



## Pandemic mask-mandate complaint rejected

In its decision in the case of [Makovetskyy v. Ukraine](#) (application no. 50824/21) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned administrative-offence proceedings against Mr Makovetskyy 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 Court held that the domestic courts had not prevented Mr Makovetskyy from making his case and had addressed his arguments, and that the administrative fine issued by a police officer subject to judicial oversight was consistent with the Convention. It found those arguments to be manifestly ill-founded.

It also held that Article 7 was not applicable in this case as there had been no criminal charge.

### Principal facts

The applicant, Oleg Yuriyovych Makovetskyy, is a Ukrainian national who was born in 1985 and lives in Roylyanka (Odessa Region, Ukraine).

In December 2020 Mr Makovetskyy went to a supermarket but refused to put on a facemask when asked to by security. The police were called, an administrative-offence report was drawn up and Mr Makovetskyy was fined 170 Ukrainian hryvnias (about 4.90 euros) for breach of Covid-19 regulations.

The requirement to wear a mask had been introduced in early December 2020 by a cabinet resolution. In his defence in court Mr Makovetskyy challenged the legitimacy of the Covid measures rather than whether he had worn a mask at the supermarket. The Suvorovskiy Local Court of Odessa dismissed the applicant's appeal and upheld the fine imposed. It held that the relevant Covid legislation had been in force at the relevant time and that, therefore, the police officer's actions had been lawful.

### Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 6 October 2021.

Relying on Articles 6 (right to a fair trial) and 7 (no punishment without law), Mr Makovetskyy complained that the courts' decisions had been arbitrary, that the police officer had not been a "tribunal established by law".

The decision was given by a Committee of three judges, composed as follows:

Stéphanie **Mourou-Vikström** (Monaco), *President*,  
Lətif **Hüseynov** (Azerbaijan),  
Kateřina **Šimáčková** (the Czech Republic),

and also Martina **Keller**, *Deputy Registrar*.

## Decision of the Court

The Court was prepared to allow that the applicant may have suffered a “significant disadvantage” on principle despite the relatively low level of the fine. It reiterated that it was not a court of fourth instance that would re-examine the decisions of the domestic courts.

Concerning Article 6, the Court found that there was nothing to indicate that the domestic courts had acted in an arbitrary manner. The applicant’s arguments concerning the lawfulness of the restrictions had been examined and dismissed. With regard to the fine having been issued by a police officer, it reiterated that in accordance with its case-law administrative bodies issuing fines can be compliant with the Convention provided that they are “subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 § 1”. That was the case in this instance. It thus rejected these arguments as manifestly ill-founded.

With regard to Article 7, the Court noted that the fine had been negligible, and failure to pay could not lead to deprivation of liberty. There had been no “criminal charge”. It determined, therefore, that Article 7 was not applicable to the applicant’s situation and rejected this part of the application too.

*The decision is available only in English.*

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### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel: +33 3 90 21 42 08

**We would encourage journalists to send their enquiries via email.**

**Neil Connolly (tel.: + 33 3 90 21 48 05)**

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)

Jane Swift (tel.: + 33 3 88 41 29 04)

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