



## Inadmissibility of application lodged by individual complaining about handling of Covid-19 health crisis

In its decision in the case of [Le Mailloux v. France](#) (application no. 18108/20) the European Court of Human Rights has unanimously declared the application inadmissible.

The case concerned the applicant's objections to the handling by the French State of the Covid-19 health crisis.

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 on Human Rights. In order for applicants to be able to claim to be a victim, they must produce reasonable and convincing evidence of the likelihood that a violation affecting them personally will occur.

The application was thus incompatible with the European Convention.

The decision is final.

### Principal facts

The applicant, Renaud Le Mailloux, is a French national who was born in 1974 and lives in Marseille.

The spread of the coronavirus responsible for the Covid-19 disease in France has led the French authorities to adopt various measures to prevent and mitigate the effects of the threat to public health. The Aix and Region Medical Union (SMAER) and two private individuals, considering the measures adopted insufficient, lodged an urgent application for the protection of a fundamental freedom with the *Conseil d'État* seeking an injunction on the State to take the requisite action to provide doctors and health professionals with FFP2 and FFP3 facemasks, surgical masks for patients and the population as a whole, and mass screening facilities for all. They also wanted the State to authorise doctors and hospitals to prescribe and administer the hydroxychloroquin and azithromycin drug combination to high-risk patients, and medical laboratories to conduct screening tests.

The applicant, claiming to have been much weakened by a serious condition, intervened in support of the urgent application.

In a decision of 28 March 2020 the urgent applications judge, having declared the applicant's intervention admissible, dismissed the application.

### Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 16 April 2020.

Relying on Article 2 (right to life), Article 3 (prohibition of inhuman and degrading treatment), Article 8 (right to respect for private and family life) and Article 10 (right to freedom of expression), the applicant 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.

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

Mārtiņš Mits (Latvia), *President*,  
 Latif Hüseyinov (Azerbaijan),  
 Mattias Guyomar (France),

and also Martina Keller, *Deputy Registrar*.

## Decision of the Court

The Court reiterated that to lodge an application under Article 34 (right of individual application) of the Convention, an applicant must be able to claim to be a victim of a violation of the Convention. The individual concerned must be able to show that he or she was “directly affected” by the measure complained of.

Article 34 of the Convention did not allow complaints alleging a violation of the Convention in the abstract. Applicants were precluded from bringing an *actio popularis*: complaints about a provision of domestic law, a domestic practice or public acts simply because they appeared to contravene the Convention.

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. It first noted that he had raised these complaints only when intervening in support of an urgent application before the *Conseil d’État*. Secondly, he had 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.

Moreover, 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.

The application was thus incompatible with the Convention and had to be rejected.

*The decision is available only in French.*

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