



## Court declares inadmissible application by Egyptian national who challenged French courts' refusal to investigate his criminal complaint against Egyptian President during official visit to France

In its decision in the case of [M.M. v. France](#) (application no. 13303/21) the European Court of Human Rights has unanimously declared the application inadmissible.

The case concerned the French courts' refusal to open an investigation into a criminal complaint (with an application for civil-party status) which had been lodged by the applicant, an Egyptian national, against the Egyptian President, Abdel Fattah al-Sisi, for alleged torture and acts of barbarity, while President Sisi had been on an official visit to France in 2014. The applicant claimed to have been seriously injured when a projectile fired by an officer in the Egyptian army had hit him in the eye, during a crackdown in Cairo on protests against the *coup d'état* of 3 July 2013. The application before the Court concerned the decision not to investigate the allegations in the applicant's criminal complaint owing to the public-international-law principle of immunity of heads of State.

The Court first observed that there were no special features in the present case capable of creating an extraterritorial jurisdictional link that would have imposed a procedural obligation on the French authorities themselves to investigate allegations of acts of torture that had taken place in Egypt (procedural limb of Article 3 of the Convention). It concluded that the applicant did not fall within France's jurisdiction with respect to the acts of which he had complained under Article 3 of the Convention and rejected this part of the application as inadmissible.

The Court next reiterated that where civil proceedings were brought in the domestic courts, the respondent State was required by Article 1 of the Convention to secure in those proceedings respect for the rights protected by Article 6. The Court, like the domestic courts, considered that President Sisi enjoyed immunity from criminal jurisdiction when abroad, by virtue of the rules of customary international law. Such immunity, however, did not entail a total deprivation of the right of access to a court for the purposes of Article 6 of the Convention.

The Court did not find anything manifestly unreasonable or arbitrary in the assessment of the domestic courts, and considered that the limitation of the applicant's right of access to a court had not been disproportionate to the legitimate aim pursued. It concluded that this part of the application was inadmissible as being manifestly ill-founded.

The decision is final.

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

### Principal facts

The applicant, M.M., is an Egyptian national who was born in 1992 and lives in the United States.

On 27 July 2013 the applicant was allegedly seriously injured when a projectile fired by an officer in the Egyptian army hit him in the eye while he was taking part in protests against the *coup d'état* of 3 July 2013 in Cairo (Egypt). The Egyptian President, Abdel Fattah al-Sisi, who was elected on 28 May 2014 and assumed office on 8 June 2014, travelled to Paris for an official visit on 26, 27 and 28 November 2014. On 26 November 2014 the applicant lodged a criminal complaint, with an application for civil-party status, against President Sisi with the Paris *tribunal de grande instance*, for torture and acts of barbarity on account of the events of 27 July 2013.

In a decision of 27 April 2016 the investigating judge refused to open an investigation into the acts complained of, owing to the public-international-law principle of immunity of heads of State.

In a judgment of 13 February 2018 the Investigation Division of the Paris Court of Appeal declared the applicant's application for civil-party status inadmissible.

The applicant appealed against that decision on points of law to the Court of Cassation, which rejected his appeal on 2 September 2020. It found that the Court of Appeal had erred in declaring the applicant's civil-party application inadmissible and upheld the first-instance decision not to open an investigation.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 2 March 2021.

Relying on Article 3 (prohibition of inhuman and degrading treatment) under its procedural limb, the applicant submitted that, by refusing to look into his complaint and civil-party application, the French authorities had breached their obligation to investigate allegations of acts of torture. Relying on Article 6 § 1 (right of access to a court), he argued that that refusal had also infringed his right of access to a court.

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

Georges Ravarani (Luxembourg), *President*,  
 Carlo Ranzoni (Liechtenstein),  
 Mārtiņš Mits (Latvia),  
 María Elósegui (Spain),  
 Mattias Guyomar (France),  
 Kateřina Šimáčková (the Czech Republic),  
 Mykola Gnatovskyy (Ukraine),

and also Victor Soloveytschik, *Section Registrar*.

## Decision of the Court

### Article 3

The Court first observed that the acts complained of by the applicant – assuming they were established – did not fall within France's territorial jurisdiction as they had taken place in Egypt, where France exercised no control. The Court then noted that the applicant had no link to the French State except his criminal complaint with an application for civil-party status.

The Court next pointed out that the French courts enjoyed, in certain cases, universal jurisdiction, which enabled them to try the perpetrator of an offence regardless of his or her nationality or that of the victim, or of the place of the offence, subject to two conditions: the perpetrator had to be on French territory and had to be tried in application of certain international conventions. The Court considered, however, that such universal jurisdiction of the French courts in criminal matters could not in itself constitute a special feature capable of creating a jurisdictional link that allowed a departure from the principle of territorial jurisdiction as enshrined in the Convention. In the present case, the applicant's lodging of a criminal complaint with an application for civil-party status alone was not enough to establish the existence of an extraterritorial jurisdictional link between the applicant and France for the purposes of Article 1 of the Convention. The mere fact that an individual brought proceedings in a State Party with which he or she had no connecting tie could not suffice to establish that State's jurisdiction over him or her.

Lastly, the Court reiterated that while there was little doubt as to the binding effect on States of the right for victims of acts of torture to obtain appropriate and effective compensation, with regard to acts of torture perpetrated on the territory of the State whose courts had the case before it or by persons within its jurisdiction, the same did not apply to acts committed by third States or persons under their jurisdiction.

The Court concluded that there were no special features in the present case capable of creating an extraterritorial jurisdictional link that would have imposed a procedural obligation on the French authorities themselves to investigate allegations of acts of torture that had taken place in Egypt.

Consequently, the applicant did not fall within France's jurisdiction with respect to the acts of which he had complained under Article 3 of the Convention. It followed that this part of the application had to be declared inadmissible.

### Article 6 § 1

The Court began by pointing out that where civil proceedings were brought in the domestic courts, the State was required by Article 1 of the Convention to secure in those proceedings respect for the rights protected by Article 6. The Court considered that, once a person brought a civil action in the courts or tribunals of a State, there indisputably existed, without prejudice to the outcome of the proceedings, a "jurisdictional link" for the purposes of Article 1.

With regard to the applicability of Article 6 § 1 to the proceedings in issue, the Court considered that the applicant could lay claim to a right which was recognised under French law, namely the right of victims of acts of torture to obtain redress and to fair and adequate compensation. Furthermore, there existed a "genuine and serious" dispute, the result of which was directly decisive for the right relied on by the applicant, and the right in question was civil in nature.

Accordingly, Article 6 § 1 of the Convention was applicable to the matter at hand.

Regarding compliance with Article 6 § 1, the parties were in agreement that the applicant's access to a court had been limited. His civil action had not succeeded because of the personal immunity from jurisdiction enjoyed by the incumbent head of State, which had amounted to a procedural bar.

Concerning that limitation, the Court considered that it had pursued the legitimate aim of complying with the rule of customary international law whereby incumbent heads of State enjoyed immunity – a rule aimed at protecting such individuals from measures by foreign powers so that they might exercise their functions unhindered – and preserving diplomatic relations.

As to whether the limitation had been proportionate, the Court began by pointing out that the State enjoyed certain discretion ("margin of appreciation") in regulating the right of access to a court, as that right was not absolute. It next noted that the Court of Cassation had found that the limitation of the applicant's right of access to a court, owing to the personal immunity of the incumbent head of State, was enshrined in international law and did not go beyond generally recognised rules on the immunity of States and their representatives.

The Paris *tribunal de grande instance* investigating judge's refusal to investigate, which had been upheld by the Court of Cassation, had been based not on the question of jurisdiction of the French courts but on the immunity from criminal jurisdiction enjoyed by an incumbent head of State, against whom the criminal complaint had been solely directed. His immunity had thus formed a procedural bar preventing criminal prosecution from being set in motion.

First, with regard to the issue of immunity, the Court, like the domestic courts, considered that President Sisi enjoyed absolute immunity from criminal jurisdiction when abroad, by virtue of the rules of customary international law. Second, the Court emphasised that the absolute nature of such personal immunity did not entail a total deprivation of the right of access to a court. Without prejudice to compliance with the conditions to which such immunity was subject, it did not have the

effect of barring a fresh criminal complaint from being lodged against the head of State in question for the same acts, either at the end of his term of office, or during that term before an international court or tribunal. More importantly, as the Court pointed out, the applicant had not been prevented from bringing his complaints before the domestic courts, up to and including the Court of Cassation. As the Government had argued, he had not therefore been denied access to a court solely on account of the personal criminal immunity enjoyed by the incumbent head of State. In this connection, the Court noted that the first investigating judge – whose reasoning had been upheld by the Court of Cassation – had considered immunity such an obvious bar in the case of an incumbent foreign head of State that a judicial investigation could in no event have resulted in prosecution and thus had had no prospect of success.

The Court did not find anything manifestly unreasonable or arbitrary in the assessment of the domestic courts, and considered that the limitation of the applicant's right of access to a court had not been disproportionate to the legitimate aim pursued. It concluded that this part of the application was manifestly ill-founded.

The Court thus unanimously declared the application inadmissible.

*The decision is available only in French.*

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