



## Firefighter's ECHR application challenging COVID-19 vaccine mandate for certain workers under law of 5 August 2021 inadmissible for failure to exhaust domestic remedies

In its decision in the case of [Thevenon v. France](#) (application no. 46061/21) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned a firefighter's refusal to comply with the COVID-19 vaccination requirement imposed on workers in certain occupations by the Public Health Emergency Act (Law no. 2021-1040 of 5 August 2021). 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 Court, alleging violations of Articles 8 (right to respect for private life) and 14 (prohibition of discrimination) of the Convention and Article 1 of Protocol No. 1 (protection of property).

The Court rejected the application as 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. Accordingly, the Court declared his application inadmissible.

A legal summary of this case will be available in the Court's HUDOC database ([link](#)).

### Principal facts

The applicant, Pierrick Thevenon, is a French national who was born in 1988 and lives in Saint-Martin-en-Haut. He is a professional and volunteer firefighter.

On 11 March 2020 the World Health Organization declared that the world was facing a pandemic caused by a novel coronavirus, SARS-CoV-2, responsible for an infectious disease termed COVID-19. The spread of the coronavirus led the French authorities to take measures to prevent and reduce the public-health impact of the threat.

One such measure was the introduction of a Public Health Emergency Bill.

The Public Health Emergency Act (Law no. 2021-1040) received final approval by both chambers of Parliament on 25 July 2021 and was signed into law by the President on 5 August 2021. It made COVID-19 vaccination mandatory for workers in the health, emergency and social-services sectors,

except for the medically exempt and those entering a relevant workplace to perform a one-off task. Firefighters were expressly included by section 12 of the Act and were therefore subject to the vaccine mandate.

Mr Thevenon, who was not vaccinated against COVID-19, was informed by letters of 31 August and 7 September 2021 of the prospective consequences of being disqualified from serving as a firefighter in both his professional and volunteer capacities, and of what to do to bring himself into compliance with requirements. He nevertheless refused to be vaccinated.

On 15 September 2021, following Mr Thevenon's failure to show proof of compliance with the vaccination requirement or to produce a medical exemption certificate, the president of the board of administrators of the fire and rescue service of the city of Lyon and of the Rhône *département* issued two orders, one suspending him without pay from his duties as a professional firefighter and the other suspending him from service as a volunteer firefighter, in the interests of the service and on public order grounds to protect the health of individuals. Mr Thevenon did not challenge the orders.

On 19 August 2021 Mr Thevenon, along with other firefighters and hospital employees, lodged a request under Rule 39 of the Rules of Court for the Court to indicate as an interim measure the suspension of the "vaccination requirement prescribed by section 12 of the Law of 5 August 2021". On 24 August 2021 the Court denied the request on the ground that it fell outside the scope of Rule 39.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 10 September 2021.

Relying on Article 8 (right to respect for private and family life) read alone and in combination with Article 14 (prohibition of discrimination), and on Article 1 of Protocol No. 1 (protection of property), the applicant complained of the vaccination requirement imposed on him under Law no. 2021-1040 of 5 August 2021 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 decision was given by a Chamber of seven judges, composed as follows:

Síofra O'Leary (Ireland), *President*,  
Mārtiņš Mits (Latvia),  
Lətif Hüseynov (Azerbaijan),  
Lado Chanturia (Georgia),  
Ivana Jelić (Montenegro),  
Arnfinn Bårdsen (Norway),  
Mattias Guyomar (France),

and also Victor Soloveytchik, *Section Registrar*.

## Decision of the Court

The Court noted that the applicant had not applied to the administrative courts for judicial review of the orders of 15 September 2021 suspending him from his duties as a professional firefighter and from service as a volunteer firefighter. And yet he had had a window of two months, as of that date, in which to do so.

In French law, an action for judicial review or *recours pour excès de pouvoir*, in which a violation of the Convention was permissible grounds on which to rely in support of a claim for a quashing order, was one of the domestic remedies that had to be exhausted. The Court also reiterated that an appeal on a point of law to the Court of Cassation or the *Conseil d'Etat* was among the avenues that

ordinarily needed to be pursued if the requirements of Article 35 of the Convention were to be met. As a rule, therefore, in order for all domestic remedies to be exhausted, the domestic case had 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.

That requirement stood regardless of the delivery of a ruling by the Constitutional Council, a body which did not decide issues under the provisions of the Convention. A review of Convention compatibility by an “ordinary court” (*juge ordinaire*) was different from a review by the Constitutional Council of the constitutionality of legislation. Moreover, it was open to an applicant for judicial review – be it of an order of the executive giving effect to a statute, a refusal to revoke such an order or a decision taken under it concerning the applicant individually – to raise a challenge to the Convention compatibility of that statute in support of a claim for a quashing order.

The Court held that an effective domestic-law remedy had therefore been available to the applicant in that he could have instituted challenges in the administrative courts not only to the decisions concerning him individually – the two suspension orders of 15 September 2021 – 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.

The Court furthermore noted the applicant’s submission that the *Conseil d’État*’s advisory opinion of 19 July 2021 had relieved him of the onus of raising a challenge to Law no. 2021-1040 of 5 August 2021 on the occasion of proceedings concerning his individual situation.

However, the Court reiterated that the mere fact that an institution had both advisory and adjudicatory functions was not sufficient to call into question its impartiality in discharging the latter. In the Court’s view it could not be concluded from the opinion handed down on 19 July 2021 by the standing committee of the *Conseil d’État*, an advisory body, that the content of the opinion and the conclusions reached therein amounted to a prejudgment or would have been binding on members of the judicial division of the *Conseil d’État* if called upon to decide a challenge brought by the applicant.

The application was therefore inadmissible for failure to exhaust domestic remedies.

*The decision is available only in French.*

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**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.