicant was complaining about the measures taken by the French State to curb the propagation of the Covid-19 virus among the whole population of France, but had not shown how he was personally affected. It reiterated that it did not recognise an *actio popularis*: meaning that applicants cannot complain about a provision of domestic law, a domestic practice or public acts simply because they appear to contravene the European Convention. In order for an individual to be able to claim to be a victim of a violation of the Convention, in the meaning of Article 34 (individual applications), the individual concerned must be able to show that he or she was "directly affected" by the measure complained of, that is he or she must produce reasonable and convincing evidence of the likelihood that a violation affecting him or her personally will occur. In the present case, however, the Court found that the applicant was complaining in *abstracto* about the measures taken by the French Government to deal with the Covid-19 virus. Beside the fact that he had raised these complaints only when intervening in support of an urgent application before the *Conseil d'État*, he had also not provided any information about his own condition and had failed to explain how the alleged shortcomings of the national authorities might have affected his health and private life. The Court considered, moreover, that if the applicant was ever denied assistance or care in the context of the general health measures that he complained of, he would be able to contest the compatibility of such refusal with the Convention in the domestic courts. In these circumstances, the Court found that the application amounted to an *actio popularis* and



the applicant could not be regarded as a victim, within the meaning of Article 34 of the Convention, of the alleged violations.

### **Zambrano v. France**

7 October 2021 (decision on the admissibility)

This case concerned a university lecturer who complained about the “health pass” introduced in France in 2021 and who created a movement to protest against it. On his website, he suggested that visitors complete a pre-filled form in order to increase the number of applications to the European Court and thus lodge a sort of collective application, while emphasising, in quite unambiguous terms, that his aim was to trigger “congestion, excessive workload and a backlog” at the Court, to “paralyse its operations” or even to “force the Court’s entrance door” “in order to derail the system”. The applicant complained about Laws nos. 2021-689<sup>1</sup> and 2021-1040<sup>2</sup>, which, in his opinion, were essentially intended to compel individuals to consent to vaccination. He also alleged that, by creating and imposing a health pass system, these laws amounted to a discriminatory interference with the right to respect for private life.

The Court declared the application **inadmissible** for several reasons, in particular the failure to exhaust the domestic remedies and the fact that it amounted to an abuse of the right of individual application within the meaning of Article 35 §§ 1 and 3 (admissibility criteria) of the Convention. In particular, the Court noted that the applicant had not raised before the administrative courts the issue of whether the Law of 5 August 2021 complied with the Convention provisions which he relied upon before the Court. It noted that an applicant who submitted a request to the *Conseil d’État* for judicial review of a decree implementing a law, or a decision refusing to repeal such a decree, could, exceptionally, argue that the law was incompatible with the Convention in support of his or her arguments for it to be set aside. The Court also considered that the applicant’s approach was clearly contrary to the purpose of the right of individual petition. It found that his approach was deliberately intended to undermine the Convention system and the functioning of the Court, as part of what he described as a “legal strategy” and was in reality contrary to the spirit of the Convention and the objectives pursued by it. The Court further noted that the almost 18,000 standardised applications, lodged as a result of the applicant’s approach, did not fulfil all the conditions set out in Rule 47 § 1 (contents of an individual application) of the Rules of Court, in spite of the time-limit given to their representative to comply with the relevant requirements. They could not therefore be examined by the Court.

### **Piperea v. Romania**

5 July 2022 (Committee decision on the admissibility)

This case concerned the complaint of the applicant, a law professor and practising lawyer, against measures put in place by the government of Romania under a state of alert declared on 18 May 2020, following a state of emergency declared on 16 March 2020, during the Covid-19 pandemic. The applicant submitted in particular that the declaration of a state of alert had given rise to a restriction on his right to freedom of movement and had amounted to a violation of his right to respect for private life because of the requirement it imposed on people leaving home in certain circumstances to fill out a document stating where they were going, why and for how long, together with other personal information.

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<sup>1</sup>. Law no. 2021-689 of 31 May 2021 introduced a transitional regime for exiting the public-health state of emergency; it was effective until 30 September 2021 and authorised the Prime Minister, among other measures, to limit travel and the use of public transport (by requiring, for example, the wearing of face masks) or to impose protective measures in shops. It also introduced a “health pass”, effective until 30 September 2021, for international travellers to and from France and for venues hosting large numbers of people (cinemas, theatres, museums, etc.) or trade fairs and similar events.

<sup>2</sup>. Law no. 2021-1040 of 5 August 2021 extended the regime for exiting the public-health state of emergency until 15 November 2021 and also broadened the use of the health pass to other areas of daily life, at least until 15 November 2021.

The Court found that the applicant's complaints either did not meet the admissibility criteria set out in Articles 34 (individual applications) and 35 (admissibility criteria) of the Convention or did not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention and Protocols thereto, and consequently declared the application **inadmissible**. It observed in particular that the measures complained of by the applicant had been introduced as part of the state of alert declared in Romania on 18 May 2020, following the state of emergency declared on 16 March 2020, for public health reasons. The situation had to be characterised as amounting to "unforeseeable exceptional circumstances". Moreover, the measures impugned by the applicant in a general and unfocused manner had been imposed on the entire population in response to what the competent national authorities had determined to be a serious public health situation. The Court also noted that the applicant had complained in the abstract that the measures taken by the Romanian State to fight the spread of the SARS-CoV-2 virus had been inadequate and inappropriate. He had not provided information about his individual situation or explained in specific terms how the national authorities' alleged failures might affect him directly.

### **Thevenon v. France**

13 September 2022 (decision on the admissibility)

This case concerned a firefighter's refusal to comply with the Covid-19 vaccination requirement imposed on workers in certain occupations by Law no. 2021-1040 of 5 August 2021 on the management of the health crisis<sup>3</sup>. When the applicant refused vaccination without claiming a medical exemption under the statute, he was suspended from both his professional and volunteer duties. He applied directly to the European Court, complaining of the vaccination requirement imposed on him by virtue of his occupation, and of the fact that his refusal of the Covid-19 vaccine had led, as of 15 September 2021, to his suspension from work and the complete loss of his pay.

The Court declared the application **inadmissible** for failure by the applicant to exhaust his domestic remedies before applying. In its decision it reiterated that in French law an action for judicial review (*recours pour excès de pouvoir*) was one of the domestic remedies that had to be exhausted and that, in order for all domestic remedies to be exhausted, the domestic case therefore had as a rule to be litigated, should occasion arise, all the way to the court of final appeal, and the claimant had to place before that court the complaints under the Convention that might subsequently be put to the Court in Strasbourg. In rejecting the applicant's submissions on this point it specified that that requirement stood irrespective, first, of the delivery of a decision by the Constitutional Council declaring the law of 5 August 2021 consistent with the French Constitution, since that body did not decide issues under the provisions of the Convention, and, second, of the opinion delivered on the bill by the standing committee of the *Conseil d'État* in the discharge of its advisory functions. The Court concluded that an effective domestic-law remedy had thus been available to the applicant in that he could have instituted challenges in the administrative courts not only to the decisions suspending him from service but also to the compatibility of Law no. 2021-1040 of 5 August 2021, and its implementing order of 7 August 2021, with the Articles of the Convention on which he was relying before the Court.

See also:

### **Toromag, s.r.o. v. Slovakia and four other applications**

28 June 2022 (Committee decision on the admissibility)

### **Magdić v. Croatia**

5 July 2022 (Committee decision on the admissibility)

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<sup>3</sup>. See footnote 2. above.

## Right to life and prohibition of torture and inhuman or degrading treatment

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### Feilazoo v. Malta

11 March 2021 (Chamber judgment)

This case concerned, inter alia, the conditions of the immigration detention of a Nigerian national, including time spent in *de facto* isolation and a subsequent period where the applicant had been placed with new arrivals in Covid-19 quarantine.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account of the applicant's inadequate conditions of detention. In particular, the Court was concerned about the applicant's assertion, not rebutted by the Maltese Government, that following an isolation period the applicant had been moved to other living quarters where new arrivals (of asylum seekers) had been being kept in Covid-19 quarantine. There was no indication that the applicant had been in need of such quarantine – particularly after an isolation period which, moreover, had lasted for nearly seven weeks. Thus, the measure of placing him, for several weeks, with other persons who could have posed a risk to his health in the absence of any relevant consideration to that effect, could not be considered as a measure complying with basic sanitary requirements.

### Ünsal and Timtik v. Turkey

8 June 2021 (decision on the admissibility)

This case concerned the compatibility of the conditions of detention with a detainee's state of health given a hunger strike during the Covid-19 pandemic and the management of the situation by the authorities.

The Court declared the application **inadmissible** as being manifestly ill-founded. Making an overall assessment of the relevant facts on the basis of the evidence adduced before it, it concluded that this was not a situation in which the necessary medical care or treatment of the detainees required measures other than those adopted.

### Fenech v. Malta (no. 19090/20) (see also below, under "Right to liberty and security")

1 March 2022

The applicant in this case was a businessman who had been arrested, in November 2019, on suspicion of involvement in the murder of Maltese journalist Daphne Caruana Galizia in October 2017 and had since then been remanded in custody. The case concerned his conditions of detention in the Corradino Correctional Facility and whether the Maltese authorities had taken adequate measures to protect him from contracting Covid-19 whilst in prison, in particular because he had only one kidney.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in relation to the applicant's detention while he was segregated. It found in particular that the applicant's period of segregation from others – due to having tested positive for cocaine – had lasted for no longer than 35 days; he had not suffered any harmful psychological or physical effects as a result, and the restrictions applied had not amounted to complete sensory isolation. The Court also held that there had been **no violation of Article 3** of the Convention in relation to the conditions of detention later in the dormitory. It noted that there had been no overcrowding, and as for the other restrictions that the applicant complained of, the Court considered that they had occurred within a very specific context, namely during a public health emergency, and had been introduced for important health reasons. Moreover, they had been imposed not only on the applicant but on society at large. Given the exceptional and unforeseeable context related to the Covid-19 pandemic, those measures, which were proportionate and restricted in time, could not be considered to have caused him greater distress or hardship than was unavoidable during detention in a pandemic. Lastly, the Court held that there had been **no violation of Article 3** in relation to the State's obligation to preserve his health and well-being. It considered, in this respect, that the authorities had put in place relevant measures

and had been vigilant in adapting their protocols to the evolving situation. While provision should be made to allow prisoners at highest risk to be separated from others, the applicant had not shown that he fell within the category of the most vulnerable. The fact that he shared a dormitory and used the same medical, sanitary, catering and other facilities with other non-Covid-19-infected detainees did not in itself raise an issue under Article 3.

### **Pending applications**

#### **Hafeez v. the United Kingdom (no. 14198/20)**

Application communicated to the Government of the United Kingdom on 24 March 2020

This application concerns the risk of life imprisonment without parole and inadequate conditions of detention due to the Covid-19 pandemic in case of the extradition to the USA of an sixty year old man with a number of health conditions, which include diabetes and asthma.

The Court gave notice of the application to the Government of the United Kingdom and put questions to the parties under Article 3 (prohibition of inhuman or degrading punishment or treatment) of the Convention.

#### **Maratsis and Others v. Greece (no. 30335/20) and Vasilakis and Others v. Greece (no. 30379/20)**

Applications communicated to the Greek Government on 25 February 2021

This case mainly concerns the conditions of detention of HIV-positive prisoners and, in particular, it raises the issue whether the authorities took adequate steps to protect the health of the applicants, as persons living with HIV, in the context of the Covid-19 health crisis.

The Court gave notice of the applications to the Greek Government and put questions to the parties under Article 3 (prohibition of inhuman or degrading treatment), Article 5 (right to liberty and security) and Article 13 (right to an effective remedy) of the Convention.

#### **Vlamis and Others v. Greece (no. 29655/20) and four other applications (nos. 29689/20, 30240/20, 30418/20 and 30574/20)**

Applications communicated to the Greek Government on 16 April 2021

These cases concern the applicants' conditions of detention at Korydallos Prison (Greece). The applicants complain in particular about the lack of protective measures against the propagation of the Covid-19 virus.

The Court gave notice of the applications to the Greek Government and put questions to the parties under Article 3 (prohibition of inhuman or degrading treatment), Article 5 (right to liberty and security) and Article 13 (right to an effective remedy) of the Convention.

#### **Rus v. Romania (no. 2621/21)**

Application communicated to the Romanian Government on 11 June 2021

The applicant complains that he was infected with the Covid-19 virus while in prison. He sees the cause for this in his conditions of detention, in particular the overcrowding.

The Court gave notice of the application to the Romanian Government and put questions to the parties under Article 3 (prohibition of inhuman or degrading treatment) and Article 35 (admissibility criteria) of the Convention.

#### **Riela v. Italy (no. 17378/20)**

Application communicated to the Italian Government on 5 May 2021

This case concerns the alleged incompatibility of the applicant's state of health with his continued detention. The applicant complains of the absence of adequate medical treatment for his multiple diseases and that the authorities have not protected him from the risk of contracting Covid-19.

The Court gave notice of the application to the Italian Government and put questions to the parties under Article 2 (right to life), Article 3 (prohibition of inhuman or degrading treatment) and Article 35 (admissibility criteria) of the Convention.

### **Faia v. Italy (no. 17378/20)**

Application communicated to the Italian Government on 5 May 2021

This case concerns the alleged incompatibility of the applicant's medical condition and serious disability with detention in a correctional facility. The applicant also complains that the measures put in place by the authorities to protect him from the risk of contracting Covid-19 were inadequate.

The Court gave notice of the application to the Italian Government and put questions to the parties under Article 3 (prohibition of inhuman or degrading treatment) and Article 35 (admissibility criteria) of the Convention.

### **Krstić v. Serbia (no. 35246/21) and six other applications**

Applications communicated to the Serbian Government on 16 December 2021

This case concerns pending extradition proceedings of the nine applicants from Serbia to the United States (Texas). The applicants submit, inter alia, that, if extradited, they would be subjected to inhuman or degrading treatment as a result of exposure to severe conditions of detention, particularly taking into account the number of Covid-19 infected people in Texas and among the inmates.

The Court gave notice of the applications to the Serbian Government and put questions to the parties under, in particular, Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

### **Grgičin v. Croatia (no. 6749/22) and one other application (no. 7154/22)**

Applications communicated to the Croatian Government on 25 March 2022

In June 2020 the first applicant boarded a train, without wearing a protective mask, with his son, the second applicant, who was two and a half years old at the time. The applications concern the allegedly disproportionate use of force during the arrest of the first applicant, who had refused to wear a protective mask on public transportation, and the second applicant who had witnessed the scene.

The Court gave notice of the applications to the Croatian Government and put questions to the parties under, in particular, Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

## Right to liberty and security

**Fenech v. Malta** (see also above, under "Right to life and prohibition of inhuman or degrading treatment")

23 March 2021 (partial decision on the admissibility)

In November 2019 the applicant was arrested and detained on remand on suspicion of involvement in murder. Due to the propagation of the Covid-19 virus, national measures were introduced which led to the suspension of the criminal proceedings, and which were to remain in force until lifted on order of the competent authority. Domestic courts retained discretion to hear urgent cases or related matters. The proceedings resumed three months later. The applicant made several unsuccessful applications for bail.

The Court declared **inadmissible**, as being manifestly ill-founded, the applicant's complaints under Article 5 (right to liberty and security) of the Convention. In particular, as to whether the authorities had acted with due diligence, the Court noted that the applicant had not referred to any failings, delays or omissions on behalf of the authorities, apart from the time the proceedings had been suspended due to the emergency measures. That temporary suspension had been due to the exceptional circumstances surrounding a global pandemic which, as held by the Constitutional Court, justified such lawful measures in the interest of public health, as well as that of the applicant. It followed that it could not be said that the duty of special diligence had not been observed.

### **Terhes v. Romania**

20 May 2021 (decision on the admissibility)

Elected as a member of the European Parliament in 2019, the applicant was in Romania at the time of the events. The case concerned the lockdown which was ordered by the Romanian government from 24 March to 14 May 2020 to tackle the Covid-19 pandemic and which entailed restrictions on leaving one's home. The applicant contended that the lockdown imposed in Romania, with which he had been required to comply, amounted to a deprivation of liberty.

The Court declared the application **inadmissible**, finding that it was incompatible with the provisions of the Convention. It considered, in particular, that the measure complained of could not be equated with house arrest. Moreover, the level of restrictions on the applicant's freedom of movement had not been such that the general lockdown ordered by the authorities could be deemed to constitute a deprivation of liberty. In the Court's view, the applicant could not therefore be said to have been deprived of his liberty within the meaning of Article 5 § 1 (right to liberty and security) of the Convention. In this case, the Court also attached importance to the fact that the applicant had not explained what specific impact the measure complained of had had on his personal situation. He did not allege that he had been confined indoors for the entire duration of the state of emergency. More generally, the Court noted that he had not provided any specific information describing his actual experience of lockdown.

### **Bah v. the Netherlands**

22 June 2021 (decision on the admissibility)

This case concerned the impossibility for the applicant, a Guinean national, to be heard in immigration detention appeal in person or by tele- or videoconference due to initial infrastructure problems in Covid-19 pandemic.

The Court declared the application **inadmissible**, as being manifestly ill-founded, finding that the applicant had been entitled to take proceedings within the meaning of Article 5 § 4 (right to a speedy decision on the lawfulness of detention) of the Convention and that in the circumstances of the present case those proceedings met the requirements of that provision. The Court noted in particular that, given the difficult and unforeseen practical problems with which the State had been confronted during the first weeks of the Covid-19 pandemic, the fact that the applicant had benefitted from adversarial proceedings during which he had been represented by and heard through his lawyer who had attended the hearing by telephone and with whom he had had regular contact, the importance of the applicant's other applicable fundamental rights and the general interest of public health, the examination of the detention order without securing his attendance at the hearing in person or by videoconference had not been incompatible with Article 5 § 4.

### **Pending applications**

#### **Khokhlov v. Cyprus (no. 53114/20)**

Application communicated to the Cypriot Government on 10 February 2021

This application concerns the applicant's ongoing detention since October 2018 for the purpose of his extradition to Russia to stand trial. In October 2020 he was informed that, due to the restrictive measures relating to Covid-19 in place by both Cyprus and Russia, the two states had decided to suspend his extradition. The applicant complains, in particular, that he has been unlawfully and arbitrarily deprived of his liberty, as a result of unjustified delays on the part of the domestic authorities in effecting his extradition.

The Court gave notice of the application to the Government of Cyprus and put questions to the parties under Article 5 (right to liberty and security) of the Convention.

#### **Ait Oufella v. France (no. 51860/20) and three other applications**

Application communicated to the French Government on 13 September 2021

These four applications concern pre-trial detentions extended automatically without any decision by a judge in the context of emergency legislation at the start

of the Covid-19 pandemic.

The Court gave notice of the applications to the French Government and put questions to the parties under Article 5 (right to liberty and security) and Article 35 (admissibility criteria) of the Convention.

### **E.B. v. Serbia and A.A. v. Serbia (nos. 50086/20 and 50898/20)**

Application communicated to the Serbian Government on 5 November 2021

The applicants, asylum seekers who were accommodated in an asylum centre in Serbia at the relevant time, complain, in particular, that their freedom of movement was restricted in a disproportionate manner in the context of emergency legislation at the start of the Covid-19 pandemic.

The Court gave notice of the applications to the Serbian Government and put questions to the parties under, in particular, Article 5 (right to liberty and security) of the Convention.

## Right to a fair trial

### **Makovetsky v. Ukraine**

19 May 2022 (Committee – decision on the admissibility)

This case concerned administrative-offence proceedings against the applicant for refusal to wear a mask in a supermarket, although doing so had been compulsory as part of measures to restrict the spread of the disease Covid-19. The applicant submitted that the courts' decisions had been arbitrary, that the police officer had not been a "tribunal established by law".

The Court declared the application **inadmissible**. Concerning the applicant's complaints under Article 6 (right to a fair trial) of the Convention, it rejected them as being manifestly ill-founded. In this regard, it found in particular that the domestic courts had not prevented the applicant from making his case and had addressed his arguments, and that the administrative fine issued by a police officer subject to judicial oversight had been consistent with the Convention. The Court also rejected the applicant's complaint under Article 7 (no punishment without law) of the Convention, finding that that provision was not applicable in this case as there had been no criminal charge.

### **Pending applications**

#### **Avagyan v. Russia (no. 36911/20)**<sup>4</sup>

Application communicated to the Russian Government on 4 November 2020

See below, under "Freedom of expression".

#### **Association of orthodox ecclesiastical obedience v. Greece (no. 52104/20)**

Application communicated to the Greek Government on 25 February 2021

See below, under "Freedom of religion".

#### **Dumea v. Romania (no. 6457/21)**

Application communicated to the Romanian Government on 24 November 2021

The applicant complains about the lack of public access to the courtroom, in the context of criminal proceedings, due to the measures taken by the national authorities to combat the Covid-19 pandemic.

The Court gave notice of the application to the Romanian Government and put questions to the parties under Article 6 § 1 (right to a fair trial) of the Convention.

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<sup>4</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the European Convention on Human Rights ("the Convention").



### **Bracci v. San Marino (no. 31338/21)**

Application communicated to the Government of San Marino on 25 February 2022

This case concerns the fine imposed on the applicant for allegedly breaching Covid-19 rules. The applicant complains in particular that she was denied access to a court to challenge the fine in question.

The Court gave notice of the application to the Government of San Marino and put questions to the parties under, in particular, Article 6 § 1 (right to a fair trial) of the Convention.

## Right to respect for private and family life

### **D.C. v. Italy (no. 17289/20)**

15 October 2020 (decision – striking out)

The applicant complained that the Italian authorities had not taken provisional and urgent measures to ensure the maintenance of the family tie with his five-year-old daughter during the confinement. In September 2020, he informed the Court's Registry that he no longer wished to maintain his application, as the Italian Government had anticipated the first hearing in June 2020 in order to take urgent interim measures in the interests of the child.

In the light of the information available, and in the absence of any special circumstances affecting the observance of the rights guaranteed by the Convention and the Protocols thereto, the Court considered that there was no longer any justification for continuing the examination of the application and decided to **strike it out** of its list of cases.

### **Pending applications**

### **Guhn v. Poland (no. 45519/20) and Michalski v Poland (no. 34180/20)**

Applications communicated to the Polish Government on 17 November 2021

The applicants, prisoners, complain about the introduction of restrictive measures relating to Covid-19 in prisons and, in particular, they allege that the long-lasting prohibition of family visits in prison is in breach of their right to respect for their private and family life.

The Court gave notice of the applications to the Polish Government and put questions to the parties under Article 8 (right to respect for private and family life) of the Convention.

### **Pasquinelli and Others v. San Marino (no. 24622/22)**

Application communicated to the Government of San Marino on 12 December 2022

The twenty-six applicants in this case, health care and social health workers, employed with the San Marino social security service and other public entities, complain in particular about the obligation to be vaccinated against Covid-19 imposed by law to their professional sector. They had refused to be vaccinated against Covid-19 and, in line with the law in question, were temporarily suspended from their functions without pay and deployed elsewhere at a pay of 600 euros monthly.

The Court gave notice of the application to the Government of San Marino and put questions to the parties under Article 8 (right to respect for private life) of the Convention.

## Freedom of thought, conscience and religion

### **Constantin-Lucian Spînu v. Romania**

11 October 2022<sup>5</sup>

This case concerned a refusal by the national authorities, on grounds of measures taken during the Covid-19 pandemic, to let a prisoner, who identified as a member of

<sup>5</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the [European Convention on Human Rights](#).

the Seventh Day Adventist Church, attend religious services outside Jilava Prison (Bucharest). The applicant relied on his freedom of religion.

The Court held that there had been **no violation of Article 9** (freedom of religion) of the Convention in the present case, finding that, having regard to the margin of appreciation that was to be afforded to the national authorities under the specific and novel circumstances of the health crisis, the applicant's right to manifest his religion had not been infringed. It concluded, in particular, that the decision of the prison authorities to deny the applicant leave to attend his church's religious services outside the prison had not been taken without considering his individual situation and the changing circumstances of the public health crisis.

### **Pending applications**

#### **Association of orthodox ecclesiastical obedience v. Greece (no. 52104/20)**

Application communicated to the Greek Government on 25 February 2021

This case concerns the prohibition on collective worship in the context of Covid-19.

The Court gave notice of the application to the Greek Government and put questions to the parties under Article 6 (right to a fair trial) and Article 9 (freedom of religion) of the Convention.

#### **Mégard v. France (no. 32647/22)**

Application communicated to the French Government on 19 September 2022

This case concerns the prohibition of any gathering or meeting within religious establishments, with the exception of funeral ceremonies within the limit of 30 people, in the context of Covid-19.

The Court gave notice of the application to the French Government and put questions to the parties under Article 9 (freedom of religion) and Article 34 (individual applications) of the Convention.

#### **Figel' v. Slovakia (no. 12131/21)**

Application communicated to the Slovakian Government on 12 December 2022

This case concerns in particular the ban on public religious services in the context of Covid-19.

The Court gave notice of the application to the Slovakian Government and put questions to the parties under, in particular, Article 9 (freedom of religion) of the Convention.

## **Freedom of expression, of assembly and association**

### **Pending applications**

#### **Communauté genevoise d'action syndicale (CGAS) v. Switzerland (no. 21881/20)**

15 March 2022 (Chamber judgment) – referred to the Grand Chamber in September 2022

The applicant association, which declared aim is to defend the interests of workers and of its member organisations, especially in the sphere of trade-union and democratic freedoms, complains of being deprived of the right to organise and participate in public events following the adoption of government measures to tackle Covid-19 under Ordinance "O.2 COVID-19", enacted by the Federal Council on 13 March 2020. On the basis of that ordinance, public and private events were prohibited with effect from 16 March 2020. Failure to comply with the prohibition was punishable by a custodial sentence or a fine. As of 30 May 2020 the ban on gatherings was relaxed (maximum of 30 participants). Events involving more than 1,000 participants continued to be prohibited until the end of August 2020. On 20 June 2020 the ban on public events was lifted, although participants were required to wear a mask.

In its Chamber judgment of 15 March 2022 the Court held, by four votes to three, that there had been a **violation of Article 11** (freedom of assembly and association) of the Convention, finding that the respondent State had overstepped the margin of

appreciation afforded to it in the present case and that the interference complained of had not been necessary in a democratic society within the meaning of the Convention. The Chamber, while by no means disregarding the threat posed by Covid-19 to society and to public health, nevertheless considered, in the light of the importance of freedom of peaceful assembly in a democratic society, and in particular of the topics and values promoted by the applicant association under its constitution, the blanket nature and significant length of the ban on public events falling within the association's sphere of activities, and the nature and severity of the possible penalties, that the interference with the enjoyment of the rights protected by Article 11 had not been proportionate to the aims pursued. The Chamber also observed, in particular, that the domestic courts had not conducted an effective review of the measures at issue during the relevant period.

On 5 September 2022 the Grand Chamber Panel accepted the Swiss Government's request that the case be referred to the Grand Chamber.

#### **Avagyan v. Russia (no. 36911/20)**<sup>6</sup>

Application communicated to the Russian Government on 4 November 2020

In May 2020, the applicant posted an online comment on *Instagram*, alleging inter alia that there had been no real cases of Covid-19 in the Krasnodar Region of Russia. She was subsequently convicted for disseminating untrue information on the Internet, and sentenced to a fine of 30,000 Russian roubles (approximately 390 euros), against which she appealed unsuccessfully.

The Court gave notice of the application to the Russian Government and put questions to the parties under Article 6 § 1 (right to a fair trial) and Article 10 (freedom of expression) of the Convention.

#### **Nemytov v. Russia (no. 1257/21) and two other applications**<sup>7</sup>

Applications communicated to the Russian Government on 22 September 2021

These applications concern the prohibition of public events in Moscow introduced in response to the spread of the Covid-19 virus.

The Court gave notice of the applications to the Russian Government and put questions to the parties under, in particular, Articles 10 (freedom of expression) and 11 (freedom of assembly and association) of the Convention.

#### **Central Unitaria de Traballadores/as v. Spain (no. 49363/20)**

Application communicated to the Spanish Government on 13 October 2021

This application concerns the right to organise and take part in a peaceful demonstration during the Covid-19 pandemic.

The Court gave notice of the application to the Spanish Government and put questions to the parties under Articles 10 (freedom of expression) and 11 (freedom of assembly) of the Convention.

#### **Jarocki v. Poland (no. 39750/20)**

Application communicated to the Polish Government on 17 November 2021

The applicant submits detailed calculations of the risk of infection with Covid-19 during an open-air gathering of a thousand people and alleges that the refusal to authorise a demonstration that he wished to hold in August 2020 breached his right to freedom of assembly.

The Court gave notice of the application to the Polish Government and put questions to the parties under Article and 11 (freedom of assembly) of the Convention.

#### **Jeremejevs v. Latvia (no. 44644/21)**

Application communicated to the Latvian Government on 17 January 2022

This case concerns criminal proceedings against the applicant, a social and political activist who regularly posts on social media, with respect to the offence of hooliganism

<sup>6</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

<sup>7</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

for having posted videos on Facebook containing his interviews with health-care professionals concerning the Covid-19 infection and the Government's control and prevention measures.

The Court gave notice of the application to the Latvian Government and put questions to the parties under Article 10 (freedom of expression) of the Convention.

### **Petrova v. Bulgaria (no. 938/21)**

Application communicated to the Bulgarian Government on 26 August 2022

In the early weeks of the Covid-19 pandemic the applicant stated publicly on Facebook that she would go out to protest against the financial effects of the measures imposed by the authorities to prevent the spread of the disease, and called on others to join her. She complains in particular that the police admonished her not to go out to protest, summoned her for an interview at the precise time when she had stated that she would go out to protest, and opened a criminal investigation against her in relation to that. She further alleges that she did not have an effective remedy in that respect.

The Court gave notice of the application to the Bulgarian Government and put questions to the parties under Article 10 (freedom of expression), Article 11 (freedom of assembly and association) and Article 13 (right to an effective remedy) of the Convention.

## Right to education

### **Pending applications**

#### **M.C.K. and M.H.K.-B. (no. 26657/22) v. Germany and three other applications**

Applications communicated to the German Government on 20 December 2022

These applications concern Covid-19 related restrictions on and prohibition of in-class lessons (also globally referred to as school closures) under Section 28b § 3 of the German Protection Against Infection Act (the "IfSG").

The Court gave notice of the applications to the German Government and put questions to the parties under Article 2 (right to education) of Protocol No. 1 to the Convention and Article 8 (right to respect for private life) of the Convention.

## Freedom of movement

### **Pending application**

#### **Árus v. Romania (no. 39647/21)**

Application communicated to the Romanian Government on 8 July 2022

This case concerns the obligation to wear a mask in public spaces in the context of the Covid-19 pandemic.

The Court gave notice of the application to the Romanian Government and put questions to the parties under Article 2 (freedom of movement) of Protocol No. 4 to the Convention.

## Interim measures<sup>8</sup> under Rule 39 of the Rules of Court

Between March 2020 and January 2023, the Court processed nearly 380 interim measures requests related to the Covid-19 health crisis, mainly brought by persons detained in prison or kept in reception and/or detention centres for asylum seekers and migrants, and lodged against, in particular, Greece, Italy, Turkey and France, but also against other countries such as the Belgium, Bulgaria, Cyprus, Germany, Malta, Romania and Russia. These requests were very diverse. While requests under Rule 39 of the Rules

<sup>8</sup>. These are measures adopted as part of the procedure before the Court, under Rule 39 of the [Rules of Court](#), at the request of a party or of any other person concerned, or of the Court's own motion, in the interests of the parties or of the proper conduct of the proceedings. See also the factsheet on "[Interim measures](#)".

of Court usually concern deportations or extraditions, those received since mid-March 2020 are mainly from applicants requesting the Court to take interim measures to remove them from their place of detention and/or to indicate measures to protect their health against the risk of being infected by Covid-19.

In the vast majority of cases, these are individual applications. Many of them were rejected. In a number of other cases, the Court adjourned its decision and requested information from the Government concerned. In some cases, Rule 39 was applied in line with the usual criteria, in the case of very vulnerable persons (unaccompanied minors or persons with serious medical conditions, pregnant women, in particular).

The Court also received requests for interim measures concerning vaccination schemes, lodged by medical professionals, employees working in medical facilities and firefighters, who challenged the compulsory vaccination. The requests were rejected for being out of scope of application of Rule 39<sup>9</sup>. In a number of other requests, applicants challenged the use of Covid-19 certificates which stipulated that only people in possession of the certificates would be allowed to attend public places and, in some cases, to use public transport. The requests were also rejected for being out of scope of application of Rule 39.

A minority of requests for general measures reached the Court (for example: to enforce a complete lockdown in certain cities). These requests were rejected.

## Further reading

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See in particular:

- ["Health" factsheet](#)
  - [Notifications under Article 15 \("Derogation in time of emergency"\) of the European Convention on Human Rights](#) in the context of the Covid-19 pandemic
  - ["Council of Europe and Covid-19"](#), Covid-19 special page
  - Council of Europe Commissioner for Human Rights, Thematic Work, ["Covid-19"](#)
  - [Parliamentary Assembly of the Council of Europe and Covid-19 | Safeguarding democratic health in times of health crisis](#), Covid-19 special page
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<sup>9</sup>. See, for example: [press release](#) of 25 August 2021, concerning requests for interim measures submitted by members of the French fire service following the entry into force of the law on the management of the public health crisis; [press release](#) of 9 September 2021, concerning requests for interim measures lodged by health professionals in respect of the Greek law on compulsory vaccination of health-sector staff against Covid-19.