



The Cour declares inadmissible the application lodged by Mr Fillon, Ms Fillon (his wife) and Mr Joulaud

In its decision in the case of [Fillon and Others v. France](#) (application no. 24326/24), the European Court of Human Rights has unanimously declared the application inadmissible, in part as being manifestly ill-founded, and in part for failure to exhaust domestic remedies.

The application essentially concerned the fairness, under Article 6 §§ 1 and 3 of the Convention, of the trial of the three applicants - Mr Fillon, a former Prime Minister, his wife Ms Fillon, and Mr Joulaud (who had been Mr Fillon's substitute in the National Assembly) – who had all been convicted of embezzlement of public funds, handling of those funds or complicity in the offence.

The Court noted, first, that the applicants' allegation of a lack of independence and impartiality in the preliminary investigation stage of the proceedings against them was not manifestly ill-founded and that it was not its task to intervene in the national debate concerning reform of the public prosecution service in France.

It then held that the criminal proceedings in question, taken as a whole, had been fair within the meaning of Article 6 of the Convention.

As to Mr Fillon's additional complaint alleging that his conviction had not been foreseeable for the purposes of Article 7 of the Convention, the Court noted that he had failed to exhaust the remedies available under domestic law, in that he had not raised this complaint, even in substance, before the Court of Cassation.

This decision is final.

Principal facts

The applicants, François Fillon, Ms Penelope Fillon (his wife), and Mr Marc Joulaud, are French nationals who were born in 1954, 1955 and 1967 respectively, and live in Solesmes and Sablé-sur-Sarthe respectively.

Mr Fillon was Prime Minister of France from 2007 to 2012, and was twice elected as a member of the National Assembly, representing the *département* of Sarthe (1997 to 2002) and the second constituency of Paris (2012 to 2017).

Following the publication of an article in *Le Canard enchaîné* on 25 January 2017 questioning the reality both of Ms Fillon's tasks as a parliamentary assistant to her husband, who was then a member of the National Assembly, and subsequently as an assistant to Mr Joulaud, and also of her duties as a literary adviser for the magazine *Revue des deux mondes* (which was funded by its publication director, Mr L., one of their friends), a preliminary investigation was opened into the embezzlement of public funds, misappropriation of company assets and handling misappropriated company assets.

The investigation was transmitted to a public prosecutor dealing with financial offences who opened a judicial investigation.

On 19 April 2019 the investigating judges remitted the three applicants for trial before the Paris Criminal Court.

In a judgment of 29 June 2020, Mr Fillon was convicted of embezzlement of public funds in the periods 1998 to 2002 and 2012 to 2013, handling and complicity in the embezzlement of public funds attributed to the third applicant, and handling and complicity in the misappropriation of company

assets attributed to M.L. The court sentenced him to five years' imprisonment, two of which were suspended, imposed a fine of 375,000 euros (EUR) and disqualified him from standing for electoral office for ten years. His wife was convicted of complicity in the embezzlement of public funds and complicity in the misappropriation of company assets attributed to M.L., and was sentenced to three years' imprisonment, suspended, fined EUR 375,000 and disqualified from standing for electoral office for two years. Mr Joulaud was convicted of embezzlement of public funds and sentenced to three years' imprisonment (suspended), fined EUR 20,000 and disqualified from electoral office for five years. In addition, the court ordered the first and second applicants, and the second and third applicants, jointly and severally, to pay the National Assembly (a civil party to the case) EUR 401, 230.19 and EUR 679,989.32 respectively by way of damages.

In pleadings filed with the Paris Court of Appeal, Mr Fillon asked that court to find – by way of exception to the provisions then in force of Article 385 paragraph 1 of the Code of Criminal Procedure – that grounds for nullity arising from “particularly serious” evidence that had come to light after the close of the judicial investigation were admissible. He applied to have several procedural acts set aside. He also submitted that “the choice of investigating judge had been deliberately partial”, and that the preliminary investigation and judicial investigation had been “biased”.

On 9 May 2022 the court of appeal held that Mr Fillon's application to have the proceedings set aside for nullity was inadmissible, in line with the procedure for curing nullity provided for in the first paragraph of Article 385 of the Code of Criminal Procedure.

The Court of Appeal concluded that there had been no failing on the part of the financial prosecutor “capable of rendering [the application for a judicial investigation] defective or irregular”, and that the order of 19 April 2019 committing the applicants for trial before the Criminal Court, “which had accordingly been made lawfully”, had entailed estoppel of the plea of nullity.

On the merits, it partly set aside the judgment. It amended the sentences of Mr Fillon and his wife to four years' imprisonment (suspended for three years) and to two years' imprisonment (suspended) respectively, and held that it was not necessary to fine Mr Joulaud. It calculated that the compensation to be paid to the National Assembly by Mr Fillon and his wife was EUR 126,167.10.

Each of the applicants appealed on points of law, relying on a large number of grounds, particularly with regard to the reasons given for the sentences and award of damages. Mr Fillon requested that the case be referred for a preliminary ruling on the constitutionality (QPC) of the first paragraph of Article 385 of the Code of Criminal Procedure.

In decision no. 2023-1062 QPC of 28 September 2023, the Constitutional Council held that the above-mentioned provision was unconstitutional, as amounting to a violation of the right to an effective judicial remedy and the rights of the defence, since that it did not provide for an exception to the curing of nullity in situations where the accused had only learned of the possible irregularity of a procedural act, or of part of the proceedings, after the closing of the investigation.

In further pleadings, Mr Fillon requested that the court of appeal's judgment be quashed, given that the court of appeal had declared inadmissible his plea of nullity on the basis of a provision that was contrary to the Constitution, which, in his argument, deprived the appeal judgment of a legal basis. In additional observations, the second and third applicants requested that the future quashing of the appeal judgment in the first applicant's favour be extended to cover the operative provisions concerning them.

On 24 April 2024 the Court of Cassation quashed and set aside the court of appeal's judgment solely in respect of the penalties imposed on the first applicant and the damages to be paid by him and Ms Fillon to the National Assembly. It remitted the case to the Paris Court of Appeal with a differently constituted bench. Pointing out that the Constitutional Council's decision did not prejudge the impact of the finding of unconstitutionality on the pending criminal proceedings, it dismissed the first applicant's further pleadings.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 21 August 2024.

Relying on Article 6 §§ 1 and 3 (right to a fair trial), the applicants submitted that they did not have access to an independent and impartial tribunal, on account of the “pressure” exerted by the Principal Public Prosecutor at the pre-trial stage. They also submitted that both the manner in which prosecutors were appointed and the feedback required by the Principal Public Prosecutor demonstrated a lack of independence on the part of the prosecutors who applied for proceedings to be brought against them.

Relying on the same provision, the second and third applicants complained that the Court of Cassation did not respond to their request to have the Court of Appeal’s judgment set aside on the basis of the Constitutional Council’s decision.

Relying on Article 7 (no punishment without law), the first applicant also submitted that the offence of embezzlement of public funds provided for by Article 432-15 of the Criminal Code was not applicable to persons holding elected office when exercising their legislative power.

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

Kateřina Šimáčková (the Czech Republic), *President*,
María Elósegui (Spain),
Gilberto Felici (San Marino),

and also Martina Keller, *Deputy Registrar*.

Decision of the Court

Article 6 §§ 1 and 3

That Court reiterated that it was not its role to act as a fourth-instance body and that it would therefore not question under Article 6 § 1 the national courts’ assessment, unless their findings could be regarded as arbitrary or manifestly unreasonable.

It noted that the applicants did not allege a lack of independence and impartiality on the part of the courts called upon to “determine ... [the] criminal charge” against them, but rather alleged a lack of independence and impartiality on the part of the financial prosecutor who had conducted the prosecution, arguing that the latter had been subjected to pressures during the preliminary investigation phase, thus rendering the trial unfair.

In this connection, the Court noted, first, that the PRF, as the prosecuting authority, had not been called upon, in that capacity, to “determine... a criminal charge” within the meaning of Article 6 § 1 of the Convention.

Secondly, the Court emphasised, with regard to the first applicant’s questioning of the financial prosecutor’s independence – on account of the manner in which prosecutors were appointed and the status of the public prosecutor’s office in France, reform of which had not yet taken place –, that it was not its role to intervene in that national debate.

Thirdly, in so far as the applicants submitted that the preliminary investigation had irretrievably prejudiced the fairness of the proceedings as a whole, guaranteed by Article 6 § 1, and undermined the rights of the defence, enshrined in Article 6 § 3, the Court found no appearance of a violation of the rights protected by that Article, for the following reasons.

First, the Court noted that the Paris Court of Appeal, before examining Mr Fillon’s plea of nullity, had verified that the adversarial principle had been complied with and the rights of the defence respected

Secondly, as noted by the Court of Cassation, the Paris Court of Appeal, in advance of the Constitutional Council's decision no. 2023-1062 on the curing of nullity in criminal matters, had ruled on a ground of nullity concerning procedural acts that the first applicant claimed to have been unaware of before the investigation's close. In so doing, it had held that it was required to examine the admissibility of the plea alleging the nullity of the proceedings, raised for the first time on appeal; it subsequently examined whether failings at the preliminary investigation stage could have prejudiced the conduct of the prosecution and the subsequent proceedings. In ruling that this had not been the case, the Court of Appeal had regard, among other material, to an opinion by the Judicial Service Commission, and had delivered a carefully reasoned judgment, after adversarial proceedings during which the first applicant had had every opportunity to present his arguments.

The Court considered that the proceedings in issue, taken as a whole, had been fair within the meaning of Article 6 § 1 of the Convention. This conclusion consequently applied, as the Court of Cassation had undoubtedly deduced, to the second and third applicants.

Article 7

The Court noted that he had not raised this complaint, even in substance, before the Court of Cassation. This part of the application had therefore to be dismissed for failure to exhaust domestic remedies.

The decision is available only in French.

Follow the Court on Bluesky [@echr.coe.int](https://bsky.app/profile/echr.coe.int), X [ECHR CEDH](https://twitter.com/ECHR_CEDH), LinkedIn, and YouTube.

Where can the Court's press releases be found? [HUDOC - Press collection](#)

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Denis Lambert (tel: + 33 3 90 21 41 09)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Inci Ertekin (tel: + 33 3 90 21 55 30)

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

4