



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF PAGERIE v. FRANCE

(Application no. 24203/16)

JUDGMENT

Art 2 P4 • Sufficient procedural safeguards attaching to thirteen-month preventive residence restriction imposed on radicalised Islamist during state of emergency following terrorist attacks • High degree of interference of measure accompanied by night-time curfew and obligation to report to police three times a day on pain of imprisonment • Foreseeability of law • Effective review by courts • Periodic review of necessity of measure • Proportionate measure not preventing applicant from having social life or maintaining contact with outside world

STRASBOURG

19 January 2023

FINAL

19/04/2023

This judgment became final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Pagerie v. France,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Síofra O’Leary, *President*,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Lətif Hüseyinov,
Lado Chanturia,
Mattias Guyomar,
Mykola Gnatovskyy, *judges*,

and Victor Soloveytchik, *Section Registrar*,

Having deliberated in private on 13 December 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns a compulsory residence order made in the context of a state of emergency and an individual administrative control and monitoring order (*mesure individuelle de contrôle administratif et de surveillance* – “MICAS”). The applicant relied on Articles 8, 9 and 14 of the Convention and on Article 2 of Protocol No. 4.

PROCEDURE

2. The case originated in an application (no. 24203/16) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a French national, Mr David Pagerie (“the applicant”), on 26 April 2016.

3. The applicant was represented by Mr S. Khankan, a lawyer practising in Nantes. The French government (“the Government”) were represented by their Agent, Mr F. Alabrune, Director of Legal Affairs at the Ministry of European and Foreign Affairs, and by B. Chamouard, Head of the Human Rights Section of that same department.

4. The application was allocated to the Fifth Section of the Court (Rule 52 § 1 of the Rules of Court). On 15 December 2020 notice of the application was given to the Government.

5. On 30 August 2022, the Chamber of the Fifth Section decided of its own motion to hold a hearing (Rule 54 § 5 of the Rules of Court), which took place in public in the Human Rights Building, Strasbourg, on 18 October 2022.

There appeared before the Court:

(a) *for the Government*:

Mr B. CHAMOUARD,

co-Agent,

Ms M. BLANCHARD,
Mr I. HERZOG,
Ms A. CAROLIN,
Ms P. LÉGLISE,
Mr A. AMADORI,
Ms C. COLLIN,

Advisers;

(b) *for the applicant:*

Mr S. KHANKAN,
Ms C. WAQUET,

Counsel.

6. The Court heard addresses by Mr Chamouard, Ms Waquet and Mr Khankan and their replies to the questions from the Court.

THE FACTS

I. THE DECLARATION OF A STATE OF EMERGENCY FOLLOWING THE ATTACKS OF 13 NOVEMBER 2015

7. On the night of 13-14 November 2015 coordinated attacks, responsibility for which was claimed by Daesh, were perpetrated in Saint Denis and Paris, taking the lives of 130 people.

8. A state of emergency was declared across continental France and Corsica in decree no. 2015-1475 of 14 November 2015, which was issued pursuant to the Law of 3 April 1955 (see paragraph 62 below). Issued on the same day, decree no. 2015-1476 authorised the enforcement of compulsory residence orders (see paragraphs 65-72 below) in those areas.

9. The state of emergency was extended by six successive laws enacted on 20 November 2015, 19 February 2016, 20 May 2016, 21 July 2016, 19 December 2016 and 11 July 2017, respectively, upon delivery of favourable opinions by the *Conseil d'État*. It came to an end on 1 November 2017.

10. According to the material submitted by the French Government, eighteen attacks were committed or attempted in France in this period. Five of them resulted in fatalities. In this regard, the attack perpetrated in Nice on 14 July 2016 was particularly deadly. In addition, another thirty-two planned attacks were thwarted.

II. THE CIRCUMSTANCES OF THE CASE

11. The applicant is a French national who was born in 1988 and lives in Verrières-en-Anjou.

A. The measures ordered in respect of the applicant

12. From 22 November 2015 to 11 June 2017 the applicant was placed under a residence restriction by five successive orders of the Minister of the Interior. He was imprisoned from 5 August 2016 to 18 January 2017 and subsequently from 11 June to 15 November 2017. Save during the first of these two periods, the compulsory residence order was enforced continuously. The applicant was subsequently placed under a MICAS order (see paragraphs 87-89 below).

1. *The first compulsory residence period*

(a) **The order of 22 November 2015**

13. By order of 22 November 2015 the Minister of the Interior placed the applicant under a residence restriction within the municipality of Angers, confining him to his home between the hours of 8 p.m. and 6 a.m. and requiring him to report to the Angers police station three times a day (at 9 a.m., 2 p.m. and 7 p.m.), including on public holidays and non-working days.

14. The grounds for this order were as follows:

“... In view of the serious nature of the terrorist threat throughout the national territory following the attacks of 13 November 2015, and having regard to his conduct, Mr David Pagerie ... falls within the scope of [section 6 of the Law of 3 April 1955, as amended]. During his imprisonment in the *Centre de détention* in Argentan (*département* no. 61) in 2012, he drew the attention of the prison authorities through his particularly radical practice of Islam, a religion to which he had converted in 2007. Acting in a provocative manner, he was sometimes violent and openly endorsed Islamist views in favour of enforcing Sharia. In June 2012 he began corresponding with Mohamed Achamlane, the then imprisoned former leader of the Forsane Alizza group, a small group which was founded in August 2010 and rapidly gained notoriety among Islamist circles, in particular owing to statements posted daily on its website, ‘forsane-alizza.com’, and its openly anti-West and antisemitic stance. Combining references to jihadist Islam with highly vitriolic anti-establishment rhetoric, ‘Forsane Alizza’ clearly stated that its goals were to establish a caliphate and enforce Sharia in France. It was dissolved by decree on 1 March 2012 and its website was shut down. Mr David Pagerie was released from prison on 18 August 2015.

In view of the serious nature of the threat he poses to public order and safety, there is cause to place him under a residence restriction within a circumscribed area, to require him to report to police headquarters in Angers (*département* no. 49) and to designate the hours during which he is required to remain on the premises where he resides. ...”

15. This administrative public-order measure (*mesure de police administrative*) was implemented from 25 November 2015 onwards.

(b) **The orders of 24 February 2016 and 24 May 2016**

16. The compulsory residence order was renewed in two orders dated 24 February and 24 May 2016, respectively, with identical implementation

conditions. In addition to the grounds initially put forward, the Minister of the Interior cited the following circumstances.

17. As to the order of 24 February 2016, after noting that Mr Achamlane (see paragraph 14 above) had been sentenced to nine years' imprisonment for criminal conspiracy linked to terrorism in July 2015, the Minister clarified as follows:

“... Since his placement under the residence restriction, Mr David Pagerie has made public statements in the local press confirming his endorsement of radical views and has refused to condemn the terrorist attacks which took place in France in January and November 2015. ...”

18. As to the order of 24 May 2016, the Minister further clarified as follows:

“... Since his placement under the residence restriction, Mr David Pagerie ... has also condoned and justified the attacks perpetrated in Brussels on 22 March 2016, stating that he too would be willing to conduct violent actions were he to have weapons.

After reviewing Mr David Pagerie's situation, and in the context of an ongoing, high-level terrorist threat, coupled with the holding of two exceptionally large sporting events, there are still substantial grounds to believe that [the applicant] poses a threat to public order and safety. Consequently, there is cause to maintain his placement under a residence restriction within the municipality of Angers. ...”

(c) The day-long exclusion order issued for 4 July 2016

19. By decision of the prefect on 20 June 2016 the applicant was placed under a separate exclusion order covering part of the territory of the municipality of Angers for the day of 4 July 2016, while the Tour de France passed through.

(d) Prohibition of contact under the order of 22 July 2016

20. In an order of 22 July 2016 the Minister of the Interior supplemented the measures that had been ordered in respect of the applicant with a prohibition on contacting Mr Mario Nadir, on the following grounds:

“... Mr David Pagerie has maintained relations with Mr Mario Nadir ... since they were imprisoned at the same time in Argentan (*département* no. 61) in February 2013. In 2010 Mr Nadir was tried for the attempted murder of a police officer and was sentenced to seven years' imprisonment for intentional wounding with aggravating circumstances. There are thus substantial grounds to believe that his conduct poses a threat to public safety and order. Consequently, there is cause to prohibit Mr Pagerie from coming directly or indirectly into contact with Mr Mario Nadir. ...”

2. The applicant's first prison sentence

21. On 4 August 2016 an administrative search was conducted at the applicant's home. On the premises, the police seized a hand-written document containing football stadium addresses, a newspaper cutting in connection with the above-mentioned article about the applicant's statements (see

paragraph 17 above), a laptop computer hidden above a suspended ceiling and a mobile phone.

22. An inspection of the phone revealed that its user had subscribed to an account that relayed jihadist propaganda by means of an encrypted messaging application. It was established that the seized phone and laptop had been used to open files sent through that channel. These files contained pictures of the attacks perpetrated in Paris, Magnanville and Brussels, videos of summary executions and of children holding weapons or attending Islamic schools, and war songs inciting hatred and violence against the West.

23. During a police interview, Mr Nadir confirmed that he had met with the applicant several times and stated that the latter had shown him videos of decapitations and scenes of combat.

24. The applicant was prosecuted under the summary trial procedure (*comparution immédiate*) first for breaching the prohibition of contact with Mr Nadir under the order of 22 July 2016 and second for habitually accessing an online service that supplied messages, pictures or representations inciting or defending acts of terrorism.

25. On 5 August 2016 he was placed in pre-trial detention.

26. In its judgment of 14 September 2016 the Angers Criminal Court requested a preliminary ruling on the constitutionality (*question prioritaire de constitutionnalité*) of the law defining the second of the above-mentioned offences, which was provided for at the time in Article 421-2-5-2 of the Criminal Code. Without deferring its decision, it found the applicant guilty of both offences with which he was charged, sentenced him to two years' imprisonment, returned him to custody and ordered the confiscation of the seized property.

27. The applicant lodged an appeal and remained in prison until 18 January 2017.

28. In its decision no. 2016-611 QPC of 10 February 2017, the Constitutional Council declared that Article 421-2-5-2 of the Criminal Code was unconstitutional as drafted on the basis of the Law of 3 June 2016.

29. In consequence, the Angers Court of Appeal, ruling on the applicant's appeal in a judgment delivered on 23 February 2017, acquitted him of that charge and sentenced him to six months' imprisonment on the remaining charge. It ordered the return of the seized property.

3. *The second compulsory residence period*

30. Upon his release on 18 January 2017 the applicant was placed under a fresh residence restriction that same day.

(a) **The order of 18 January 2017 and its subsequent amendments**

31. As the applicant was homeless following his release from Rennes–Vezin-le-Coquet Prison, he was first placed under a residence restriction in

Rennes by an order of 18 January 2017. He was required to report periodically to police headquarters and to surrender his passport and all other identity documents, against delivery of a receipt.

32. In addition to the grounds on which the previous measures had been based, the new order relied on the results of the administrative search conducted on 4 August 2016 (see paragraphs 21-22 above), on the circumstances that had resulted in his conviction on 14 September 2016 (see paragraph 26 above) and on the following considerations:

“... During his imprisonment at Rennes–Vezin-le-Coquet Prison (*département* no. 35), Mr David Pagerie developed relations with the Algerian radical Islamist Jamel Beghal, also imprisoned there, who was sentenced to 10 years’ imprisonment on 15 March 2005 for criminal conspiracy to plot a terrorist act and to 10 years’ imprisonment on 20 December 2013 for taking part in a large-scale criminal plot involving the break-out of two individuals from Clairvaux Prison. ...”

33. In an amending order of 19 January 2017 the applicant was placed under a residence restriction in Angers. He was required to stay at home every night between the hours of 8 p.m. and 6 a.m. and to report to Angers police headquarters three times a day (at 9 a.m., 2 p.m. and 7 p.m.), including on public holidays and non-working days. In addition, he was prohibited from contacting Mr Nadir. Lastly, the requirement to surrender an identity document was maintained.

34. The applicant’s place of residence was amended in a second amending order issued on 25 January 2017. From that date he was accommodated in a hotel room in Angers.

(b) The order of 27 March 2017 extending the applicant’s residence restriction beyond twelve months

35. The applicant’s residence restriction was renewed with identical conditions by an order of 27 March 2017.

36. Having regard to the total length of the measure imposed, which exceeded twelve months, this decision gave special reasons. In addition to reiterating all the considerations mentioned previously, the order relied on the following considerations:

“... While in prison in 2013, he made unequivocal statements to the effect that, upon his release, he wished to enlist in jihad abroad. In January 2015, while once more imprisoned in Laval Prison, he consolidated the process of radicalisation, refusing any contact with the prison’s female staff and asking that the television set be removed from his cell.

... An administrative search conducted at his home on 4 August 2016 revealed that the applicant was accessing websites that defended terrorism. Since accessing such websites constituted a criminal offence at that time, [the applicant] was sentenced to two years’ imprisonment... Even though accessing websites that defend terrorism is no longer proscribed today as a result of the Constitutional Council’s decision of 10 February 2017, the facts which justified his conviction remain established and troubling nonetheless.

Having been placed under a fresh residence restriction upon his release, Mr David Pagerie ramped up his violent statements and provocations against representatives of the State. Thus, on 11 February 2017, the day following the above-mentioned decision of the Constitutional Council, he contacted the *gendarmerie* in Angers (*département* no. 49) by telephone and sent a letter to the Principal Public Prosecutor at the Angers Court of Appeal (*département* no. 49) to inquire as to the lawfulness of viewing videos of throat slitting online. The same day, when reporting to the police station, he refused to submit to checks using a metal-detector and, when the police officers refused to allow him to enter, yanked the door open and spat at them.

Moreover, [the applicant] was sentenced to six months' imprisonment on 23 February 2017, without immediate remand in custody, for breaching his residence restriction.

In view of the serious nature of the facts which justified [the applicant's] residence restriction and its successive renewals, and of the new evidence of Mr David Pagerie's ongoing involvement with radical circles, there are substantial grounds to believe that his conduct still poses a particularly grave threat to public safety and order. Accordingly, there is cause to extend Mr David Pagerie's residence restriction for a period of three months. ..."

(c) The denial of an adjustment request by decision of 30 March 2017

37. On 30 March 2017 the Minister of the Interior rejected the applicant's request for a temporary suspension of his obligation to report to the police. The Minister considered that the medical certificate produced by the applicant did not show that his state of health was incompatible with the trips he was required to make between his place of compulsory residence and the Angers police station.

38. On 11 June 2017 the measure's enforcement was interrupted by the applicant's return to prison.

4. *The applicant's second prison sentence*

39. On 9 June 2017 the police learned that the applicant was making regular trips to a swimming pool located in a municipality bordering Angers. He was arrested and his phone was seized. A technical inspection of the device identified new propaganda videos among the data contained in an encrypted messaging application. One such video described how to make a bomb. Another concerned an execution by decapitation.

40. On 11 June 2017 the applicant was prosecuted and stood trial under the summary procedure for a breach of his residence restriction and habitual use of an online service that defended or incited acts of terrorism. As a result of the Constitutional Council's decision of 10 February 2017, Article 421-2-5-2 of the Criminal Code, which provided for the latter offence, had been amended by the Law of 28 February 2017. He was placed in pre-trial detention by a decision of the liberties and detention judge delivered on the same day.

41. In a judgment of 13 July 2017 the Angers Criminal Court requested a fresh preliminary ruling on the constitutionality of the new wording of

Article 421-2-5-2 of the Criminal Code. Without deferring its decision, it acquitted the applicant of that charge, finding that it had not been established that he had accessed the files found on his phone. It sentenced him to six months' imprisonment on the remaining charge, remanded him in custody and ordered the additional penalty of confiscation.

42. The applicant lodged an appeal against the confiscation penalty alone. The Angers Court of Appeal partly overturned that judgment on 9 November 2017.

43. The applicant was released from prison on 15 November 2017.

44. In its decision no. 2017-682 QPC of 15 December 2017 the Constitutional Council declared that Article 421-2-5-2 of the Criminal Code was unconstitutional as drafted on the basis of the Law of 28 February 2017.

5. The MICAS order issued in respect of the applicant

45. On 14 November 2017 a MICAS order was issued in respect of the applicant, under which, among other things, he was prohibited from leaving Angers and required to report to the police station once a day. These requirements were renewed twice and lasted nine months in total.

B. The legal remedies pursued by the applicant

46. The applicant brought several challenges against the decisions mentioned above, all of which were all rejected by the administrative courts.

1. Urgent applications for interim relief to suspend the effect of administrative decisions on grounds of illegality (référé-suspension)

47. In two separate applications lodged under Article L. 521-1 of the Administrative Courts Code, the applicant asked the urgent-applications judge to suspend the enforcement of the orders of 22 November 2015 and 26 February 2016. Proceedings in respect of his first application were discontinued by order of 29 February 2016. The second was dismissed on 11 March 2016, there being no serious doubts as to the lawfulness of the impugned decision.

48. The applicant did not seek to have those decisions reviewed on points of law.

2. Urgent applications for protection of a fundamental freedom (référé-liberté)

49. The applicant also lodged five separate applications with the urgent-applications judges of the administrative courts of Nantes and Rennes under Article L. 521-2 of the Administrative Courts Code to suspend the enforcement of the orders of 22 November 2015, 24 May 2016, 18 January 2017 and 27 March 2017, and of the decision of 30 March 2017.

50. He submitted that these measures had interfered with his freedom of movement in a serious and flagrantly unlawful manner and, in one of his applications, complained succinctly of a breach of Article 8 of the Convention. Furthermore, he alleged manifest errors of assessment and mistakes of law. From April 2017 onwards, he further submitted that the conditions of his obligation to report to the police were no longer appropriate on account of the deterioration of his state of health.

51. These applications were dismissed in four decisions dated 29 January and 4 July 2016, and 26 January and 10 April 2017, respectively. The last one concerned his applications for stays of execution of the order of 27 March 2017 and of the decision of 30 March 2017 refusing to adapt the residence restriction.

52. The applicant appealed against the decisions of 29 January 2016 and of 10 April 2017. He continued to maintain that the impugned measures had interfered with his freedom of movement in a serious and flagrantly unlawful manner, but refrained from alleging any interference with his right to respect for private and family life.

53. The urgent-applications judge of the *Conseil d'État* dismissed the applicant's first appeal – against the order of 22 November 2015 – in a decision of 10 February 2016, which was reasoned as follows:

“6. The examination shows that, in issuing the impugned order, the Minister of the Interior based his decision – relying, in particular, on a ‘*note blanche*’ (intelligence report) from the intelligence services which was the subject of adversarial argument – on the fact that Mr Pagerie had drawn attention to himself during his imprisonment in 2012 through his radical religious practice, his sometimes violent behaviour and his openly pro-Islamist ideological commitments. He began a correspondence with Mr Mohamed Achamlane, who was sentenced to nine years' imprisonment for criminal conspiracy linked to terrorism and was the former leader of the Forsane Alizza group, which had been dissolved by decree on 1 March 2012 in the light of its anti-West, antisemitic and ‘jihadist’ stance. The Minister also took account of public statements made by Mr Pagerie in the press, which had confirmed his radicalisation.

7. Mr Pagerie, who did not attend the hearing scheduled by the urgent-applications judge of the *Conseil d'État* that he had himself initiated, did not provide any evidence in support of his application. He did not dispute the fact that he had corresponded with Mr Mohamed Achamlane, the leader of the Forsane Alizza group, who was convicted for having planned terrorist attacks in France. In an interview with the local press following the compulsory residence order, he made public statements confirming his radical views and refused to condemn the terrorist attacks which had taken place in France in January and November 2015. Having regard to all the evidence thus collected, it has not been shown, as the examination stands, that in imposing the residence restriction on Mr Pagerie on the grounds that there were substantial reasons to believe that his conduct posed a grave threat to public safety and order, and in establishing its implementation conditions, the Minister of the Interior, who has struck a balance between the various interests in issue, has interfered with a fundamental freedom in a serious and flagrantly unlawful manner.

8. It follows from the above considerations that Mr Pagerie is not justified in claiming that, in the decision appealed against, the urgent-applications judge of the Nantes Administrative Court wrongly dismissed his application.”

54. In his second appeal – against the orders of 27 and 30 March 2017 – the applicant complained only of flagrantly unlawful interference with his freedom of movement. His appeal was examined by the urgent-applications judge of the *Conseil d’État*, sitting as a member of a bench of judges, and was dismissed by a decision of 19 May 2017. Having pointed out the role of the urgent-applications judge in reviewing residence restrictions imposed under section 6 of the Law of 3 April 1955 (see paragraph 77 below), the *Conseil d’État* found as follows:

“6. Firstly, in issuing the impugned order to renew the residence restriction, the Minister of the Interior based his decision – relying, in particular, on a ‘*note blanche*’ from the intelligence services which was the subject of adversarial argument – on the fact that Mr Pagerie had drawn attention to himself during his imprisonment in 2012, on account of his radical religious practice, his sometimes provocative behaviour, his openly pro-Islamist ideological commitments and his expressed wish to enlist in the jihad upon his release. He had thus begun a correspondence with Mr Mohamed Achamlane, who had been sentenced to nine years’ imprisonment for criminal conspiracy linked to terrorism and had formerly been the leader of the ‘Forsane Alizza’ group, which had been dissolved by decree on 1 March 2012 in the light of its stance as anti-West, antisemitic and ‘jihadist’. In addition, during his imprisonment at Rennes-Vézin-le-Coquet Prison from 5 August 2016 to 18 January 2017, he had allegedly come into contact with the Algerian radical Islamist Jamel Beghal, also imprisoned there, who had been sentenced to ten years’ imprisonment for criminal conspiracy to plot a terrorist act and for organising a plot to break two individuals out of Clairvaux Prison. The Minister also took account of public statements made by Mr Pagerie in an interview with the local press following the initial compulsory residence order, in which he confirmed his radical views and refused to condemn the terrorist attacks that had taken place in France in January and November 2015 and in Brussels in March 2016.

7. In the light of all these considerations, the substance of which the applicant did not dispute, and of the exchanges during both the written and oral proceedings, it can be seen that the conduct of Mr Pagerie, who has shown no intention of severing his ties to radical Islamism, poses a particularly grave threat to public order and safety.

8. Secondly, during the twelve-month period preceding the impugned renewal of the residence restriction, Mr Pagerie was subjected to an administrative search on 4 August 2016, following which he was remanded in custody on 5 August 2016, under the ‘summary’ procedure, then sentenced, by a judgment of the Criminal Division of the Angers *tribunal de grande instance* of 14 September 2016, to two years’ imprisonment for having had contact with Mr Mario Nadir on 31 July 2016, in spite of the prohibition imposed as part of his residence restriction, and for having used an online public communication service from 3 June to 3 August 2016 which supplied messages, pictures or representations that incited or defended acts of terrorism. The judgment of the Criminal Division shows, in particular, that Mr Pagerie subscribed to a group on the Telegram encrypted messaging service which disseminated messages, war songs and videos from the Daech organisation defending terrorism, and by means of which he viewed numerous pictures of the attacks carried out in France and Europe and propaganda videos that issued threats against France or showed summary executions.

In a decision of the Angers Court of Appeal of 23 February 2017 Mr. Pagerie was ... acquitted of the second charge, following the Constitutional Council's decision no. 2016-611 QPC of 10 February 2017, which held that Article 421-2-5-2 of the Criminal Code, on which the charge had been based, was unconstitutional. However, both Mr Pagerie's failure to comply with the conditions of his residence restriction and his use of an online messaging service that defended terrorism and barbaric acts, even though he was acquitted of the charges in respect of those acts, constitute fresh or additional circumstances that have arisen or come to light in the past twelve months and are such as to justify an extension of Mr Pagerie's residence restriction.

9. Thirdly, [Mr] Pagerie's residence has been restricted to a hotel room in Angers provided by the administrative authority. The requirements to remain in the hotel between the hours of 8.30 p.m. to 6 a.m. and to report to the city's police station at 9 a.m., 2 p.m. and 7 p.m. do not impose constraints that are excessive in relation to their aims. The medical certificate produced by the applicant dated 18 March 2017, according to which he had problems walking that were incompatible with the requirement to go out three times a day, even though the examination showed that, from the onset of these problems until 1 April 2017, the police had adjusted his reporting obligations by making the trip to his home, is not substantiated by sufficiently recent clarifications to demonstrate that the restrictions imposed on him are disproportionate. Accordingly, and despite of the length of the residence restriction under which he has been placed, it can be seen that the authorities have given due consideration to the constraints attaching thereto, without imposing excessive requirements on the applicant."

55. The applicant subsequently lodged three urgent applications for the interim protection of a fundamental freedom (*référé-liberté*) against the MICAS order issued in respect of him and its two renewals. His applications were rejected and his appeals against those decisions were dismissed. The dismissal of his appeals became final with a judgment of the *Conseil d'État* on 5 July 2018.

3. *Applications for judicial review of administrative action*

56. In the judicial review proceedings, the applicant lodged seven separate applications for judicial review of the orders of 22 November 2015, 24 February, 24 May, 22 July 2016, and 18 January and 27 March 2017, respectively, and of the decision of 30 March 2017 refusing to adapt his reporting requirement.

57. He submitted, in particular, that the order of 22 November 2015 had been in breach of Article 2 of Protocol No. 4 to the Convention and of Article 8 of the Convention.

(a) **The judgment of the Nantes Administrative Court of 13 February 2018**

58. The seven applications were joined and dismissed by a judgment of the Nantes Administrative Court of 13 February 2018, which was reasoned as follows:

"The application [in respect of the order of 22 November 2015]:

...

7. ... [I]t can be seen from a *note blanche* from the intelligence services, which was produced by the Minister of the Interior and was the subject of adversarial argument, that, as mentioned in point 3, Mr Pagerie, while in prison in 2012, developed relations with Mr Achamlane, the former leader of the Forsane Alizza Islamist group, with whom he began corresponding. In a judgment delivered on 10 July 2015 by the Paris Criminal Court, Mr Achamlane was sentenced to nine years' imprisonment for criminal conspiracy linked to terrorism. Moreover, Mr Pagerie drew attention to himself through his radical practice of Islam and statements that were openly in support of Islamist views in favour of enforcing Sharia. The applicant does not substantively challenge these sufficiently detailed elements, the substance of which is thus established. Consequently, having regard to all the factual elements thus made out and because the threat of new acts of terrorism was especially pronounced in the days that followed the declaration of a state of emergency, the Minister of the Interior, to whom it falls under the Law of 3 April 1955 to secure public safety and order, could reasonably have considered, without committing an error of judgment, that on 22 November 2015 there were substantial grounds to believe that Mr Pagerie's conduct posed a threat to public safety and order and, accordingly, could lawfully decide, in the impugned order, to impose a residence restriction on the applicant until 26 February 2016, without thereby acting in breach of the aforementioned section 6 of the Law of 3 April 1955.

8. Fourthly, while the impugned order had the effect of requiring Mr Pagerie, until 26 February 2016, to report to the Angers police station three times a day and to remain within that municipality, confined to his home between the hours of 8 p.m. and 6 a.m., the applicant has failed to explain in what way these restrictions allegedly prevented him from seeking employment. In addition, he has provided no evidence of having applied to the prefect of the Maine-et-Loire *département*, as he was entitled to do, for authorisation to travel beyond the Angers city limits, in particular for the purpose of effectively seeking or engaging in professional activities. The residence restriction was thus appropriate, necessary and proportionate to the aim pursued.

9. Fifth, given the grounds adduced to justify the declaration of a state of emergency, the possibility of imposing a residence restriction on the basis of section 6 of the Law of 3 April 1955 is not incompatible with the provisions of Article 2 of Protocol No. 4 to [the Convention]... Consequently, and in any event, Mr Pagerie cannot validly argue that the Minister of the Interior acted in breach of the above-mentioned provisions.

10. Sixth, although Mr Pagerie submitted that the impugned order prevented him from visiting other members of his family residing outside of Angers, he failed to clarify his relationship to these alleged individuals, or their place of residence. He did not submit or even allege that they were unable to visit him in Angers. Consequently, and in any event, he is not justified in claiming that the Minister of the Interior, in imposing the impugned residence restriction on him, acted in breach of the provisions of Article 8 of [the Convention].

...

The application [in respect of the order of 24 February 2016]:

...

14. Secondly, to justify his decision of 24 February 2016 to extend Mr Pagerie's residence restriction, the Minister of the Interior produced an article published on 2 February 2016 in the 'Courrier du Maine' newspaper, which reported the applicant's replies to questions from a journalist. It can be seen from these replies, the content of which is not in dispute, that the applicant refused to condemn the terrorist attacks perpetrated in France in November 2015 and submitted that the *Marseillaise* [the

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French national anthem] constituted a defence of terrorism. These statements – about which it has not been established that they were made only to provoke the readership of the aforementioned newspaper – demonstrate the applicant’s abiding adherence to radical Islamist views. Accordingly, the Minister of the Interior could, without committing an error of judgment, and having regard to all the information available to him, legitimately conclude from these statements that, on 24 February 2016, there were still substantial grounds to believe that Mr Pagerie’s conduct posed a threat to public order and safety.

...

The application [in respect of the order of 24 May 2016]:

...

18. Secondly, the evidence before the court shows that, in taking the impugned decision to impose a residence restriction on the applicant under section 6 of the Law of 3 April 1955, the Minister of the Interior took account of the information contained in a *note blanche* from the intelligence services, which was added to the file and was the subject of adversarial argument, according to which Mr Pagerie, who had condoned and justified the attacks perpetrated in Brussels on 22 March 2016, stating that he too would be willing to conduct violent actions if he had weapons, appeared to be increasingly isolated, since the violence of his statements was rejected by some of his former Muslim acquaintances, and met once a month with his resettlement and probation officer, without ever providing him with the slightest proof that he had taken steps to find work, his evolution having been judged to be especially troubling in the light of his statements and general attitude. Having confined himself to denying, as a matter of principle, the sufficiently detailed information contained in this note, Mr Pagerie has not substantively challenged its accuracy. Consequently, the Minister of the Interior could legitimately have considered, without committing an error of judgment, that, as of 24 May 2016, there were still substantial grounds to believe that Mr Pagerie’s conduct posed a threat to public safety and order which justified keeping his residence restriction in place.

...

The application [in respect of the order of 22 July 2016]:

...

28. Secondly, the impugned order was issued one week after a particularly serious terrorist attack had been committed on the Promenade des Anglais in Nice, causing many victims. That event demonstrates that there was, at that time, an ongoing and extremely pronounced terrorist threat in French. Consequently, for the same reasons as those mentioned in point 18, the Minister of the Interior could legitimately consider, without committing an error of judgment, that there were serious grounds for keeping in place the residence restriction imposed on Mr Pagerie, who has merely reiterated the argument he presented in his application no. 1605409 against the Minister of the Interior’s order of 24 May 2016.

...

The application [in respect of the order of 18 January 2017]:

...

31. It can be seen from the material produced by the Minister of the Interior, which was the subject of adversarial argument, that an administrative search conducted at Mr Pagerie’s home on 4 August 2016 revealed that he was receiving, by mobile phone

via the Telegram application, audio and video messages disseminated by the Daesh organisation. This search led to the discovery, in particular, of a hand-written document containing French football stadium addresses and a laptop computer hidden above a suspended ceiling. It was also established that Mr Pagerie had received Mr Nadir at his home on 31 July 2016, despite being prohibited from doing so by the Minister of the Interior, and that they had viewed videos of decapitations together from February to March 2016. The applicant, who was convicted on the basis of these facts and sentenced to two years' imprisonment by the Angers Criminal Court, was imprisoned in Rennes Prison and, according to the Minister, went on to develop relations with Mr Jamel Beghal, an Algerian radical Islamist, who was also imprisoned there at the time. Although Mr Pagerie has denied these relations, the other elements reported above demonstrate, in any event, that he has, through his conduct, shown no intention of severing his ties to radical Islamism and that, on the date of the impugned order, there were still substantial grounds to believe that he posed a grave threat to public order and safety. Accordingly, the plea as to an alleged error of assessment in the impugned order must be rejected.

...

The application [in respect of the order of 27 March 2017]:

...

35. To justify the impugned renewal of Mr Pagerie's residence restriction, the Minister of the Interior took into account, in particular, the evidence disclosed by the administrative search conducted at the applicant's home on 14 August 2016, mentioned in point 31, and the fact that, on 31 July 2016, the applicant had breached the order served on him prohibiting contact with Mr Nadir, a breach which had resulted in his being sentenced to six months' imprisonment by judgment of the Angers Court of Appeal of 23 February 2017. Mr Pagerie has confined himself to maintaining that he is not a member of extremist circles and is trying to rebuild his life following his release from prison, without disputing in detail the acts attributed to him personally, which were committed during the year preceding the issuance of the impugned order. As such, the applicant's allegations cannot serve to refute those of the Minister of the Interior seeking to establish that, on the date of the impugned order, the applicant's conduct could have posed a particularly grave threat to public safety and order. Although Mr Pagerie has produced a medical certificate, dated 18 March 2017, according to which the significant foot pains he is experiencing are incompatible with his obligation to report to the Angers police station three times a day, that certificate alone does not suffice to establish, having regard in particular to the option open to the applicant of using public transport and, if necessary, forearm crutches, that the obligation imposed on him to report to the police station three times a day was excessive. It follows from the above considerations that the Minister did not make an error of judgment or law, or disregard the principle of proportionality with regard to public-order measures, in deciding to renew the residence restriction above and beyond the total period of twelve months in the circumstances set out above.

...

The application [in respect of the decision of 30 March 2017]:

...

38. As stated in point 35, the evidence before the court, including the medical certificate dated 18 March 2017, does not show that the pain in one foot, of which Mr Pagerie complained, although it justified a visit to the podiatrist, required an adjustment to the requirement imposed on him by the authorities to report to the police

three times a day. The applicant has failed to provide any information demonstrating that his affliction was so severe as to preclude making the trip from his home to the Angers police station, whereas the Minister has argued, without being contradicted, that it was a roughly three-minute walk from the applicant's home to the nearest tram stop, then another six minutes to cover the distance from the tram stop nearest the police station to that station itself. Accordingly, and given the importance of the obligation to report to the police three times a day with a view to maintaining public order and safety, Mr Pagerie's claim that the authorities imposed an excessive obligation on him is unfounded. ..."

(b) The applicant's appeal

59. The applicant appealed against that judgment by seven separate applications. He relied on the same grounds and further argued that the orders of 24 February 2016, 24 May 2016, 22 July 2016 and 18 January 2017 had been in breach of Article 8 of the Convention.

60. In a decision of 27 August 2018, the President of the Nantes Administrative Court of Appeal dismissed the appeals as manifestly ill-founded.

61. The applicant did not appeal against that decision on points of law.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Relevant domestic law and practice

1. *The state of emergency*

62. Law no. 55-385 of 3 April 1955 sets out the conditions under which a state of emergency may be declared and the public-order powers exceptionally conferred on prefects, the Minister of the Interior and the Cabinet in such circumstances.

The relevant provisions of that Law are as follows:

Section 1

"A state of emergency may be declared in all or part of the territory ... either in case of imminent danger resulting from serious breaches of public order or in case of events which, by their nature and gravity, constitute a public calamity."

Section 2

"A state of emergency shall be declared by decree of the Cabinet. The decree shall specify the administrative area or areas in which it shall apply.

Within these areas, the sectors in which a state of emergency shall be in effect shall be established by decree.

No state of emergency shall be extended beyond a period of twelve days, except where authorised by law."

Section 3

“A law authorising an extension of the state of emergency beyond a period of twelve days shall establish its ultimate duration.”

63. In addition, section 4 of the Law of 3 April 1955 requires the administrative authorities to inform the National Assembly and the Senate immediately of measures taken under a state of emergency and enables these bodies to request any additional information for the purposes of reviewing and assessing those measures. Since the entry into force of Law no. 2016-987 of 21 July 2016, measures taken pursuant to the 1955 Law are to be communicated to them promptly.

64. In practice, from 2015 to 2017, this parliamentary scrutiny fell to the two assemblies’ standing committees. Thus, the National Assembly’s Standing Committee on Legislation (*Commission des lois*) was entrusted with the follow-up, review and assessment of the measures taken during the state of emergency, in the context of which it made use of its powers of investigation (in this connection, see Information Report no. 4281 submitted on 6 December 2016 by Mr Raimbourg and Mr Poisson).

2. *Compulsory residence orders issued under a state of emergency*

(a) **Legislative framework**

65. The legislative framework for residence restrictions was amended between 22 November 2015 and 18 January 2017.

66. The version of the Law of 3 April 1955, as amended by Law no. 2015-1501 of 20 November 2015, contained the following provisions:

Section 6

“The Minister of the Interior may order the placement under a residence restriction, in a place determined by him or her, of anyone residing within the sector specified in the decree mentioned in section 2 and in respect of whom there are substantial grounds to believe that his or her conduct poses a threat to public safety and order in the administrative areas mentioned in that same section. The Minister of the Interior may have the person concerned brought to the place of his or her compulsory residence by the police or *gendarmerie*.

The person mentioned in the first paragraph of this section may also be placed under home curfew in a place of residence determined by the Minister of the Interior, during the hours specified by him or her, for up to twelve hours every twenty-four hours.

A residence restriction must allow those on whom it is imposed to reside in, or in the immediate vicinity of, a populated urban area.

Under no circumstances shall a residence restriction result in the creation of camps wherein the persons mentioned in the first paragraph are held.

The administrative authority shall take every measure to ensure the subsistence of those placed under a residence restriction and of their family.

The Minister of the Interior may require the following of a person placed under a residence restriction:

1. The obligation to report periodically to the services of the police or gendarmerie at the times set by the Minister, up to three times a day, specifying whether this obligation also applies on Sundays and public holidays or non-working days.

2. The surrender of his or her passport or any identity document to those services.

...

The person placed under a residence restriction in the place assigned to him or her pursuant to the first paragraph of this section may be prohibited by the Minister of the Interior from having contact, whether directly or indirectly, with certain named individuals in respect of whom there are substantial grounds to believe that their conduct poses a threat to public safety and order. This prohibition shall be lifted as soon as it is no longer necessary.

..."

Section 14

"The measures taken under this Law shall cease to have effect when the state of emergency comes to an end."

67. The Law of 20 November 2015 broadened the scope of application of these measures. In this connection, the Law's impact assessment clarifies as follows:

"The bill changes the scope of residence restrictions to further the intended aim and to face up to the reality of the threat, by replacing the words '[any person] whose activities pose a threat to public safety and order', which appear too restrictive, with the words '[of any person] in respect of whom there are substantial grounds to believe that his or her conduct poses a threat to public safety or order', by which the scope can be made to encompass individuals whose conduct or acquaintances, statements or plans have brought them to the attention of the police or intelligence services.

Thus, in the case of individuals suspected of plotting acts of terrorism, the information gathered may indicate that an act is in preparation, even where that person's activities have never posed a threat to public safety and order."

68. In its decision in *M. Domenjoud* (*Conseil d'État*, Judicial Division, 11 December 2015, no. 395009, *Recueil Lebon*), the *Conseil d'État* considered that a residence restriction of seventeen days, including home curfew between the hours of 8 p.m. and 6 a.m. and the obligation to report to the police three times a day, should be regarded as a measure restricting freedom.

69. The Constitutional Council ruled on the constitutionality of the first nine paragraphs of section 6 of the Law of 3 April 1955 in its decision no. 2015-527 QPC of 22 December 2015 (*M. Cédric. D.*).

Called upon to examine a complaint as to the compliance of those provisions with Article 66 of the Constitution – which entrusts the protection of individual liberty to the judicial authority – the Constitutional Council held that, provided it did not impose a home curfew of more than twelve hours per

day, a residence restriction did not constitute a custodial measure within the meaning of that Article:

“5. Firstly, the impugned provisions enable the Minister of the Interior, where a state of emergency has been declared, to ‘order the placement under a residence restriction, in a place determined by him or her, of anyone residing within the sector specified’ in the decree declaring the state of emergency. Such a residence restriction, which may only be imposed on someone in respect of whom ‘there are substantial grounds to believe that his or her conduct poses a threat to public safety and order’, is an exclusively administrative public-order measure and can therefore pursue no other aim than to maintain *ordre public* and prevent crime. Such a residence restriction ‘must allow those on whom it is imposed to reside in, or in the immediate vicinity of, a populated urban area’. It may not under any circumstances ‘result in the creation of camps wherein the persons [placed under such restrictions] are held’. Neither the subject matter nor the scope these provisions entails a deprivation of individual liberty within the meaning of Article 66 of the Constitution.

6. Secondly, under a compulsory residence order made by the Minister of the Interior, the person concerned ‘may also be placed under home curfew in a place of residence determined by the Minister of the Interior, during the hours specified by him or her, for up to twelve hours every twenty-four hours’. The maximum length of home curfew under a compulsory residence order, which is set at twelve hours per day, cannot be extended without the residence restriction being thereby deemed a custodial measure subject, accordingly, to the requirements of Article 66 of the Constitution”.

As to the proportionality requirement and the scrutiny of such measures, the Constitutional Council went on to clarify as follows:

“12. ... [N]ot only the compulsory residence order itself, but also its length, implementation conditions and any additional requirements as may be attached thereto must be justified and proportionate in view of the reasons given for this measure in the particular circumstances which led to the declaration of a state of emergency. It is for the administrative courts to ensure that this measure is appropriate, necessary and proportionate to the aim pursued.”

Lastly, as to the duration of the state of emergency and the effects of its extension on the residence restrictions ordered in that context, the Constitutional Council clarified as follows:

“13. ... [A]fter a period of twelve days, a state of emergency declared in a decree issued by the Cabinet must be extended by a law which establishes its term. That term may not be excessive with regard to the imminent danger or public calamity which led to the declaration of a state of emergency. If the legislature passes a new law extending the state of emergency, the residence restrictions ordered previously cannot be extended without being renewed.”

70. Drawing the conclusions from this decision, Law no. 2016-1767 of 19 December 2016 amended section 6 of the Law of 3 April 1955 to regulate the maximum duration of a residence restriction and the conditions for its renewal.

71. In its decision no. 2017-624 QPC of 16 March 2017 (*M. Sofiyan I.*), the Constitutional Council expressed the following interpretative reservation:

“... [A]fter twelve months, a compulsory residence order may not be renewed without undue interference with freedom of movement unless, first, the conduct of the person in question poses a particularly grave threat to public safety and order, second, the administrative authority produces fresh or additional evidence, and, lastly, the total length of the residence restriction, its conditions and the supplementary requirements attached thereto are taken into account in examining that person’s situation.”

72. As amended by the Law of 19 December 2016 following the decision of 16 March 2017, paragraphs eleven to fourteen of section 6 provide:

“From the declaration of the state of emergency and for its entire duration, the same person cannot be placed under a compulsory residence order for a total period of more than twelve months.

However, the Minister of the Interior may extend a residence restriction beyond the period mentioned [in the preceding paragraph]. Such an extension may not exceed a period of three months. The administrative authority may terminate the residence restriction or diminish the requirements stemming therefrom at any time in accordance with the provisions of the present section.”

(b) Review by the courts

73. The first paragraph of section 14-1 of the Law of 3 April 1955 reiterates that residence restrictions ordered under a state of emergency are subject to review by the administrative courts, as provided for in the Administrative Courts Code, in particular in Book V on urgent proceedings.

(i) Review by the judge dealing with urgent applications for protection of a fundamental freedom

74. Upon referral of an urgent application for protection of a fundamental freedom under Article L. 521-2 of the Administrative Courts Code, the administrative courts may order any measure as may be necessary to address “serious and flagrantly unlawful” interference with of a fundamental freedom.

75. The applicable procedure for urgent applications for protection of a fundamental freedom was presented in the *J.M.B. and Others v. France* judgment (nos. 9671/15 and 31 others, §§ 136-37, 30 January 2020).

76. The fundamental freedoms for which such applications may seek protection include freedom of movement (*Conseil d’État*, urgent proceedings, 9 January 2001, *M. Deperthes*, no. 228928, *Recueil Lebon*), freedom of religion (*Conseil d’État*, urgent proceedings, 10 August 2001, *Association « La Mosquée »*, no. 237004), the right to live a normal family life (*Conseil d’État*, Judicial Division, 30 October 2001, *Ministre de l’Intérieur c. Mme Tliba*, no. 238211, *Recueil Lebon*), the right to respect for private life (25 October 2007, *Mme Y*, no. 310125) and, more generally, the right to respect for private and family life under Article 8 of the Convention (*Conseil d’État*, full court, 31 May 2016, *Mme Gonzalez Gomez*, no. 396848, *Recueil Lebon*). In addition, the *Conseil d’État* has held that certain forms of

discrimination, having regard to the grounds on which they are based or their effects on the exercise of such freedoms, may constitute interference with a fundamental freedom (*Conseil d'État*, urgent proceedings, 1 September 2017, *Commune de Dannemarie*, no. 413607) and be complained of as such.

Regarding litigation over residence restrictions more specifically, the urgent-applications judge has allowed complaints from litigants about interference with their freedom of movement, their right to live a normal family life (see, for example, *Conseil d'État*, urgent proceedings, 16 November 2016, no. 404824; 23 November 2016, no. 404916; 25 August 2017, no. 413369; and 19 October 2017, no. 414871) or their rights under Article 8 of the Convention (see, for example, *Conseil d'État*, 6 January 2016, no. 395622).

77. Where the existence of an emergency has been established, the urgent-applications judge may take any measure he or she deems appropriate to swiftly address a serious and flagrantly unlawful interference with a fundamental freedom.

78. In a slew of decisions of 11 December 2015 (Judicial Division, *M. Gauthier*, no. 394990, *Recueil Lebon*; *M. Domenjoud*, no. 395009, *Recueil Lebon*; and five others), the *Conseil d'État* gave two clarifications concerning the role of the judge dealing with urgent applications for protection of a fundamental freedom in disputes over residence restrictions ordered under a state of emergency:

“Having regard to its purpose and effects, in particular to the restrictions thereby placed on freedom of movement, a decision taken by the administrative authority to place someone under a residence restriction under section 6 of the Law of 3 April 1955 will, in principle and of itself, unless the authorities allege particular circumstances, seriously and immediately interfere with that person’s situation such that an emergency situation is thereby created, on the basis of which the administrative urgent-applications judge, applied to under Article L. 521-2 of the Administrative Courts Code, will be justified, provided the other requirements of that Article are met, in swiftly ordering an interim and precautionary measure of protection.

...

It is for the *Conseil d'État*, sitting as the urgent-applications judge, to satisfy itself, on the basis of the evidence before it, that the administrative authority, in seeking the requisite balance between respect for freedoms and the protection of public order, has not interfered with a fundamental freedom in a serious and flagrantly unlawful manner, whether in its assessment of the threat posed by the conduct of the person concerned, having regard to the situation which led to the declaration of a state of emergency, or in determining the conditions of the residence restriction. The urgent-applications judge, if it is found that the requirements set out in Article L. 521-2 of the Administrative Courts Code have been met, may take any measure he or she deems appropriate to ensure that the fundamental freedom that has been interfered with is protected.”

79. The presumption of urgency, created in this area by judicial interpretation, was subsequently enshrined in the second paragraph of section 14-1 of the Law of 3 April 1955.

80. In examining applications lodged under Article L. 521-2 of the Administrative Courts Code, the administrative courts have thus been led to stay the execution of residence restrictions ordered under a state of emergency (see, for example, *Conseil d'État*, urgent proceedings, 22 January 2016, no. 396116; 15 April 2016, no. 398377; and 20 May 2016, no. 399692) or to order the administrative authorities to adapt their conditions of implementation (see, for example, *Conseil d'État*, urgent proceedings, 6 January 2016, cited above).

81. In practice, in order to adapt the organisation of the courts to meet the requirements of such cases, the *Conseil d'État*, in a circular of 14 November 2015, asked the administrative courts of the Île-de-France region and of large metropolitan areas to increase the number of judges on duty such that urgent applications against measures taken under the state of emergency could be processed by experienced judges in sufficient numbers.

(ii) *Judicial review of administrative measures*

82. Residence restrictions ordered under section 6 of the Law of 3 April 1955 are subject to “full review by the administrative courts” (*Conseil d'État*, Judicial Division, 11 December 2015, decisions cited above). As such, the administrative courts review the merits of such administrative public-order measures, in particular as to the accuracy and proper legal characterisation of the facts. As the Constitutional Council pointed out in its above-mentioned decision of 22 December 2015, these courts are responsible for ensuring that such measures are appropriate, necessary and proportionate to the aim they pursue (regarding residence restrictions, see, for example, *Conseil d'État*, 24 July 2019, no. 418113).

(c) **Criminal-law provisions**

83. Under section 13, paragraph 2, of the Law of 3 April 1955, failure to comply with section 6, paragraph 1, is punishable by three years' imprisonment and a fine of 45,000 euros (EUR).

84. Under section 13, paragraph 3, failure to comply with any additional requirements as may be attached to the measure is punishable by one year's imprisonment and a fine of EUR 15,000.

(d) **Statistics**

85. According to the impact assessment of the bill to bolster domestic security and the fight against terrorism of 20 June 2017, from 14 November 2015 to 2 June 2017, 439 individuals were placed under residence restrictions under section 6 of the Law of 3 April 1955. Seven hundred and eight orders were issued to that effect. On 2 June 2017 only thirteen individuals had been under a residence restriction for more than twelve months.

86. According to the case statistics provided by the Government, as of 4 October 2017, the administrative courts had registered 521 applications concerning compulsory residence orders. Most of these were urgent applications, with an estimated total or partial “success” rate of 14%. The *Conseil d’État*, for its part, had received 82 applications by that date, sixteen of which had been wholly or partly successful and seventeen of which had resulted in discontinuance orders (in particular where the authorities had chosen to revoke the measure in the course of the proceedings).

3. *MICAS orders*

87. A MICAS order is an administrative public-order measure created by Law no. 2017-1510 of 30 October 2017 and is governed by Articles L. 228-1 to L. 228-7 of the Domestic Security Code.

88. Falling outside the legal framework of the state of emergency, they can be issued, to protect against the commission of acts of terrorism, against any person in respect of whom there are “substantial grounds to believe that his or her conduct poses a particularly grave threat to public safety and order and who either has habitual contact with individuals or organisations that incite, facilitate or take part in acts of terrorism, or supports, disseminates – where such dissemination is accompanied by overt endorsement of the ideology expressed –, or endorses ideas that incite acts of terrorism or defend such acts.”

89. These measures may include all or part of the requirements and prohibitions provided for in Articles L. 228-2 to L. 228-5 of the Domestic Security Code, under the conditions set forth therein. These include the prohibition of travel outside a given geographical area, the requirement to report periodically to police or *gendarmerie* services, the requirement to declare and provide proof of one’s place of residence, exclusion from a specific place or area and the prohibition of contact with certain individuals.

4. *The presentation in evidence of notes blanches*

(a) *The status of notes blanches*

90. *Notes blanches* are documents drawn up and used by the intelligence services to impart information to other authorities. They are not dated or signed and any particulars that might serve to identify the authors or sources are redacted.

91. In practice, at the relevant time, two entities under the purview of the Ministry of the Interior contributed to the preparation of compulsory residence orders. It fell to the Anti-Terrorist Coordinating Unit to centralise requests for administrative public-order measures with a view to preventing acts of terrorism and radicalisation. This unit was responsible for drawing up proposed measures, accompanied by *notes blanches* laying out the factual evidence provided by the intelligence services to justify them. These

documents were then forwarded to the Department of Public Freedoms and Legal Affairs, which prepared the final drafts after requesting additional information, if necessary.

(b) Safeguards surrounding the submission of *notes blanches* to the administrative courts

92. It is well-established case-law that the administrative courts will take into consideration a *note blanche* that has been submitted as evidence provided it has been the subject of adversarial argument and gives a “precise and detailed” account of facts which are not “substantively challenged (*sérieusement contestés*)” (*Conseil d’État*, 3 March 2003, *Ministre de l’Intérieur c. Rakhimov*, no. 238662, *Recueil Lebon*, 4 October 2004, and *Ministre de l’Intérieur c. Bouziane*, no. 266948, 23 February 2007). Subject to this dual condition, the *Conseil d’État* has held that “there is no legislative provision or principle that would bar the administrative courts from taking into consideration the factual account given in the ‘*notes blanches*’ produced by the Minister...” (see *M. Domenjoud*, cited above).

93. When examining the facts reported in the *notes blanches*, the administrative courts may ask the authorities to provide further information by means of the additional enquiry procedure (see, for example, *Conseil d’État*, 22 January 2016, cited above). Where appropriate, refusal to respond to such additional enquiries will be taken into consideration in the assessment of the evidential value of the relevant *note* (see, for example, *Conseil d’État*, urgent proceedings, 9 February 2016, no. 396570).

(c) Opinion of the National Advisory Commission on Human Rights (CNCDH) of 18 February 2016

94. In an opinion on the monitoring of the state of emergency issued on 18 February 2016, the National Advisory Commission on Human Rights (*Commission nationale consultative des droits de l’homme* – “CNCDH”) made the following observations about reliance on *notes blanches*:

“Several interviews conducted by the CNCDH have established that the judges of the administrative courts are finding it most difficult to assess the evidential value of such documents, which are sometimes imprecise, terse or subjective, and occasionally contain factual errors. As to defence counsel, they claim it is often extremely difficult for them to provide refuting evidence (in particular owing to the difficulty of gathering evidence within very short time-limits or the difficulty of disputing undated or insufficiently detailed information). The CNCDH must therefore point out, once again, that in order to avoid any risk of arbitrariness, any interference with freedom of movement as serious as a residence restriction must always be based on objective criteria and tangible evidence enabling its scrutiny. Restrictions on the freedom of movement must be justified on the basis of facts or information which would satisfy an objective observer that the person concerned poses a threat to public safety and order (section 6 of the Law of 3 April 1955). In the CNCDH’s view, a *note blanche* can be regarded as having evidential value only if it is sufficiently detailed and precise, has been subject to adversarial argument without being substantively challenged and is

supported by corroborating evidence from other sources. In the case of a document which has been classified for reasons of national security (*document classifié secret défense*), while it is very difficult in practice to scrutinise its content, it is nevertheless possible to examine the relevance of such a classification”.

B. Relevant international law

1. United Nations material

95. In a “public statement on the law relating to the state of emergency and the law on the monitoring of international electronic communications” published on 18 January 2016, five special rapporteurs shared their concerns about the “imprecision of the expression ‘substantial grounds’” in section 6 of the Law of 3 April 1955 and “the lack of clarity and precision as to what circumstances [were] liable to pose a threat to ‘public safety and order’, as these concepts [were] overly vague and broad”.

96. Furthermore, in the report on her visit to France published on 20 June 2016 (A/HRC/40/52/Add.4), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism pointed out that she considered that “long-term emergencies [had] generally nefarious consequences for the integrity of the rule of law”. As to the administrative courts’ use of *notes blanches*, she expressed the following fears:

“... using undated evidence sets a dangerous precedent for administrative abuse. Despite a trend towards sourcing more detailed notes, confirmed by officials to the mandate, the notes continue to lack the legal and factual rigor that a properly comprised evidential source needs to base substantial liberty-depriving consequences upon.”

2. Relevant Council of Europe material

97. The Opinion of the European Commission for Democracy through Law (Venice Commission) on the protection of human rights in emergency situations (no. 359/2005, 17 and 18 March 2006) states as follows:

“35. The protection of national security and public safety may justify restrictions of the full enjoyment of certain human rights, and even derogations from certain human rights obligations. Restrictions of human rights and freedoms, and derogations must, however, be regulated by law and preferably have a foundation in the Constitution. This constitutes a vital guarantee of the maintenance of democracy and the rule of law. The law must indicate in which cases limitations may be justified and preferably should define the states of emergency that may justify derogating measures, in order to create guarantees against abuse of the power to take restricting or derogating measures for other aims or to a larger extent than is allowed under domestic law and the [Convention].

36. A balance has to be found between national security, public safety and public order, on the one hand, and the enjoyment of fundamental rights and freedoms, on the other hand. The assessment of the fairness and proportionality of the balancing of public and private interests has to be determined by the concrete situation and circumstances. The bottom line, however, is that the right or freedom concerned may not be curtailed

in its essence. The domestic courts must have full jurisdiction to review measures of restriction and derogation for their legality and justification, and for their conformity with the relevant provisions of the [Convention].”

98. Resolution 2209 (2018) of the Parliamentary Assembly of the Council of Europe, headed “State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights”, which was adopted on 24 April 2018, contains the following observations:

“12. The Assembly notes with concern the various criticisms made of the state of emergency in France, including its use of subjective and insufficiently precise terms to define the scope of application and its reliance on posterior judicial review by the administrative courts, including on the basis of intelligence reports...”

It recommended that France review the Law of 3 April 1955 with a view to specifying, in particular, the definitions used in certain provisions and to improving the effectiveness of judicial oversight.

C. Notification of France’s exercise of its right of derogation under Article 15 of the Convention

99. By a statement recorded on 24 November 2015 the Secretary General of the Council of Europe was informed that France intended to exercise its right of derogation under Article 15 of the Convention. The successive extensions of the state of emergency were subsequently brought to his attention. In a letter of 6 November 2017 he was informed of the end of the state of emergency.

THE LAW

I. SCOPE OF THE CASE

100. The Court’s first task is to circumscribe the scope of the case.

101. The criteria for defining the scope of a case were presented in the *Radomilja and Others v. Croatia* judgment ([GC], nos. 37685/10 and 22768/12, §§ 106-127, 20 March 2018). When an individual application is lodged with the Court, its jurisdiction is limited to examining the complaints submitted by the applicant. However, this does not prevent an applicant from clarifying or elaborating upon his or her initial submissions in the course of the proceedings before it: the Court has to take account not only of the original application but also of additional documents intended to complete the latter by eliminating any initial omissions or obscurities (*ibid.*, §§ 122 and 129).

102. In his application of 26 April 2016 the applicant complained about the residence restriction imposed on him pursuant to the order of 22 November 2015, relying on Articles 8, 9 and 14 of the Convention and on Article 2 of Protocol No. 4. In his observations of 17 June 2021 he extended

his complaints to all the orders that had renewed his residence restriction and to the MICAS measure under which he had subsequently been placed.

103. Accordingly, the Court takes the view that it is called upon to examine complaints about the residence restriction imposed on the applicant from 25 November 2015 to 5 August 2016 (see paragraphs 13-20 above), then from 18 January to 11 June 2017 (see paragraphs 30-38 above) and about the MICAS measure under which he was placed from 14 November 2017 to 14 August 2018 (see paragraph 45 above).

II. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

104. The Government raised two preliminary objections, alleging a failure to comply with the time-limit under Article 35 § 1 of the Convention and a failure to exhaust domestic remedies. The Court will examine these objections in turn.

A. Whether the time-limit under Article 35 § 1 of the Convention was complied with

1. The parties' submissions

105. In their observations in reply of 17 September 2021 the Government objected that the complaint concerning the MICAS order issued in respect of the applicant was out of time.

106. The applicant did not comment on this point.

2. The Court's assessment

107. While nothing prevents an applicant from raising a new complaint in the course of the proceedings before it, the Court would point out that such a complaint must, like any other, comply with the admissibility requirements laid down by the Convention (see *Radomilja*, cited above, § 135). In particular, it must be raised within the time-limit specified in Article 35 § 1 of the Convention, which provided for a six-month period at the relevant time.

108. As this is a mandatory rule, the Court is empowered to apply it of its own motion (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 29, 29 June 2012, and *Radomilja*, cited above, § 138). It follows that it is not open to the Court to set aside the application of this rule on the ground that the Government only raised this objection after their written observations on the admissibility of the application (see, *mutatis mutandis*, *Blečić v. Croatia* [GC], no. 59532/00, §§ 63-69, ECHR 2006-III).

109. In the present case, although a compulsory residence order issued under section 6 of the Law of 3 April 1955 (see paragraphs 65-72 above) and a MICAS order issued under Articles L. 228-1 et seq. of the Domestic Security Code (see paragraphs 87-89 above) are administrative public-order

measures that can be seen as having comparable effects, they have separate legal bases with different application criteria. In the Court's view, in extending his initial complaints to the MICAS measure under which he had been placed from 14 November 2017 to 14 August 2018, the applicant put forward fresh complaints that were specific to this measure, relying on Articles 8, 9 and 14 of the Convention and Article 2 of Protocol No. 4.

110. These new complaints were made on 17 June 2021, namely more than six months after 5 July 2018, which was the date of the final decision in respect of the applicant's last domestic remedy (see paragraph 55 above). It follows that the Government's preliminary objection must be upheld and that the applicant's complaints as to the MICAS measure must be dismissed, in accordance with Article 35 §§ 1 and 4 of the Convention, as having been lodged out of time.

B. Exhaustion of domestic remedies

1. The parties' submissions

(a) The Government

111. The Government submitted that the applicant had not duly exhausted the available domestic remedies.

112. As their principal argument, they pointed out that the applicant ought to have lodged appeals on points of law in the context of his applications for judicial review, referring to the decision in *Graner v. France* ((dec.), no. 84536/17, § 44, 5 May 2020). They contended that the application as a whole was inadmissible.

113. In the alternative, assuming an urgent application for protection of a fundamental freedom was considered an effective and sufficient remedy, the Government submitted that the applicant had failed to exhaust domestic remedies in respect of the measures imposed under the orders of 24 February 2016, 24 May 2016, 22 July 2016, 18 July 2017 and 27 March 2017, and under the decision of 30 March 2017. They emphasised that the applicant had been placed under a residence restriction pursuant to admittedly successive yet separate administrative decisions and criticised the applicant for not lodging an appeal with the *Conseil d'État* against the decisions to dismiss his urgent applications in respect of the first four of those measures. In addition, they objected that the appeal against the decision to dismiss his applications in respect of the order of 27 March 2017 and of the decision of 30 March 2017 had been lodged after his application to the Court.

114. Lastly, they submitted that, in any event, the applicant had never put any argument to the domestic courts corresponding, at least in substance, to the complaints under Articles 9 and 14 of the Convention. Nor, they added, had he pursued his Article 8 complaint in his appeals to the *Conseil d'État*.

(b) The applicant

115. The applicant replied in substance that there had been no effective remedy available to him in respect of his complaints, such that he could not be faulted for having failed to exhaust domestic remedies. In support of this claim, he pointed out that the domestic courts had dismissed every one of his applications.

116. As to his applications for judicial review, he emphasised that his applications and appeals had been examined after the impugned measures had expired, such that, in his view, an appeal on points of law had become pointless.

117. Concerning the urgent proceedings, he submitted that the administrative courts to which he had applied could carry out only a limited examination of the residence restrictions in issue, confined to manifest errors of judgment. He further noted that the urgent-applications judge could only grant interim measures, in decisions not constituting *res judicata*. In the alternative, he submitted that it had not been open to him to rely on fundamental freedoms other than freedom of movement in an urgent application for protection of a fundamental freedom against a residence restriction imposed on the basis of a state of emergency.

118. He further alleged that there was an official tolerance on the part of the French State with regard to an administrative practice consisting in the repetition of acts that were inconsistent with the Convention.

119. In any event, he submitted at the hearing that he had expressly relied on Article 8 of the Convention before the *Conseil d'État* in his appeals against the dismissal of his urgent applications for protection of a fundamental freedom.

2. The Court's assessment**(a) General principles**

120. The Court reiterates that the purpose of the exhaustion rule is to afford a Contracting State the opportunity of addressing, and thereby preventing or putting right, the particular Convention violation alleged against it (see *Hanan v. Germany* [GC], no. 4871/16, § 148, 16 February 2021). The machinery of protection established by the Convention is intended to be subsidiary (see *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V).

121. The obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and*

Decisions 1996-IV, and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 71, 25 March 2014).

122. To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success (see *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II). The existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to pursue it (see *Akdivar and Others*, cited above, § 71, and *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 206, 22 December 2020).

123. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. It then falls to the applicant to establish that the remedy advanced by the Government was in fact used, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Gherghina v. Romania* (dec.) [GC], no. 42219/07, §§ 88-89, 9 July 2015).

124. Article 35 § 1 also requires of the applicant that the complaints he or she intends to make subsequently before the Court should have been made previously, at least in substance (see, for example, *Guzzardi v. Italy*, 6 November 1980, § 72, Series A no. 39, and *Gäfgen v. Germany* [GC], no. 22978/05, §§ 144-146, ECHR 2010) and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used (see *Cardot v. France*, 19 March 1991, §§ 34-36, Series A no. 200, and *Akdivar and Others*, cited above, § 66).

125. That being said, Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism (see *Gherghina*, cited above, § 87).

(b) Application to the present case

(i) Appeal on points of law in the context of the judicial review applications

126. The Government submitted firstly that the applicant ought to have appealed on points of law in the context of his applications for judicial review.

127. The Court reiterates that, where it is available, an application for judicial review, in which a violation of the Convention is a permissible ground on which to rely in support of the relevant submissions, is in principle one of the domestic remedies that must be exhausted (see *Charron and Merle-Montet v. France* (dec.), no. 22612/15, § 21, 16 January 2018; *Graner*, cited above, § 44; *Zambrano v. France* (dec.), no. 41994/21, § 27, 21 September 2021; and *Thevenon v. France* (dec.), no. 46061/21, § 61, 13 September 2022). Furthermore, the domestic proceedings should in principle be pursued up to the cassation stage (see *Civet v. France* [GC], no. 29340/95, § 41,

ECHR 1999-VI, and *Graner*, cited above, § 44). The Court observes that an application for judicial review was available in such matters (see paragraphs 82 and 56-61 above) and that it was not fully pursued in the present case, since the applicant failed to appeal to the *Conseil d'État* on points of law (see paragraph 61 above).

128. However, the Court reiterates that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. It must examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him to exhaust domestic remedies. An applicant must have made normal use of domestic remedies which are likely to be effective and sufficient. Accordingly, where several remedies are available which may be regarded as effective, he or she is only required to pursue one of them (see *Moreira Barbosa v. Portugal* (dec.), no. 65681/01, 29 April 2004, ECHR 2004-V, and *Kozacıoğlu v. Turkey* [GC], no. 2334/03, § 40, 19 February 2009). It follows, having regard to the circumstances of the case, that the requirement to exhaust domestic remedies must be regarded as having been complied with by the applicant, provided the procedure of urgent application for protection of a fundamental freedom, which he pursued in the present case, can be considered effective.

129. In this connection, the Court notes that the procedure of urgent application for protection of a fundamental freedom (*référé-liberté*), as provided for in Article L. 521-2 of the Administrative Courts Code, enables the urgent-applications judge, where the existence of an emergency has been established, to swiftly address serious and flagrantly unlawful instances of interference with a fundamental freedom (to similar effect, see, in particular, *Afiri and Biddarri v. France* (dec.), no. 1828/18, §§ 44-45, 23 January 2018, and *O.L.G. v. France* (dec.) [Committee], no. 47022/16, §§ 47-49, 5 June 2018; contrast *J.M.B. and Others v. France*, cited above, §§ 217-18, where the Court held that the limits of the urgent-applications judge's power to give directions prevented him or her from addressing infringements of prisoners' rights under Article 3, where such infringements stemmed from overcrowding in prisons; and see, *mutatis mutandis*, *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, §§ 65-66, ECHR 2007-II, where the Court held that, since it lacked suspensive effect, an urgent application for protection of a fundamental freedom could not be regarded as an effective remedy against a removal order that was likely to entail treatment contrary to Article 3). It would further emphasise that the fact that the urgent-applications judge's decisions do not constitute *res judicata* does not preclude the effectiveness of those decisions, which are enforceable in nature (see paragraph 75 above).

130. More specifically as regards claims in connection with residence restrictions imposed under a state of emergency, the Court would emphasise, firstly, that a presumption of urgency facilitating access to the urgent-

applications judge was instituted by judicial interpretation and subsequently enshrined by the legislature (see paragraphs 78-79 above).

131. Secondly, the Court would point out that the urgent-applications judge examines the effects of the impugned measure as a whole. It therefore falls to that judge to verify that the administrative authority has struck the requisite balance between respect for freedoms and the protection of *ordre public* and, in so doing, that it has not interfered with a fundamental freedom in a serious and flagrantly unlawful manner, whether in its assessment of the threat on which the residence restriction was based, or in determining its implementation conditions (see paragraph 78 above). The Court notes, moreover, that the urgent-applications judge is entitled, as part of his or her review, to stay the execution of the impugned measure, or order the administrative authority to adapt or amend its conditions of implementation (see paragraphs 77 and 80 above). The Court infers from this that the procedure of urgent application for protection of a fundamental freedom is capable of remedying directly the infringements complained of by the applicant.

132. Thirdly, in the Court's view, the examples from the case-law provided by the Government (stay-of-execution decisions cited in paragraph 80 above) and the case statistics they produced (see paragraph 86 above) show that this remedy had a reasonable chance of success. Contrary to the applicant's submissions, the fact that his applications were dismissed does not suffice to establish that this remedy was obviously futile.

133. Fourthly, the Court notes that the administrative courts took organisational measures to ensure that, in practice, such cases were dealt with swiftly by experienced judges (see paragraph 81 above). Accordingly, all the relevant applications lodged by the applicant received a prompt and thorough examination.

134. In the light of all the above considerations, the Court finds that, having regard to the administrative courts' remit, and in particular to the scope of their review and powers, the procedure of urgent application for protection of a fundamental freedom is to be regarded as having been, at the relevant time, an available and effective remedy in such matters, both in theory and in practice. The Court concludes that the applicant's recourse to this procedure in order to challenge the impugned measures must be regarded as having met the requirement to exhaust domestic remedies even though he failed to pursue, as far as an appeal on points of law, the judicial review proceedings that he had initiated.

(ii) The right of appeal in the context of the urgent application procedure

135. The Government submitted, secondly, that the applicant had not fully pursued the procedure of urgent application for protection of a fundamental freedom. In this connection they argued that the applicant ought to have lodged an appeal with the *Conseil d'État* against the decisions to

dismiss his urgent applications in respect of the orders of 24 February 2016, 24 May 2016, 22 July 2016 and 18 July 2017. They added that the appeal in the proceedings concerning the order of 27 March 2017 and the decision of 30 March 2017 ought to have predated the lodging of his application with the Court.

136. The Court reiterates, firstly, that, to be regarded as having fully exhausted domestic remedies, an applicant who has lodged an urgent application for protection of a fundamental freedom must in principle pursue those proceedings up to the appeal stage (see *O.L.G. v. France*, cited above, § 50).

137. In the present case, the Court notes that the applicant lodged an appeal with the *Conseil d'État* against the decision dismissing his urgent application for protection of a fundamental freedom which had sought a stay of execution of the compulsory residence order of 22 November 2015 and that, in that context, he alleged interference with his freedom of movement (see paragraph 52 above). It further notes that the applicant also lodged a second appeal with the *Conseil d'État* against the decision to dismiss his application in respect of the order of 27 March 2017, which had extended his residence restriction beyond a period of one year, and in respect of the decision of 30 March 2017, alleging interference with his freedom of movement (see paragraph 52 above). He must therefore be considered to have given the domestic courts an opportunity to scrutinise his residence restriction *in concreto*, with its maximum term being taken into account, and to have done so prior to the Court's ruling on the admissibility of his application (on these two criteria, see *Graner*, cited above, §§ 42 and 52-62).

138. Moreover, the Court considers that it would be excessively formalistic and contrary to the purpose of the rule of exhaustion of domestic remedies to require of the applicant that he should reiterate his complaints in appeals against the successive measures to extend his residence restriction, as the Government have argued. Such a requirement would be unreasonable and would constitute a disproportionate obstacle to the effective exercise of the right of individual application under Article 34 of the Convention (see, *mutatis mutandis*, *Vaney v. France*, no. 53946/00, § 53, 30 November 2004, and *Gaglione and Others v. Italy*, nos. 45867/07 and 69 others, § 22, 21 December 2010).

139. In these circumstances, the Court finds that the applicant duly exhausted domestic remedies in his actions challenging his residence restriction under Article 2 of Protocol No. 4, those actions being considered in the round, even though he failed to pursue as far as the appeal stage all the sets of urgent proceedings for protection of a fundamental freedom that he had brought against the successive compulsory residence orders. Accordingly, it dismisses the Government's plea of inadmissibility on this point. However, it remains for the Court to determine whether the applicant

raised his complaints under Articles 8, 9 and 14 of the Convention, at least in substance, in the context of the domestic proceedings.

(iii) *Whether the applicant relied upon Articles 8, 9 and 14 of the Convention*

140. Firstly, the Court notes that, contrary to his submission at the hearing, the applicant failed to raise even the substance of his complaint under Article 8 of the Convention in his appeals before the *Conseil d'État* relating to his urgent applications for protection of a fundamental freedom (see paragraphs 52 and 54 above). Yet it was open to him to rely on an interference with the right to respect for private and family life in those proceedings (see paragraph 76 above).

141. Secondly, although the applicant briefly mentioned the risk of stigmatising the Muslim community in his appeal against the Nantes Administrative Court's decision of 29 January 2016, he did not develop arguments in this regard before the domestic courts, even though it was open to him under domestic law to rely on interference with his freedom of religion or on discrimination in the exercise of that freedom before the urgent-applications judge (see paragraph 76 above).

142. Thirdly, the applicant has by no means established the existence of an "official tolerance" by the French authorities with regard to a "repetition of acts" inconsistent with the Convention, whereas it fell to him to produce *prima facie* evidence of the constituent elements of such an administrative practice (see *Ukraine v. Russia (re Crimea)* (dec.) [GC], nos. 20958/14 and 38334/18, § 366, 16 December 2020).

143. Accordingly, and having regard to the lack of any appeals on points of law in respect of the applications for judicial review, the Court finds that the Government's preliminary objection on this point must be upheld and that the applicant's complaints under Articles 8, 9 and 14 of the Convention must be dismissed for failure to exhaust domestic remedies, pursuant to Article 35 §§ 1 and 4.

II. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4

144. The applicant submitted that his residence restriction, ordered under a state of emergency, had been in breach of Article 2 of Protocol No. 4, which provides as follows:

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

...

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, ... or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.”

145. The Government took the opposite view. In the alternative, they argued that France had validly exercised its right of derogation under Article 15 of the Convention, which provides as follows:

“1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under [the] Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (§ 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.”

146. In examining the present application the Court considers that it must first ascertain whether the measure complained of was compatible with the Convention rights and freedoms on which the applicant relied. If this was the case, it will not be necessary to determine whether or not the derogation relied on by the respondent Government was valid (see, *mutatis mutandis*, *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 161, ECHR 2009; *Ireland v. the United Kingdom*, 18 January 1978, § 191, Series A no. 25; *Khlebiuk v. Ukraine*, no. 2945/16, § 82, 25 July 2017; and *Terheş v. Romania* (dec.), no. 49933/20, § 46, 13 April 2021).

A. Preliminary remarks

147. The Court considers it important to begin by emphasising that it must take into account the particular circumstances surrounding the case, namely the wave of terrorist attacks committed in France from 2015 onwards (see paragraph 10 above).

148. The Court is fully aware of the difficulties involved in preventing terrorism (see, recently and among many other authorities, *Selahattin Demirtaş*, cited above, § 275). It considers that the national authorities must be in a position to take effective action in this domain. Nevertheless, it is imperative that such action be taken in a manner consistent with the Contracting States’ obligations under the Convention.

149. In this connection, the Court emphasises that the Convention forms an indivisible whole within which the protected rights are interdependent and intertwined. Thus, when it is a matter of combatting terrorism, the Convention requires member States not only to take preventive measures to protect the

lives of the population in the event of a real and imminent threat of attack (see *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, §§ 481-493, 13 April 2017) but also to ensure that protected rights are effectively guaranteed (see, for example, *Saadi v. the United Kingdom* [GC], no. 13229/03, §§ 140-41, ECHR 2008, and *Ramirez Sanchez v. France* [GC], no. 59450/00, §§ 115-16, ECHR 2006-IX, from the standpoint of Article 3; *A. and Others v. the United Kingdom*, cited above, §§ 171-72, from the standpoint of Article 5; *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 252, 13 September 2016, from the standpoint of Article 6; *Klass and Others v. Germany*, 6 September 1978, § 49, Series A no. 28, from the standpoint of Article 8; and *Sürek v. Turkey (no. 4)* [GC], no. 24762/94, § 58, 8 July 1999, and *Selahattin Demirtaş*, cited above, § 276, from the standpoint of Article 10). It is therefore in the light of the Convention as a whole, having regard to the interplay between the various requirements which serve to ensure that it is implemented effectively, that the Court must exercise its scrutiny.

150. In this connection, the Court would point out that, in accordance with the principle of subsidiarity, it is in the first place for the domestic authorities to strike what is at times a difficult balance to reach between the need to protect the public and the need to safeguard rights. However, this balance is subject to European supervision, which it falls to the Court to ensure. In doing so, the Court will pay particular attention to the nature and practical scope of the safeguards in place against abuse and arbitrariness (see, for example, *K. I. v. France*, no. 5560/19, 15 April 2021, from the standpoint of the procedural limb of Article 3; *Klass and Others*, cited above, §§ 50 and 55, and *K2 v. the United Kingdom* (dec.), no. 42387/13, §§ 54-61, 7 February 2017, from the standpoint of Article 8; *Selahattin Demirtaş*, cited above, §§ 275-80, from the standpoint of Article 10; *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, §§ 272-83, 14 September 2022, from the standpoint of Article 3 of Protocol No. 4; and *Muhammad and Muhammad v. Romania* [GC], no. 80982/12, §§ 134-57, 15 October 2020, from the standpoint of Article 1 of Protocol No. 7; concerning the effectiveness of the scrutiny exercised by the domestic courts, see also *Chahal v. the United Kingdom*, 15 November 1996, § 131, *Reports* 1996-V, and *A. and Others v. the United Kingdom*, cited above, § 210, from the standpoint of Article 5).

B. Whether Article 2 of Protocol No. 4 is applicable

151. Even though the parties have acknowledged that Article 2 of Protocol No. 4 is applicable, the Court must satisfy itself that this is indeed the case.

152. The Court reiterates that Article 2 of Protocol No. 4 applies solely to restrictions of freedom of movement (see *Assanidze v. Georgia* [GC], no. 71503/01, § 194, ECHR 2004-II, and *M.S. v. Belgium*, no. 50012/08,

§§ 192-95, 31 January 2012). It must therefore ascertain whether the applicant's residence restriction fell within the scope of this provision, having regard to its effects and conditions of implementation.

153. In the Court's view, the series of compulsory residence orders issued in respect of the applicant should be taken as a whole (see paragraph 139 above), and consideration given to their combined effects.

154. First, the Court notes that the effect of the orders was to prohibit the applicant from leaving the municipality where he lived, to confine him to his home between the hours of 8 p.m. and 6 a.m., to oblige him to report to a police station three times a day at specified times, to prohibit him from having contact with a specified person from 22 July 2016 to 5 August 2016, and, as of 18 January 2017, to require the surrender of his passport and all other identity documents (see paragraphs 13, 16, 20, 31 and 33-35 above).

155. It notes that failure to comply with these obligations was punishable by imprisonment (see paragraphs 83-84 above) and that the applicant was imprisoned twice on that basis (see paragraphs 23-31 and 41-46 above).

156. Second, the Court notes that the residence restriction lasted for a combined period of nearly 13 months. In practice, few residence restrictions ordered on the same basis have remained in effect for so long (see paragraph 85 above). The circumstances of the case show that it also involved an extended period of close monitoring by the police.

157. Third, the Court notes that the applicant was at liberty to leave home during the day and that he was not prevented from having a social life or maintaining contact with the outside world (on this point, see, in particular, *De Tommaso v. Italy* [GC], no. 43395/09, §§ 86-88, 23 February 2017, and, for example, *Trijonis v. Lithuania* (dec.), no. 2333/02, 17 March 2005).

158. Furthermore, it was open to the applicant to apply for permission to travel outside the area of his residence restriction, but he chose not to do so (see *De Tommaso*, cited above, § 88).

159. The Court would point out, lastly, that it has previously examined comparable measures of equal or greater length under Article 2 of Protocol No. 4 (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 193, ECHR 2000-IV; *Vito Sante Santoro v. Italy* (dec.), no. 36681/97, ECHR 2003-I; *M.S. v. Belgium*, cited above, §§ 192-195; and *Timofeyev and Postupkin v. Russia*, nos. 45431/14 and 22769/15, §§ 123-125 and 137, 19 January 2021).

160. In view of all these considerations, the Court takes the view that the impugned residence restriction must be regarded as a restriction of freedom of movement and concludes, as have the parties, that Article 2 of Protocol No. 4 is applicable.

161. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Whether Article 2 of Protocol No. 4 was complied with

1. *The parties' submissions*

(a) The applicant

162. The applicant submitted that the legal basis for his residence restriction had not been foreseeable. He argued that the concept of “conduct [posing] a threat to public safety and order” in section 6 of the Law of 3 April 1955, in the version applicable to his case, was too flexible. In his view, this application criterion conferred a discretion on the administrative authority. He complained that the scope of this provision had been broadened by the Law of 20 November 2015.

163. In addition, he argued, in substance, that the law had not provided for minimum procedural safeguards that were commensurate with the importance of the right at stake. In this connection, he criticised the fact that scrutiny of residence restrictions fell to the administrative courts and claimed that they only carried out a limited review of such measures.

164. He also disputed the necessity of the measure imposed on him. He submitted that it had been ordered on a tenuous factual basis and on the strength of subjective findings as to his religious radicalisation. In particular, he emphasised that he had never been named or even interviewed in the context of criminal proceedings in connection with terrorism and that he could simply have been monitored by the intelligence services if it had been decided that he posed a threat to public safety or order. Lastly, he complained about the administrative authority's submission of *notes blanches* in the proceedings he had brought before the administrative courts and about the evidential value they had been given.

(b) The Government

165. The Government submitted that there had been no violation of Article 2 of Protocol No. 4.

166. Firstly, they argued that section 6 of the Law of 3 April 1955 provided a foreseeable legal basis. They pointed out that the drafting history of the Law of 20 November 2015 clarified the definition of the relevant conduct and that the administrative courts' case-law had given illustrations of this concept (*Conseil d'État*, Judicial Division, 11 December 2015, cited above; 23 December 2015, urgent proceedings, no. 395229; and 29 January 2016, urgent proceedings, no. 396280). They added that such a measure could be ordered only under a state of emergency, which could be declared only under strict conditions. They further noted that the Court had previously acknowledged the foreseeability of similar provisions referring to acts “that could ... seriously breach public order” (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 113, ECHR 2015), to “disturbances of public order” (see *Olivieira v. the Netherlands*, no. 33129/96, §§ 53-58,

ECHR 2002-IV) or to the requirements of “public order and national security” (see *Gurekin and Other v. France* (dec.), no. 9266/04, 6 June 2006). They added that it would be unrealistic to require an exhaustive legal definition of such conduct.

167. In addition, they submitted that domestic law afforded sufficient guarantees against the risk of abuse. In this connection, they pointed out that compulsory residence orders were subject to review by the administrative courts, which examined their proportionality. They emphasised the speed and effectiveness of urgent proceedings for protection of a fundamental freedom. They added that the duration of such measures was regulated and that they had to be renewed in the event of an extension of the state of emergency.

168. Secondly, they argued that the restriction in question had pursued the aim of protecting public safety and maintaining *ordre public*.

169. Thirdly, as to the necessity of the applicant’s residence restriction, they submitted that the State had a wide margin of appreciation in such matters and that the measure had been based on a well-established and particularly troubling set of indications.

170. With regard to the submission of *notes blanches* in the administrative courts, the Government argued that this was the only way to protect the confidentiality of intelligence sources and methods while observing the adversarial principle. They submitted that the production of such evidence was surrounded by sufficient procedural safeguards. They added that the Court appeared to have acknowledged as much in its *Hammami v. France* (no. 20871/15, § 22, 29 September 2020) Committee decision.

2. The Court’s assessment

171. In so far as the restriction of freedom of movement in issue was not specific to “particular areas”, it is appropriate to examine it under the third paragraph of Article 2 of Protocol No. 4 (see *Garib v. the Netherlands* [GC], no. 43494/09, § 110, 6 November 2017). According to the Court’s case-law, any such measure must be in accordance with law, pursue one of the legitimate aims referred to in that paragraph and strike a fair balance between the public interest and the individual’s rights (see, among many other authorities, *De Tommaso*, cited above, § 104).

172. In the present case, having found that the impugned compulsory residence order restricted the applicant’s freedom of movement (see paragraph 160 above), the Court must ascertain whether this interference was in accordance with the law, pursued a legitimate aim and was necessary in a democratic society.

(a) Quality of the law

173. The Court notes, first, that the legal basis for the residence restriction was section 6 of the Law of 3 April 1955, as interpreted by the *Conseil d’État*

and the Constitutional Council, and that the applicant did not dispute that it was accessible.

174. To assess the foreseeability of this legal basis, the Court will examine the precision of the concepts used and ascertain whether it was accompanied by sufficient safeguards against the risk of arbitrariness.

(i) *General principles*

175. The principles pertaining to the foreseeability of the law under Article 2 of Protocol No. 4 have been set out in the *De Tommaso* (cited above, §§ 106-09) and *Rotaru v. the Republic of Moldova* (no. 26764/12, §§ 24-25, 8 December 2020) judgments.

176. The Court reiterates that it is important, in particular, that the legal basis for the interference be foreseeable. Accordingly, it must afford a degree of legal protection against arbitrary interference by the public authorities. A law which confers a discretion must indicate the scope of that discretion, although the detailed procedures and conditions to be observed do not necessarily have to be incorporated in rules of substantive law (see *Khlyustov v. Russia*, no. 28975/05, § 70, 11 July 2013, and *De Tommaso*, cited above, § 109).

177. In order to be compatible with the rule of law and provide protection against arbitrariness, the applicable law must provide minimum procedural safeguards commensurate with the importance of the right at stake (see *Rotaru*, cited above, § 24). An interference by the executive authorities with the rights guaranteed by Article 2 of Protocol No. 4 should normally be reviewed by the courts, at least in the last resort, since they offer the best guarantees of independence, impartiality and lawfulness of the procedures (see *Sissanis v. Romania*, no. 23468/02, § 70, 25 January 2007, and *Sarkizov and Others v. Bulgaria*, nos. 37981/06 and 3 others, § 69, 17 April 2012). This review must cover both the lawfulness and the proportionality of the impugned measure (see *Riener v. Bulgaria*, no. 46343/99, § 126, 23 May 2006; *Gochev v. Bulgaria*, no. 34383/03, § 50, 26 November 2009; and *Rotaru*, cited above, § 25). Moreover, the domestic authorities are not entitled to maintain over lengthy periods restrictions on an individual's freedom of movement without a periodic reassessment of their justification (see *Rotaru*, cited above, § 25).

(ii) *Application to the present case*

(α) Whether the concepts used were precise

178. The applicant's main complaint was that the concepts used by the legislature were imprecise.

179. Section 6 of the Law of 3 April 1955 allows the Minister of the Interior, in the exercise of the administrative public-order powers vested in that office, to impose a residence restriction on any person "in respect of

whom there are substantial grounds to believe that his or her conduct poses a threat to public safety and order” (see paragraph 66 above). Although the Law of 3 April 1955 was amended on several occasions between 2015 and 2017, this application criterion has not changed.

180. The Court would point out that the level of precision required of domestic law depends to a considerable degree on the content of the law in question, the field it is designed to cover and the number and status of those to whom it is addressed (see *De Tommaso*, cited above, § 108, with further references).

181. In the present case, the Court notes that the provisions complained of are applicable only under a state of emergency and in the areas where such a state is in effect. A state of emergency can be declared only in exceptional circumstances strictly determined by law (see paragraph 62 above). The legislation in issue, which derogates from the ordinary law, is therefore intended to apply only by way of exception, subject to restrictions as to time and place.

182. The Court further notes that a compulsory residence order is subject to there being “substantial grounds” to believe that a particular course of conduct poses a threat. The law thus requires the existence of an established risk, since a residence restriction cannot lawfully be imposed on the basis of mere suspicion. This high standard is corroborated by the drafting history of the Law of 20 November 2015 (see paragraph 67 above) and by the administrative courts’ case-law that quickly developed in that area (see paragraphs 80 and 166 above). The threshold is even higher where the measure is to have effect for more than twelve months, requiring that the threat be “particularly grave” in such cases (see paragraph 71 above).

183. The Court also observes that “national security”, “public safety” and the maintenance of “*ordre public*” are expressly among the legitimate aims that may justify interference with the rights guaranteed by Article 2 of Protocol No. 4. It would point out that the concept of “*ordre public*” is used widely in continental countries, as the drafting history of Protocol No. 4 attests (see *Garib*, cited above, § 85).

184. In this connection, it would seem unrealistic to expect the national legislator to enumerate an exhaustive list of types of conduct which might justify the use of preventive powers by the administrative authorities (see, *mutatis mutandis*, *Kudrevičius and Others*, cited above, § 113), as the Government have pointed out. According to well-established case-law, the law must be able to keep pace with changing circumstances and cannot in any case provide for every eventuality, which is why many laws are inevitably couched in terms which, to a greater or lesser extent are vague and whose interpretation and application are questions of practice (see, among many other authorities, *Rekvényi v. Hungary* [GC], no. 25390/94, § 34, ECHR 1999-III, and *De Tommaso*, cited above, §§ 107-08).

185. This difficulty is particularly acute where the national legislature is required to regulate *ex ante* the powers conferred on the administrative authority to deal with largely unforeseeable events of exceptional gravity and to avert major risks to national security, public safety and *ordre public* as effectively as possible, thereby ensuring effective respect for the right to life of members of the public.

186. Be that as it may, it is impermissible under any circumstances for such emergency legislation to contravene the rule of law. The Court must accordingly undertake a comprehensive review of the safeguards against arbitrariness in place under domestic law in order to determine whether they effectively regulate and constrain the discretion afforded to the administrative authority.

(β) Whether safeguards against the risk of arbitrariness were in place

187. The Court notes, first, that the operation of the state of emergency is strictly regulated by domestic law. While it can be declared by the executive authorities, its initial duration is limited to twelve days and it can be extended only through legislation, for a fixed period of time (see paragraph 62 above). Any draft legislation to that effect must be submitted to the *Conseil d'État* for an opinion, in accordance with Article 39 of the Constitution (see paragraph 9 above). In addition, the law provides that Parliament is to be informed without delay of any measures taken under the state of emergency and is given investigative powers, which it indeed used in exercising its oversight of this emergency regime (see paragraphs 63-64 above).

188. Second, the Court notes that the legal framework regulating compulsory residence orders is clearly laid out in domestic law. The length of the measure, its implementation conditions and the additional requirements which may attach to it are clearly regulated by the Law of 3 April 1955, as interpreted by the *Conseil d'État* and the Constitutional Council (contrast *De Tommaso*, cited above, §§ 119-23). In particular, the Constitutional Council has ruled, in its decision of 22 December 2015, that residence restrictions and all their implementation conditions must be justified and proportionate to the grounds for the measure in the particular circumstances which had prompted the declaration of a state of emergency (see paragraph 69 above). The same case-law also requires the compulsory residence order to be renewed with each extension of the state of emergency. Given the frequency of such extensions between 2015 and 2017 (see paragraph 9 above), this requirement entailed a regular periodic review of compulsory residence orders. In addition, in a decision of 16 March 2017 the Constitutional Council declared that an extension of this measure beyond a period of twelve months should be conditional upon the production of fresh or additional evidence by the administrative authority (see paragraph 71 above).

189. The Court attaches particular importance to the fact that, in interpreting the emergency legislation in question, the domestic courts took care to give the individual adequate protection against arbitrary interference (see, *mutatis mutandis*, *Selahattin Demirtaş*, § 275, and *Kudrevičius and Others*, § 110, both cited above).

190. Third, the Court observes that compulsory residence orders are open to legal challenge by urgent application for protection of a fundamental freedom, a procedure which constitutes an effective remedy, as the Court has already held (see paragraphs 129-134 above). It notes that this review covers both the lawfulness and proportionality of the order (see paragraph 78 above) and emphasises that it is carried out swiftly (see paragraph 75 above), if necessary while the measure is still in effect. The measure can thus be appealed against at two levels of jurisdiction within a short time-frame following its implementation. In parallel, such measures can be challenged in an application for judicial review. Moreover, although the applicant criticised the administrative courts' jurisdiction over such disputes, the Court notes that this rule as to jurisdiction has been found to be consistent with Article 66 of the Constitution (see paragraph 69 above). The Court's task is not to give an assessment of such rules of judicial organisation but merely to ascertain whether they are compatible with the Convention. However, none of the applicant's allegations is such as to call into question the administrative courts' independence, impartiality or respect for lawfulness. The Court concludes that compulsory residence orders issued under a state of emergency are subject to effective scrutiny by the courts, with procedural safeguards in place that are commensurate with the importance of the right at issue (see *Rotaru*, cited above, §§ 24-25).

191. In view of all the above considerations, the Court finds that the provisions in issue, as interpreted by the domestic courts, lay down with sufficient clarity the scope and manner of exercise of the discretion conferred on the Minister of the Interior and prescribe suitable safeguards against the risks of abuse and arbitrariness. It concludes that this legal basis was foreseeable.

(b) Whether the aims pursued were legitimate

192. In the Court's view, the aims pursued by the interference complained of, which involved the protection of national security and public safety and the maintenance of *ordre public*, were legitimate.

(c) Whether the interference was necessary

(i) General principles

193. According to the Court's settled case-law, an interference with freedom of movement will be considered "necessary in a democratic society" if it answers a "pressing social need", if it is proportionate to the legitimate

aim pursued, and if the reasons adduced by the national authorities to justify it are “relevant and sufficient” (see *Nada v. Switzerland* [GC], no. 10593/08, § 181, ECHR 2012). A margin of appreciation must be afforded to the competent national authorities in this regard (*ibid.*, § 184; see also *Oliveira*, cited above, § 64).

194. However, a restriction of freedom of movement may be justified in a given case only if there are clear indications of a genuine public interest which outweighs the individual’s right to freedom of movement (see *Hajibeyli v. Azerbaijan*, no. 16528/05, § 63, 10 July 2008; *Nalbantski v. Bulgaria*, no. 30943/04, § 65, 10 February 2011; and *Popoviciu v. Romania*, no. 52942/09, § 91, 1 March 2016). Preventive measures must be based on concrete elements which are truly indicative of the continued existence of the risk that such measures seek to forestall (see, *mutatis mutandis*, *Nalbantski*, cited above, § 65, and *Vlasov and Benyash v. Russia*, nos. 51279/09 and 32098/13, § 34, 20 September 2016; see also *Labita*, cited above, § 196).

195. A measure restricting freedom may be imposed or maintained only after the particular situation of the person concerned has been duly taken into consideration (see, for example, *Battista v. Italy*, no. 43978/09, § 44 and 47, ECHR 2014, and *Stamose v. Bulgaria*, no. 29713/05, § 35, ECHR 2012). Moreover, the domestic authorities are not entitled to maintain over lengthy periods restrictions on an individual’s freedom of movement without periodic reassessment of their justification (see, among other authorities, *Villa v. Italy*, no. 19675/06, § 49, 20 April 2010; *Battista*, cited above, § 42; and *Rotaru*, cited above, § 25). When examining the severity of a restriction, the Court will have particular regard to its duration (see *Nikiforenko v. Ukraine*, no. 14613/03, § 56, 18 February 2010).

196. Lastly, the person on whom a preventive measure has been imposed must be afforded the benefit of a review by the courts which provides appropriate procedural safeguards (see *Bulea v. Romania*, no. 27804/10, § 63, 3 December 2013, and *Popoviciu*, cited above, § 92). He or she must be given a genuine opportunity to seek any clarification of the reasons for such a restriction and must have access to adversarial proceedings (see *Marturana v. Italy*, no. 63154/00, §§ 188-89, 4 March 2008).

(ii) *The Court’s assessment*

197. The Court notes that the applicant’s freedom of movement was subjected to a particularly high degree of interference, in so far as it included a prohibition on leaving the municipality of Angers, a night-time curfew and an obligation to report to the police three times a day on pain of imprisonment. It further notes that the applicant was placed under a residence restriction for a total period of more than thirteen months.

198. The applicant’s residence restriction was initially imposed on the basis of his “religious radicalisation”, violent tendencies and criminal history,

and the fact that he had attempted to contact the leader of an Islamist organisation that was in favour of armed jihad and advocated the creation of a caliphate and the enforcement of Sharia law in France (see paragraph 14 above).

199. The Court would point out that such a restriction of freedom of movement cannot be based solely on an individual's beliefs or religious practice. It reiterates, however, that Article 9 of the Convention does not protect every act motivated or inspired by a religion or belief (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 60, ECHR 2000-XI). In the present case, it notes that the Minister of the Interior relied on a set of factors probative of "conduct" such as to provide substantial grounds to believe that it posed a threat to public safety and order, and did so with a view to preventing an act of terrorism, as the *Conseil d'État* concluded (see paragraph 53 above). The Court would emphasise that this measure was ordered a few days after the attacks of 13 November 2015, when there was no doubt whatsoever that protecting the public and preventing further terrorist acts constituted a pressing need. In this connection, the Court reiterates that the effectiveness of a preventive measure frequently depends on the speed of its implementation (see *Gochev*, cited above, § 53). It takes the view, moreover, that the measure's implementation conditions, although stringent, were suited to its purpose.

200. Accordingly, the Court considers that the measure in issue was taken on grounds that were relevant and sufficient in the context of the present case, namely an exceptionally serious and prolonged threat to national security, public safety and *ordre public*.

201. The applicant's residence restriction and its implementation conditions were thereafter reviewed on a regular basis, his personal situation having been re-examined eight times by the Minister of the Interior (see paragraphs 17, 18, 20, 32, 33, 34, 36 and 37 above). In deciding to extend the residence restriction in question, the Minister relied on a body of evidence which expanded over time. In the Court's view, this new evidence could reasonably have been regarded by the authorities as strengthening the serious grounds to believe that the applicant's conduct posed a threat that justified extending his residence restriction. The Court notes that the administrative authority relied on intelligence to the effect that the applicant had claimed he would be willing to conduct violent actions; that he had refused to condemn recent attacks in an interview voluntarily granted to a journalist; that he had maintained relations with an individual who had been sentenced heavily for aggravated assault against a police officer; that particularly violent jihadist propaganda videos which incited the use of deadly force had been found on devices belonging to him during an administrative search of his home; that he had breached the order prohibiting contact that had been issued against him and had been convicted on that charge; that he had developed relations, while imprisoned, with a figure of the jihadist movement, who was convicted

of criminal conspiracy with a view to committing acts of terrorism; and that he had at times displayed violent or provocative conduct towards the police and judicial authorities while under the residence restriction (see paragraphs 17, 18, 20, 32 and 36 above). The Court considers that these are concrete elements which the national authorities could reasonably have seen as indicative of the continued existence of the risk that the order sought to forestall (see *Nalbantski*, § 65, and *Vlasov and Benyash*, § 34, both cited above), namely, that of a potential terrorist act. It places special emphasis on the fact that the extension of the measure beyond twelve months was based, in particular, on the discovery of new evidence (see paragraphs 36 and 71 above). The Court reiterates that the nature and severity of the assessed risk will always be an important factor with regard to the proportionality of any protective and preventive measures to be taken (see, *mutatis mutandis*, *Kurt v. Austria* [GC], no. 62903/15, § 183, 15 June 2021).

202. In addition, the Court notes that the applicant was required to reside in Angers for almost the entire duration of the impugned measure. Angers is a municipality covering 42.7 sq. km, with close to 155,000 inhabitants. During the day, the applicant was free to move about the city, subject to compliance with the requirement that he report to the Angers police station three times a day. The station was easily accessible by public transport, since the applicant lived in the immediate vicinity until 5 August 2016. The Court concludes that neither the applicant's residence restriction nor any of the other requirements imposed on him prevented him from having a social life or maintaining contact with the outside world. It also notes that the administrative authority took into account the applicant's personal situation as unemployed, with no family expenses, and his allegations concerning his health problems by carrying out a thorough examination of the medical certificate he had produced. It would point out that the applicant never applied to the administrative authority for permission to leave the area of his residence restriction or to have the measure adapted on family or work-related grounds. He merely requested that his reporting requirement be made less frequent on grounds of temporary mobility issues, which were not regarded as established. At the hearing before the Court, the applicant explained that, in his view, seeking to have the measure adapted would have amounted to accepting it in principle. Accordingly, the Court considers that the fact that the applicant neither sought nor obtained the adaptation of his residence restriction cannot be attributed to the domestic authorities (see, *mutatis mutandis*, *Timofeyev and Postupkin*, cited above, § 135, and *Munteanu v. Romania* (dec.), no. 39435/08, § 26, 1 December 2015).

203. From all the foregoing considerations the Court concludes that the length of the measure and the perpetuation of the restrictions imposed thereunder were based on relevant and sufficient grounds.

204. Furthermore the Court notes that all the administrative decisions taken in respect of the applicant were reviewed by the courts (see

paragraphs 47, 51, 53, 54, 58 and 60). The applicant was always granted legal aid and was afforded the opportunity to put his case to the domestic courts, which undertook a careful review of the grounds for his residence restriction each time it was extended.

205. Lastly, the applicant submitted that the domestic courts had mainly ruled on the basis of *notes blanches*, which in his view were difficult to challenge. He complained of their excessive influence on the courts and submitted that he had been deprived of the minimum procedural safeguards. On that point, the Government argued that this practice enabled the considerations on the basis of which the administrative authority had taken the impugned measure to be disclosed to both the applicant and the court without hindering the activities of the intelligence services, while preserving the necessary confidentiality of their sources.

206. The Court has had occasion to acknowledge that the use of confidential material may be unavoidable where national security is at stake. However, this does not mean that the national authorities can be free from effective supervision by the domestic courts whenever they choose to assert that national security and terrorism are involved (see, *mutatis mutandis*, *Chahal*, §§ 130-31, and *A. and Others v. the United Kingdom*, § 210, both cited above, from the standpoint of Article 5 § 4). The Court has previously examined several techniques designed to accommodate the security requirements surrounding access to such material while affording the individual a substantial measure of procedural justice (see *Chahal*, §§ 131 and 144, and *A. and Others v. the United Kingdom*, §§ 214-24, both cited above). In the present case, the Court must ascertain whether the production of *notes blanches* was accompanied by sufficient procedural safeguards.

207. In this connection, the Court notes that under domestic law a *note blanche* must be the subject of adversarial argument. Furthermore, it falls to the administrative courts to review the accuracy and precision of the information it contains by examining whether this information is based on precise and detailed facts and whether or not these facts are substantively challenged (see paragraph 92 above). The administrative courts are entitled to exercise their investigative powers to this end (see paragraph 93 above). In the present case, the Court notes that the inclusion of *notes blanches* in the adversarial proceedings enabled the applicant to gain knowledge of the considerations on the basis of which he was placed under a residence restriction and afforded him a genuine opportunity to seek clarification in that regard (see, *mutatis mutandis*, *Marturana*, cited above, §§ 188-89). It finds that most of these considerations went unchallenged by the applicant, who, the Court notes, missed several hearings and never requested that the domestic courts make use of their investigative powers. The domestic courts found the reports to be sufficiently precise and detailed as to the facts. Having examined the *notes blanches* included in the evidence before it, the Court finds that this conclusion cannot be regarded as arbitrary.

208. Accordingly, the Court concludes that the applicant was afforded appropriate procedural safeguards in the circumstances of the case.

209. In view of all the foregoing considerations, and having regard to the pressing need to prevent terrorism, to the applicant's conduct, to the procedural safeguards afforded to him and to the periodic review of the necessity of the compulsory residence order, the Court concludes that the measure was not disproportionate. Accordingly, there has been no violation of Article 2 of Protocol No. 4. Having so found, the Court does not need to determine in the present case whether France validly exercised its right of derogation under Article 15 (see paragraph 146 above).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Upholds* the Government's preliminary objection that the complaints under Articles 8, 9 and 14 of the Convention and under Article 2 of Protocol No. 4 concerning the MICAS order issued in respect of the applicant were lodged out of time;
2. *Upholds* the Government's preliminary objection of failure to exhaust domestic remedies in respect of the complaints under Articles 8, 9 and 14 of the Convention concerning the applicant's placement under a residence restriction, and *dismisses* the remainder of that objection;
3. *Declares* the complaint under Article 2 of Protocol No. 4 concerning the compulsory residence order issued in respect of the applicant admissible and the remainder of the application inadmissible;
4. *Holds* that there has been no violation of Article 2 of Protocol No. 4 to the Convention.

Done in French, and notified in writing on 19 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytkhik
Registrar

Siofra O'Leary
President