



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

FIFTH SECTION

CASE OF DOMENJOUD v. FRANCE

(Applications nos. 34749/16 and 79607/17)

JUDGMENT

Art 2 P4 • Freedom of movement • Preventive residence restrictions imposed on two applicants – under state-of-emergency legislation enacted following terrorist attacks – on suspicion of possible violent actions during COP21 summit • Foreseeability of law • No direct link between measure and countering terrorism • Measure imposed on first applicant: adequate procedural safeguards; sufficiently linked to state-of-emergency context in very specific circumstances of case; relatively short; relevant and sufficient reasons; material evidence based on applicant's conduct and background reflecting serious risk of participation in particularly violent disruptions; proportionality • Measure imposed on second applicant: essence of procedural rights not preserved; no individual and detailed assessment of conduct or acts allowing risk to be characterised • Art 15 • Second applicant's placement under residence restriction not covered by derogation on grounds of public emergency threatening life of nation, as not ordered to counter threat of terrorism and not strictly required by exigencies of situation

Art 5 • Residence restriction regarded as mere restriction, not deprivation, of liberty, in light of its duration, effects and combined implementation conditions • Incompatibility *ratione materiae*

Prepared by the Registry. Does not bind the Court.

STRASBOURG

16 May 2024

FINAL

16/08/2024

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 Domenjoud v. France,

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

Georges Ravarani, *President*,

Lado Chanturia,

Mārtiņš Mits,

Stéphanie Mourou-Vikström,

María Elósegui,

Kateřina Šimáčková, *judges*,

Jean-Marie Delarue, *ad hoc judge*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the applications (nos. 34749/16 and 79607/17) 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”) on 10 June 2016 and 17 November 2017;

the decision to give notice to the French Government (“the Government”) of the complaints under Articles 5 and 6 § 1 of the Convention and under Article 2 of Protocol No. 4 and to declare inadmissible the remainder of the applications;

the observations submitted by the parties;

the comments submitted by the French Défenseure des droits and by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (“the Special Rapporteur”), who were granted leave to intervene as third parties;

Considering that Mattias Guyomar, the judge elected in respect of France, was unable to sit in the case (Rule 28 §§ 2 (b) and 3 of the Rules of Court), and that the President of the Section decided to appoint Jean-Marie Delarue to sit as an *ad hoc* Judge (Rule 29 § 1 (a));

Having deliberated in private on 30 January and 2 April 2024;

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

INTRODUCTION

1. The cases concern two compulsory residence orders made under state-of-emergency legislation with a view to maintaining public order during a climate change summit. The applicants complained of breaches of Articles 5, 6 and 13 of the Convention and, in the alternative, of Article 2 of Protocol No. 4. They argued that the measures were not covered by Article 15 of the Convention.

THE FACTS

2. The applicants are two brothers. Mr Cédric Domenjoud (“the first applicant”) was born in 1985 and lives in Marseilles. Mr Joël Domenjoud (“the second applicant”) was born in 1982 and lives in Commercy. They were represented before the Court by Ms M. Ruef, a lawyer practising in Lille.

3. The Government were represented by their Agent, Mr F. Alabrune, Director of Legal Affairs at the Ministry of Europe and Foreign Affairs.

I. DECLARATION OF A STATE OF EMERGENCY

4. On the night of 13 to 14 November 2015 Islamist terrorist attacks, responsibility for which was claimed by Daesh, were perpetrated in Saint-Denis and Paris. One hundred and thirty people were killed, most of them in an attack on a concert hall (the Bataclan).

5. In a decree of 14 November 2015 the French President declared a state of emergency under the Law of 3 April 1955 (see paragraphs 37-38 below). In two further decrees issued the same day, the Minister of the Interior was authorised to enforce compulsory residence orders across continental France and Corsica.

6. The state of emergency was extended six times by the legislature. It ended on 1 November 2017.

7. According to the material submitted by the French Government, five further attacks were perpetrated in France in this period. They caused 92 deaths, with the attack in Nice on 14 July 2016 proving especially deadly. In addition, 13 attempted attacks took place, while plans for another 32 attacks were thwarted.

II. NOTICE OF DEROGATION

8. On 24 November 2015 the Permanent Representative of France to the Council of Europe informed the Organisation’s Secretary General of the decision by France to exercise its right of derogation under Article 15 of the Convention (see paragraph 54 below).

III. CIRCUMSTANCES OF THE CASE

9. Despite the terrorist threat to France, it was decided to maintain arrangements for France to host the 21st session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (“COP21”). That session was held in Le Bourget and Paris from 30 November to 12 December 2015. Various preventive measures were taken to ensure security at the summit, including compulsory residence orders, demonstration bans and the establishment of security perimeters.

A. The compulsory residence orders in respect of the two applicants

10. At the time of the measures, Cédric Domenjoud was living in squatted premises in Ivry-sur-Seine. Joël Domenjoud was living in Malakoff.

11. In two orders issued on 25 November 2015 under section 6 of the Law of 3 April 1955 (see paragraph 39 below), the Minister of the Interior placed the applicants under residence restrictions within their respective municipalities until 12 December 2015. The measures included the obligation to report to a police station three times a day at fixed times (at 9 a.m., 1 p.m. and 7.30 p.m.) and not to leave their homes between the hours of 8 p.m. and 6 a.m.

12. The orders were initially reasoned on the basis of the following general considerations:

“In view of the seriousness of the terrorist threat on national territory, specific measures are necessary to ensure security at ... ‘COP21’, which is scheduled to take place in Paris and Le Bourget ..., bringing together a very large number of heads of State. Rallying cries have circulated calling for violent protest actions in the vicinity of both venues where the summit is to be held and of sensitive sites in the Île-de-France region, including operations of vital interest to the nation. The heavy deployment of security forces to counter the threat of terrorism cannot be redirected to respond to the risk of [breaches of] public order in connection with such protests.”

The Minister indicated that he feared violent disruptions by “black bloc” activists, as had occurred at the inauguration of the headquarters of the European Central Bank in Frankfurt in March 2015 and at the Milan Expo in May 2015.

13. He then relied on considerations specific to the applicants. Both were described as having been among the “main leaders of the [left-wing extremist] radical protest movement” in the greater Paris area. Both had been involved in “violent protest actions” in the past and were likely to take part in especially violent protests during COP21.

14. With regard the first applicant in particular, the Minister stated as follows:

“[F]or several weeks, he has been organising most of the meetings held in a squat where the movement’s most determined and violent activists have gathered to prepare the actions they intend to mount in an attempt to prevent this international conference from being held. These actions include blocking official motorcades, personalities and heads of State, along with more violent actions targeting State institutions and the representative offices of industrial or financial firms sponsoring COP21. Mr Cédric Domenjoud was one of the main organisers of the anti-authoritarian ‘summer camp’ held in Bure (Meuse *département*) from 1 to 10 August 2015 to protest against a project for the installation of a waste burial site. On that occasion, on the night of 3 to 4 August, in Bure, he took part in an action targeting the premises of the Agency for the Management of Radioactive Waste [*Agence de gestion des déchets radioactifs*] (ANDRA), in particular by severing fibre-optic cables in order to neutralise cameras, using ropes and grappling hooks to tear down 25 metres of fencing and throwing Molotov cocktails at the gendarmes, who were attempting to intervene. On 22 November 2015 he was spotted on Place de la Bastille (11th *arrondissement*) at a

rally in support of migrants that had been banned by order of the prefect on 18 November 2015, at the end of which he also took part in a protest, after breaking through a roadblock set up by police. ...”

15. Regarding the second applicant, he stated as follows:

“Mr Joël Domenjoud ... has been actively involved for several years in actions against State bodies, in particular the police, the courts and the prison authorities, and against symbols of capitalism, including banking establishments. ... [He] takes part in the preparatory meetings [for protest actions to prevent COP 21 from taking place] held in a squat. He was one of the main organisers of the anti-authoritarian ‘summer camp’ in Bure (Meuse *département*)... In the period during which that camp was held, violent actions were perpetrated against the premises of [ANDRA]. These actions led to clashes with law enforcement and resulted in significant criminal damage (severing of fibre optic cables, tearing-down of fences, throwing of Molotov cocktails).”

16. The orders were enforced from 26 November to 12 December 2015.

17. During that period, the first applicant was able to procure leave to appear in person before the Administrative Court and attend a job interview.

B. The legal remedies pursued by the applicants

18. The applicants pursued various remedies before the administrative courts to challenge their placement under residence restrictions.

19. In defence of his orders, the Minister of the Interior produced a series of *notes blanches* (see paragraph 49 below) to demonstrate that the measures complained of were justified.

1. The remedies pursued by the first applicant

20. On 27 November 2015 Cédric Domenjoud applied to the urgent-applications judge of the Melun Administrative Court seeking, under Article L. 521-2 of the Administrative Courts Code, a suspension of the residence restriction imposed. He submitted, *inter alia*, that the measure interfered with his individual liberty, freedom of movement and right to lead a normal family life in a serious and flagrantly unlawful manner. He disputed the facts on which the Minister of the Interior had based his decision but submitted nothing more than the impugned decision itself, along with an invitation to a job interview and his *curriculum vitae*.

21. After the hearing, the urgent-applications judge dismissed his application in a decision of 3 December 2015, for the following reasons:

“5. It can be seen from the preparatory work for the Law of 20 November 2015 ... that the declaration and subsequent extension of the state of emergency were designed to deal with Islamist terrorism. However, that aim does not preclude the measures for which it provides from being implemented to guard against other threats to security and public order, in particular to allow the services tasked with security to carry out their duties, especially during an exceptional event like [COP21], which hosts numerous heads of State.

6. Under the Law of 3 April 1955 the administrative courts' review must take account of the emergency situation and the grave danger in response to which it has arisen. It must be admitted that a compulsory residence order, which is not a sanction but serves a preventive purpose, is based on facts that are probable and sufficiently substantiated by the intelligence services.

7. It can be seen from the material in the case file, and in particular from the '*note blanche*' drawn up by the domestic intelligence services [on] 24 November 2015, together with an undated note submitted to the court on 2 December 2015, which have been the subject of adversarial argument in the present proceedings, that the applicant was one of the main organisers of and fundraisers for the anti-authoritarian 'summer camp' held in Bure... In that context, during the night of 3 to 4 August 2015, he took part in an action against the premises of the Agency for the Management of Radioactive Waste, causing criminal damage to them. He was also present at the demonstration in support of migrants on 22 November 2015 at Place de la Bastille, in Paris, despite the fact that it had been prohibited by order of the prefect on 18 November 2015. On that occasion, he broke through a police roadblock. He is one of the leaders of the radical protest movement.

8. In these circumstances, in finding that there were substantial grounds to believe that Mr Domenjoud's conduct posed a threat to public safety and order – in particular owing to his active role in organising banned demonstrations – and in placing him under a residence restriction on that ground for a period corresponding to that of COP21, a period during which he intended to concentrate the police's efforts, the Minister of the Interior – having regard to the limited duration of the residence restriction and the clarification given at the hearing that Mr Domenjoud would be granted leave, if he so requested, to attend a job interview on 7 December 2015, just as he was granted leave to attend the hearing on 2 December 2015 – has not interfered with a fundamental freedom in a flagrantly unlawful manner."

22. Cédric Domenjoud appealed against this decision. Before the *Conseil d'État*, he submitted, firstly, that section 6 of the Law of 3 April 1955 was incompatible with a number of rights and freedoms guaranteed by the Constitution, in particular the right to individual liberty and freedom of movement. Secondly, he argued that his placement under a residence restriction seriously undermined these fundamental freedoms and was in breach of Article 5 of the Convention and Article 2 of Protocol No. 4. He further complained of factual inaccuracies and of the weight that had been given to the *notes blanches* submitted by the authorities, arguing that it was materially impossible for him to adduce any refuting evidence. He pointed out that he had never been convicted of serious offences, only of causing minor damage and refusing to submit to DNA sampling. He supplemented his submissions with extracts from parliamentary proceedings and a copy of a circular on the use of *notes blanches*.

23. In a decision of 11 December 2015 the *Conseil d'État* decided to refer the first applicant's request for a preliminary ruling on constitutionality to the

Constitutional Council, specifying that it concerned the provisions of section 6 of the Law of 3 April 1955 as it had interpreted them.

In addition, it declined to order interim measures of protection pending the Constitutional Council's decision, on the following grounds:

“23. Mr Domenjoud relies ... on the provisions of Article 5 of the [Convention] and of Article 2 of Protocol No. 4...

24. On the one hand, although a compulsory residence order of the kind made in respect of the applicant restricts the exercise of certain freedoms, in particular freedom of movement, it does not, having regard to its duration and manner of implementation, amount to a deprivation of liberty within the meaning of Article 5... Consequently, and in any event, Mr Domenjoud cannot validly rely on that Article to challenge the compulsory residence order made against him.

25. On the other hand, and in any event, it has not been shown, at this stage of the urgent proceedings that, where a state of emergency has been declared in response to an imminent danger resulting from serious breaches of public order or a public calamity, the possibility of making a compulsory residence order under section 6 of the Law of 3 April 1955 is manifestly incompatible with the provisions of Article 2 of Protocol No. 4...

...

27. As currently drafted ... the provisions of section 6 must not be understood as precluding the Minister of the Interior, while the state of emergency remains in force, from ordering ... the placement under a residence restriction of any person residing in the area subject to the state of emergency, provided that there are substantial grounds to believe that his or her conduct poses a threat to public safety and order, in view of the imminent danger or public calamity which has led to the declaration of a state of emergency. ...

28. It can be seen from the examination, and in particular from the material submitted by the Minister of the Interior in the adversarial proceedings before the *Conseil d'État*, that Mr Cédric Domenjoud took part in violent protest actions, including the action targeting the National Agency for the Management of Radioactive Waste's waste burial site in Bure of the on the night of 3 to 4 August 2015, during which the site's fence and video-surveillance system were damaged and incendiary devices were thrown at the law-enforcement officers attempting to halt the intrusion. He took an active part in preparing protest actions to prevent and disrupt the United Nations climate change conference, including violent actions against sites owned by the State or by legal entities sponsoring that conference. There is no legislative provision or principle barring the administrative courts from taking into consideration the facts set out in the '*notes blanches*' submitted by the Minister, which have been the subject of adversarial argument and have not been substantively challenged (*sérieusement contestées*) by the applicant.

29. The examination also shows that law enforcement remains heavily deployed to counter the threat of terrorism and guard against the imminent danger which led to the declaration of a state of emergency, and to ensure security at, and the proper conduct of, the United Nations conference in Paris and Le Bourget through to its conclusion.

30. In these circumstances, it has not been shown, at this stage, that in placing Mr Domenjoud under a residence restriction until the end of [COP21] 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, having weighed up the various interests at stake, has interfered with a fundamental freedom in a serious and flagrantly unlawful manner.”

The *Conseil d'État* deferred its decision on the remainder of the application.

24. In a decision of 22 December 2015, the Constitutional Council held that the first nine paragraphs of section 6 of the Law of 3 April 1955 were compatible with the Constitution.

Firstly, it found that the compulsory residence order provided for in these provisions did not amount to a deprivation of liberty within the meaning of Article 66 of the Constitution:

“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 a 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.”

Secondly, it held that the provisions in question did not disproportionately interfere with freedom of movement, for the following reasons:

“8. The Constitution does not bar the legislature from providing for rules governing a state of emergency. In that context, it is for the legislature to ensure that the prevention of breaches of public order can be reconciled with respect for the rights and freedoms secured to everyone residing on French territory. These rights and freedoms include freedom of movement...

...

11. Firstly, a compulsory residence order may be made only where a state of emergency has been declared. Under section 1 of the Law of 3 April 1955, a compulsory residence order may be made only ‘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’. Such a restriction may be imposed only on an individual residing in the area covered by the state of emergency and in respect of whom ‘there are substantial grounds to believe that his or her conduct poses a threat to public safety and order’.

12. Secondly, not 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.

13. Thirdly, after 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.”

25. In a decision of 20 January 2016 the *Conseil d’État* held that there was no need to examine the matter further, as the effects of the impugned order had lapsed.

26. Cédric Domenjoud did not bring proceedings on the merits in the administrative courts.

2. The remedies pursued by the second applicant

(a) Urgent application for protection of a fundamental freedom (*référé-liberté*)

27. On 27 November 2015 Joël Domenjoud applied to the urgent-applications judge of the Cergy-Pontoise Administrative Court under Article L. 521-2 of the Administrative Courts Code seeking a suspension of the residence restriction imposed on him. Like his brother, he argued, *inter alia*, that the measure interfered in a serious and flagrantly unlawful manner with his individual liberty, freedom of movement and right to lead a normal private and family life. He submitted nothing more than the decision complained of. He pointed out that he had no criminal record and described himself as an ordinary activist.

28. In a decision of 28 November 2015 the urgent-applications judge of the Cergy-Pontoise Administrative Court dismissed his application for lack of urgency under Article L. 522-3 of the Administrative Courts Code, noting, in particular, as follows:

“Mr Domenjoud, a civil servant in the public education system who was on leave of absence until February 2016, has failed to demonstrate that the impugned order ... deprives him of the ability to travel or engage in any activity, in particular owing to formalities he is required to perform *vis-à-vis* the relevant authorities, or that it has the effect of causing damage to his reputation.”

29. The second applicant lodged an appeal against that decision, requesting that the *Conseil d’État* decide the matter under the urgent-applications procedure. He challenged the admissibility of the *notes blanches* submitted by the Minister of the Interior and the measure’s proportionality.

30. In a decision of 11 December 2015 the *Conseil d’État* quashed the decision of 28 November 2015, holding that the urgency criterion had been

incorrectly assessed at first instance. In so doing, it laid down the following principle:

“... [H]aving 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.”

Ruling under the urgent-applications procedure, it nevertheless dismissed his request on the following grounds:

“19. It can be seen from the investigation, and in particular from the material submitted by the Minister of the Interior in the adversarial proceedings before the *Conseil d’État*, that Mr Joël Domenjoud took part in violent protest actions, including the action targeting the National Agency for the Management of Radioactive Waste’s waste burial site in Bure on the night of 3 to 4 August 2015, during which the site’s fence and video-surveillance system were damaged and incendiary devices were thrown at the law-enforcement officers who were attempting to halt the intrusion. He took an active part in preparing protest actions to prevent and disrupt the United Nations climate change conference, including violent actions against sites owned by the State or by legal entities sponsoring that conference. There is no legislative provision or principle barring the administrative courts from taking into consideration the facts set out in the ‘*notes blanches*’ submitted by the Minister, which have been the subject of adversarial argument and have not been substantively challenged (*sérieusement contestées*) by the applicant. ...”

In view of the heavy deployment of security forces, it held that the Minister had not interfered with the applicant’s freedom of movement in a serious and flagrantly unlawful manner in placing him under a residence restriction.

(b) Application for judicial review

31. On 15 December 2015 Joël Domenjoud applied to have the order against him set aside. He submitted, *inter alia*, that there had been a breach of Article 5 of the Convention and of Article 2 of Protocol No. 4. He challenged the accuracy of the *notes blanches* submitted against him, arguing that there was no evidence establishing that he had ever resorted to violence as part of his activism. He pointed out that he had never been prosecuted or arrested for acts of that nature. He further sought the redaction of the Minister of the Interior’s written remarks characterising him as a violent individual and 2,000 euros in damages, arguing that such allegations were defamatory. In support of his application, he produced his personal criminal record extract (Bulletin no. 3), showing no criminal convictions, and a press article on the organisation of the Bure camp.

32. The Cergy-Pontoise Administrative Court dismissed his application in a judgment of 18 February 2016, on the following grounds:

“11. Mr Domenjoud maintains that, although he is an active advocate of environmental causes, he has committed no violent acts and has not been the subject of any criminal proceedings. However, it is clear from the material in the file, and in particular from the *notes blanches* supplied by the intelligence services – which have been the subject of adversarial argument – that Mr Domenjoud has taken part in several unannounced demonstrations, that he is an organiser for the ‘Vladimir, Martine and Co.’ collective, which is named after the driver of the construction vehicle responsible for the death of the Chairman and Managing Director of Total, and that he took part in organising and running the anti-authoritarian ‘summer camp’ in Bure (Meuse *département*), which gave rise to a violent protest action against the waste burial site of the National Agency for the Management of Radioactive Waste. On 20 September, 23 September and 1 October, he took part in preparations for protest actions to prevent and disrupt [COP 21]. Mr Domenjoud has failed to produce any detailed evidence to rebut these allegations. Thus, he is not justified in submitting that the Minister of the Interior’s decision to place him under a residence restriction within the municipality of Malakoff until 12 December 2015, the day after [COP 21] was scheduled to end, was vitiated by an error of assessment, notwithstanding the fact that the heads of State present at that conference are alleged to have left French territory by 1 December at the latest.

12. Lastly, ... the circumstances listed under section 1 of the Law of 3 April 1955 must be understood as corresponding to the subject matter of the above-mentioned provisions of Article 15 of the [Convention]. Thus, and in accordance with the second paragraph of that Article, the applicant cannot validly rely on the provisions of Article 2 of Protocol No. 4 ... and Articles 5, 8 and 10 of [the Convention] to challenge the lawfulness of the impugned order, which was made in accordance with the provisions of section 6 of Law no. 55-385 of 3 April 1955.”

The Administrative Court further held that it was not established that the Minister’s written remarks were defamatory and dismissed the claims under that head.

33. Joël Domenjoud appealed against that judgment. He supplemented his submissions in evidence by producing six statements from private individuals attesting to the peaceful nature of his political activism. A number of them described him as a non-violent activist and lauded his involvement in organising the Bure camp, emphasising that the actions in Bure that summer could not be reduced to the incidents of the night of 3 to 4 August 2015.

34. In a judgment of 21 June 2016 the Versailles Administrative Court of Appeal rejected his appeal, dismissing his factual challenges as follows:

“6. While Mr Domenjoud argues that he has never been convicted, he does not substantively challenge the facts contained in the intelligence services’ *notes blanches*, which have been the subject of adversarial argument. In particular, he does not dispute that he took part in organising the Bure camp to protest the burial of radioactive waste, which gave rise to violence, or in other demonstrations against the Notre-Dame-des-Landes airport project and in support of an activist who had died during protests against the Sivens dam, some of which had been banned and resulted in disruptions, or, lastly, that he took part in meetings to prepare protests against COP21 – protests likely to cause serious disturbances of public order, given what is commonly observed at major international summits. In the light of those facts, of the requirements of public order and of the fact that the measure placing him under a residence restriction within the municipality Malakoff expired on 12 December 2015, the day after COP21 was

scheduled to end, that Mr Domenjoud was confined to his home only at night, that he was free to travel within city limits and that adjustments could be made at his request, the measure in question is necessary, appropriate and proportionate, and the ground of appeal alleging an error of assessment must be rejected.”

It further held that the measure taken against the applicant did not amount to a deprivation of liberty within the meaning of Article 5 of the Convention and was not in breach of Article 2 of Protocol No. 4, in so far as it was in accordance with law and was “necessary for security and *ordre public* and proportionate to its purpose”. Lastly, it upheld the dismissal of the second applicant’s other claims.

35. Joël Domenjoud appealed against that judgment on points of law. Before the *Conseil d’État*, he argued that the Administrative Court of Appeal had misconstrued the material in the file in holding that he had not substantively challenged (*sérieusement contesté*) the statements of fact contained in the *notes blanches* submitted by the Minister of the Interior. He further alleged that an error of law had been made, consisting in treating the content of the *notes blanches* as established fact. Lastly, he contested the necessity and proportionality of the measure.

36. In a decision of 18 May 2017 the *Conseil d’État* declared Joël Domenjoud’s appeal on points inadmissible.

LEGAL FRAMEWORK

I. DOMESTIC LAW AND PRACTICE

A. Domestic legislation on states of emergency

1. Declaration and extension of a state of emergency

37. 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.

38. Those conditions, together with the procedures for parliamentary oversight of the state of emergency, are set out in *Pagerie v. France* (no. 24203/16, §§ 62-64, 19 January 2023), to which the Court refers.

1. Legislative framework for residence restrictions

39. The relevant provisions of the Law of 3 April 1955, as in force at the relevant time, read as follows:

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 [by]

decree ... 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 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 on public holidays or non-working days;

...”

40. In a slew of decisions of 11 December 2015, delivered in response to requests by the applicants and five other individuals placed under residence restrictions during COP21, the Judicial Division of the *Conseil d’État* held that a person could be lawfully placed under a residence restriction for reasons other than those justifying the declaration of a state of emergency “provided that there [were] substantial grounds to believe that his or her conduct pos[ed] a threat to public safety and order, in view of the imminent danger or public calamity which [had] led to the declaration of a state of emergency” (*Conseil d’État*, Judicial Division, 11 December 2015, *M. Gauthier* and *M. Domenjoud*, nos. 394990 and 395099, published in *Recueil Lebon*, and five others).

41. Furthermore, the Constitutional Council has held that “not 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 (decision no. 2015-527 QPC of 22 December 2015, *M. Cédric D.*, cited in paragraph 24 above).

2. *Judicial scrutiny of compulsory residence orders*

42. Section 14(1) of the Law of 3 April 1955, as in force at the relevant time, provided that residence restrictions ordered under a state of emergency “[were] subject to review by the administrative courts”.

43. Such judicial scrutiny can be exercised, *inter alia*, in the context of urgent applications for protection of a fundamental freedom, as provided for in Article L. 521-2 of the Administrative Courts Code, and in the context of applications for judicial review of administrative measures (see *Pagerie*, cited above, §§ 74-82).

44. The *Conseil d'État* has held, in particular, that it is for the urgent-applications judge “to satisfy [himself or herself], on the basis of the evidence before [him or her], 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” (*Conseil d'État*, Judicial Division, 11 December 2015, cited above).

3. *Criminal sanctions*

45. Section 13 of the Law of 3 April 1955 provides that failure to comply with a residence restriction or its implementation conditions is punishable by imprisonment and a fine.

4. *Practical considerations and statistical data*

46. While the measures taken under the state of emergency from 2015 to 2017 mostly pursued the aim of preventing terrorism, they were at times used to maintain *ordre public*, and in particular to prevent disruptions during demonstrations. Radical activists were thus placed under exclusion orders during demonstrations against a reform of labour law and during the dismantling of the migrant camp in Calais (see Information Report no. 4281 on parliamentary supervision of the state of emergency, submitted on 6 December 2016 by Mr Raimbourg and Mr Poisson, members of parliament, pp. 88-91 and 128-29, and CREDOF (Paris-Nanterre University) research report for the *Défenseur des droits*, P. Hennette-Vauchez (ed.), “Ce qui reste(ra) toujours de l’urgence”, February 2018, pp. 20-21 and 178-98).

47. Regarding the use of residence restrictions under a state of emergency more specifically, it can be seen from the parliamentary report cited above that 563 draft measures were sent to the services of the Minister of the Interior between 14 November 2015 and 25 February 2016, 162 of which were rejected. The vast majority of these measures were aimed at countering terrorism.

48. With specific regard to security arrangements for COP21, 103 residence restrictions were proposed to the Minister, 76 of which were rejected. Twenty-seven measures were adopted but only 12 were actually notified and enforced (see the parliamentary report cited above, pp. 209-10).

In addition, other types of measures provided for in the state-of-emergency legislation were taken to that end. Three protection and security perimeters – within which freedom of movement was restricted – were established in the Île-de-France region. Prefects were also instructed to prohibit demonstrations on the public highway within their jurisdiction, “whatever the reason, with the exception of tributes to victims”, from 28 November 2015 to 30 November 2015, in view of the heavy deployment of security forces (see the parliamentary report cited above, pp. 86-87 and 219-20). Lastly, administrative searches were conducted at premises squatted by activists in Ivry-sur-Seine and Pré-Saint-Gervais (see the CREDOF research report, cited above, p. 196).

B. Submission of *notes blanches* in administrative proceedings

49. *Notes blanches* are documents drawn up and used by the intelligence services to impart information to other authorities, in particular for use in court proceedings. They are unsigned, sometimes undated, and any particulars that might serve to identify the authors or sources are redacted.

50. According to settled case-law, where a *note blanche* is submitted as evidence before the administrative courts, it must be the subject of adversarial argument and will have evidential value only if it 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).

51. When examining the facts reported in *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*, decision, 22 January 2016, no. 396116). 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

52. 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”) recommended that the grounds for public-order measures ordered under a state of emergency be explicitly and systematically linked to the grounds triggering this exceptional regime. It further emphasised the difficulties faced by legal practitioners in assessing or challenging the evidential value of *notes blanches* (Official Gazette, no. 0048 of 26 February 2016, points 25-26).

II. INTERNATIONAL LAW

A. Reservations and declarations relating to the Convention

1. *France's reservation in respect of Article 15 of the Convention*

53. The instrument of ratification of the Convention deposited by France on 3 May 1974 includes the following reservation:

“The Government of the Republic, in accordance with Article 64 of the Convention [Article 57 since the entry into force of the Protocol No 11], makes a reservation in respect of paragraph 1 of Article 15, to the effect ... that the circumstances specified in ... Section 1 of Act No. 55-385 of 3 April 1955 regarding proclamation of a state of emergency, and in which it is permissible to apply the provisions of those texts, must be understood as complying with the purpose of Article 15 of the Convention...”

2. *Declarations relating to the exercise of the right of derogation*

54. The notice of derogation deposited by France on 24 November 2015 reads as follows:

“On 13 November 2015, large-scale terrorist attacks took place in the Paris region.

The terrorist threat in France is of a lasting nature, having regard to information from the intelligence services and to the international context.

The French Government has decided, by Decree No. 2015-1475 of 14 November 2015, to apply Law No. 55-385 of 3 April 1955 on the state of emergency.

Decrees No. 2015-1475, No. 2015-1476 and No. 2015-1478 of 14 November 2015 and No. 2015-1493 and No. 2015-1494 of 18 November 2015 have defined a number of measures that may be taken by the administrative authorities.

The extension of the state of emergency for three months, with effect from 26 November 2015, was authorised by Law No. 2015-1501 of 20 November 2015. This law also amends certain of the measures provided for by the Law of 3 April 1955 in order to adapt its content to the current context.

The texts of the decrees and laws mentioned above are attached to this letter.

Such measures appeared necessary to prevent the commission of further terrorist attacks.

Some of them, prescribed by the decrees of 14 November 2015 and 18 November 2015 and by the Law of 20 November 2015, may involve a derogation from the obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms. I would therefore kindly request you to consider that this letter constitutes information for the purposes of Article 15 of the Convention.”

55. Similar statements were deposited following each extension of the state of emergency. On 6 November 2017 the Secretary General of the Council of Europe was informed that the state of emergency had ended.

B. United Nations (UN) material

56. Article 4 of the International Covenant on Civil and Political Rights (“ICCPR”) provides:

“In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”

57. Paragraph 4 of General Comment No. 29 on Article 4 adopted by the UN Human Rights Committee on 24 July 2001 (CCPR/C/21/Rev.1/Add.11) states as follows:

“4. A fundamental requirement for any measures derogating from the Covenant, as set forth in article 4, paragraph 1, is that such measures are limited to the extent strictly required by the exigencies of the situation. This requirement relates to the duration, geographical coverage and material scope of the state of emergency and any measures of derogation resorted to because of the emergency. ...”

58. Moreover, in a “public statement on the law on the state of emergency and the law on surveillance of international electronic communications” published on 18 January 2016, five special rapporteurs shared their concerns about the lack of precision of the Law of 3 April 1955 and about the possibility of its being applied for purposes other than those strictly required to counter the threat of terrorism. They were particularly alarmed by allegations that environmental activists had been placed under residence restrictions with a view to preventing peaceful demonstrations in connection with COP21.

C. Council of Europe material

59. 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 (footnotes omitted):

“12. Derogations may only last for as long as, and may only have a scope that is ‘*strictly required by the exigencies of the situation*’. Their necessity and proportionality must be subject to domestic and international supervision. That supervision is of primary importance, since State Practice shows that the gravest violations of human rights tend to occur in the context of states of emergency and that States may be inclined, under the pretext of a state of emergency, to use their power of derogation for other purposes or to a larger extent than is justified by the exigency of the situation.”

13. Even in genuine cases of emergency situations the rule of law must prevail. ...”

60. 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:

“10. France notified the Secretary General of its derogation on 24 November 2015. ... The notifications do not specify the Convention rights from which France derogated, this not being a requirement of Article 15.

...

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, instead of the prior authorisation by the ordinary courts required under criminal law. It is also concerned about ... the application of emergency measures to situations not directly related to the grounds for the state of emergency. It notes that these matters have been carefully examined by the competent domestic courts. It welcomes the structured, continuous parliamentary oversight of the state of emergency and the close scrutiny given to it by national human rights structures, civil society and the media, to whose criticisms the government remained attentive.”

It recommended, in particular, that France:

“18.2.1. review the 1955 Law, which remains on the statute books and could be used again in future, in light of recent criticisms ..., examining in particular concerns relating to definitions used in certain provisions, the effectiveness of judicial oversight, ... and the possibility of using emergency measures for purposes without a direct link to the situation that gave rise to the declaration of a state of emergency”.

THE LAW

I. JOINDER OF THE APPLICATIONS

61. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. PRELIMINARY OBSERVATION

62. The Government submitted that there had been no infringement of the rights guaranteed by the Convention, adding, as a subsidiary consideration, that the applications should be examined in the light of France’s exercise of its right of derogation under Article 15 of the Convention, which provides:

“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 (paragraph 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.”

63. The Court must first ascertain whether the residence restrictions imposed on the applicants were compatible with Convention rights and freedoms. If that is the case, it will not be necessary to determine whether or not the derogation was valid (see *Pagerie v. France*, no. 24203/16, § 146, 19 January 2023; see also, *mutatis mutandis*, *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 161, ECHR 2009, and *Ireland v. the United Kingdom*, 18 January 1978, § 191, Series A no. 25).

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

64. The applicants submitted that the residence restrictions imposed on them had not been reviewed by a court in compliance with the requirements of Article 5, which provides:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...”

A. The parties’ submissions

1. *The Government and the applicants*

65. The Government submitted that Article 5 was not applicable in the present case. The applicants’ residence restrictions had been brief; they had been placed under home curfew solely between the hours of 8 p.m. and 6 a.m.; and the measures’ implementation conditions had been designed in such a way as to preserve their social and professional lives, including by granting the first applicant specific leave.

66. The applicants, on the other hand, complained that they had been deprived of their liberty. The measures had been particularly stringent and they had been forced to observe a night-time curfew and report to a police station three times a day. They had spent close to three hours a day on the travel and formalities required to fulfil their reporting obligations.

2. *The third-party interveners*

67. The Special Rapporteur suggested extending the scope of criminal law to cover certain administrative counter-terrorism measures, in view of their degree of coercion and the fact that they deprived individuals of their rights or freedoms based on a mere suspicion of dangerousness.

68. The Défenseure des droits urged the Court to characterise the measures autonomously, giving due consideration to their combined and cumulative effects. In this connection, she reiterated, in particular, that breaches of residence restrictions were punishable under criminal law.

B. The Court's assessment

69. The Court reiterates at the outset that in proclaiming the “right to liberty”, paragraph 1 of Article 5 contemplates the physical liberty of the person. Accordingly, it is not concerned with mere restrictions on liberty of movement, which fall within the ambit of Article 2 of Protocol No. 4, with regard to persons lawfully within the territory of the State. The difference between deprivation and restriction of liberty is one of degree or intensity, and not one of nature or substance. In order to determine whether someone has been “deprived of his or her liberty” within the meaning of Article 5, the starting-point must be his or her specific situation, and account must be taken of a whole range of factors such as the type, duration, effects and manner of implementation of the measure in question (see *Guzzardi v. Italy*, 6 November 1980, §§ 92-93, Series A no. 39; *De Tommaso v. Italy* [GC], no. 43395/09, § 80, 23 February 2017; and *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, §§ 211-12, 21 November 2019). These factors must be assessed cumulatively and in combination (see *Guzzardi*, cited above, § 95, and *De Tommaso*, cited above, § 80).

70. The characterisation, or lack of characterisation, given by a State to a factual situation cannot be a decisive consideration (see *Creangă v. Romania* [GC], no. 29226/03, § 92, 23 February 2012).

71. Moreover, the Court would point out that it has had occasion to adjudicate on measures taken in accordance with section 6 of the Law of 3 April 1955. In *Pagerie* (cited above, §§ 152-61), it held that a residence restriction for a cumulative period of 13 months, including home curfew between the hours of 8 p.m. and 6 a.m., the obligation to report to a police station three times a day and a prohibition on contacting a third party on pain of imprisonment, amounted to a restriction of liberty. In *Fanouni v. France* (no. 31185/18, § 32, 15 June 2023), it reached the same conclusion with regard to a residence restriction within a rural municipality for a period of three months, comprising similar requirements.

72. In the present case, the Court notes that the measure complained of did not deprive the applicants of the ability to have a social life and maintain relations with the outside world. Cédric Domenjoud was thus placed under a

residence restriction in a place where other individuals opposed to COP21 were accommodated, while Joël Domenjoud, as he told the Court, had been able to give daily interviews to the press and host “anti-COP21 coffee hours” in a library run by an association. Furthermore, the fact that the measures included a night-time curfew does not suffice for them to be characterised, by nature, as a “deprivation of liberty” (see *De Tommaso*, cited above, §§ 86-88). Lastly, the applicants were able to request temporary authorisations to leave their place of compulsory residence (see paragraphs 17 and 21 above). Having regard not only to the duration of the measure but also to its effects and overall manner of implementation (see paragraphs 11 and 16 above), the Court takes the view that the residence restriction imposed on the applicants must be regarded as a mere restriction of liberty. It follows that the complaint under Article 5 of the Convention is incompatible *ratione materiae* with the Convention and must be rejected in accordance with Article 35 §§ 3 (a) and 4.

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

73. Alternatively, the applicants relied on Article 2 of Protocol No. 4. They argued that the legal basis for their placement under a residence restriction had not been foreseeable and disputed its proportionality. Relying on Articles 6 and 13 of the Convention, they further complained that they had been placed under a residence restriction on the sole basis of *notes blanches*, which they had not had the opportunity to challenge effectively.

74. Being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), the Court will examine these complaints solely under Article 2 of Protocol No. 4, which also includes procedural safeguards (see *Bulea v. Romania*, no. 27804/10, § 63, 3 December 2013, and *Popoviciu v. Romania*, no. 52942/09, § 92, 1 March 2016) and provides:

“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, for the protection of health or morals, or for the protection of the rights and freedoms of others.

...”

A. Admissibility

75. The Government objected that domestic remedies had not been exhausted. Firstly, the first applicant had failed to bring proceedings on the merits after his urgent applications had been dismissed. Secondly, neither applicant had pursued a compensatory remedy in addition to the other remedies used. Lastly, the applicants had not been sufficiently explicit in raising their complaint as to the possibility of effectively challenging the content of the *notes blanches* submitted by the administrative authorities.

76. The applicants argued that this preliminary objection should be dismissed. The remedies they had pursued were sufficient for the purposes of exhausting domestic remedies. Furthermore, any action for damages had been bound to fail, in view of the fact that their applications to suspend the measure or have it set aside had been dismissed by the administrative courts. Moreover, they had expressly relied on Article 6 and on equivalent constitutional grounds before the *Conseil d'État*.

77. The general principles on exhaustion of domestic remedies and on the burden of proof in such matters were reiterated in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014). 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).

78. The Court has held that the procedure of urgent application for protection of a fundamental freedom, as provided for in Article L. 521-2 of the Administrative Courts Code, is an effective and available remedy in this regard and that its use may be sufficient for the purpose of exhausting domestic remedies (see *Pagerie*, cited above, §§ 129-34). The parties have not alleged that this remedy was ineffective in the circumstances of the case. The Court further notes that Cédric Domenjoud pursued his urgent application for protection of a fundamental freedom up to the appeal stage before the *Conseil d'État* (see *Pagerie*, cited above, § 129). It observes, moreover, that the residence restriction imposed on him had expired by the time the examination of his urgent application for protection of a fundamental freedom had been completed. Accordingly, it finds that the first applicant made normal use of remedies which were in all likelihood effective and sufficient and was not required to pursue any others.

79. It observes, furthermore, that the applicants challenged the admission in evidence of the *notes blanches* before the *Conseil d'État*, arguing that reliance thereon infringed their right to a fair hearing.

80. Accordingly, the Government's preliminary objection must be dismissed. The Court notes that the complaint in question is neither

manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

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

1. The parties' submissions

(a) The applicants

81. The applicants contested the foreseeability of the legal basis for their placement under a residence restriction, the weight attached to the *notes blanches* by the administrative courts and the necessity of the measure.

82. Firstly, they argued that the conditions under which the measure could be applied were overly flexible. The concept of “conduct [posing] a threat to public safety and order” in section 6 of the Law of 3 April 1955 was too vague. It gave the authorities virtually unfettered discretion to place under a residence restriction anyone whose conduct they considered inappropriate.

83. Secondly, the applicants complained that they had been placed under residence restrictions on the sole basis of *notes blanches* from the intelligence services. They pointed out, in this connection, that they had never been prosecuted or even questioned by law enforcement in connection with the events reported in these *notes*. They submitted, in substance, that there were insufficient safeguards surrounding the administrative courts' reliance on that material. In particular, the applicants had not been able to challenge the *notes* adversarially, in so far as their content was vague and not based on tangible facts.

84. Thirdly, they submitted that the measure imposed on them was disproportionate. The Minister of the Interior had deliberately chosen the most restrictive measure available to him in order to deter other activists from protesting. The administrative authority could have confined itself to prohibiting them from travelling to Paris or outside the municipality in which they lived. The Minister of the Interior's stated desire to preserve the domestic security forces' resources to ensure security at COP21 had not prevented the domestic authorities from allowing many other demonstrations and public gatherings to go forward throughout the month of December 2015.

(b) The Government

85. The Government challenged every one of the applicants' arguments.

86. Firstly, the Law of 3 April 1955 circumscribed the discretion conferred on the administrative authority and provided sufficient safeguards against abuse. The declaration of a state of emergency was thus subject to strict conditions. Moreover, it would be unrealistic to require the types of conduct liable to give rise to a residence restriction to be exhaustively defined and the Court had already acknowledged the foreseeability of similar concepts. Furthermore, section 6 of the Law of 3 April 1955 did not require

that the grounds for a residence restriction should be linked to those justifying the state of emergency, and this reflected a deliberate choice on the part of the legislature. In the event of an extraordinary crisis, the authorities had both to cope with the crisis and guard against any further disruptions. Lastly, the measure was subject to review by the administrative courts, in particular by way of an urgent application for protection of a fundamental freedom.

87. Secondly, they pointed out that *notes blanches* could be taken into consideration by the administrative courts only if they were sufficiently detailed, had been the subject of adversarial argument and were found not to have been substantively challenged (*sérieusement contestées*) during the examination. They contended that those conditions had been met in the present case and argued, in essence, that there were adequate procedural safeguards surrounding the admission of that type of evidence. Furthermore, they illustrated the effectiveness of the administrative courts' review of the content of *notes blanches* by providing examples from the case-law (see *Conseil d'État*, urgent proceedings, 22 January 2016, no. 396116; 19 June 2017, no. 411587; and 16 July 2018, no. 421791).

88. Thirdly, they contended that the applicants' placement under a residence restriction had been proportionate to the aims it pursued of preventing terrorist acts, protecting safety and maintaining *ordre public*. They emphasised the seriousness of the terrorist threat and the fact that collective gatherings had been particularly targeted. They argued that the measure's conditions could have been more restrictive and that a blanket ban on demonstrations would have interfered with the rights and freedoms guaranteed by the Convention more severely still. Referring to the content of the *notes blanches* and the domestic courts' reliance thereon, they submitted that the measure had been justified by detailed and substantiated intelligence to the effect that the applicants had planned to take violent action at COP21, and the domestic courts had been careful to scrutinise its necessity and proportionality. In particular, the *Conseil d'État* had used this case as an opportunity to develop its case-law on judicial review of measures taken under a state of emergency in a more protective direction (see paragraph 44 above).

(c) The third-party interveners

89. The third-party interveners submitted that the legal basis for the measure was unforeseeable and were concerned by the power conferred on the authorities to impose residence restrictions on grounds unrelated to those which had justified declaring a state of emergency. The Défenseure des droits further emphasised that section 6 of the Law of 3 April 1955 did not define with sufficient precision the factual circumstances or conduct to be taken into account in assessing the dangerousness of the person concerned. The Special Rapporteur criticised the lack of prior judicial scrutiny of such measures.

90. The third-party interveners further submitted that *notes blanches* were often the only basis for measures taken under a state of emergency. However, their admission in evidence created a significant imbalance in the burden of proof, as their content was difficult to challenge in practice.

2. The Court's assessment

91. 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). The Court has consistently held that 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).

92. The Court has already found (see paragraph 72 above) that there was a restriction on the applicants' freedom of movement. There can be no doubt that this restriction pursued legitimate aims, namely the protection of national security and public safety and the maintenance of *ordre public*. It therefore remains to be determined whether the measure had a foreseeable legal basis and whether it was necessary in a democratic society.

(a) Foreseeability of law

93. 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, to which the Court refers. The Court reiterates, in particular, that a rule is “foreseeable” when it affords a measure of legal protection against arbitrary interference by 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). Moreover, 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 (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).

94. In *Pagerie* (cited above), the Court held that section 6 of the Law of 3 April 1955, as amended by the Law of 20 November 2015, satisfied the requirements of foreseeability of the law (*ibid.*, §§ 178–91). In reaching that

conclusion, it carried out a detailed examination of the measure's implementation conditions (ibid., §§ 181-83). Taking into account the difficulty of regulating *ex ante* the powers conferred on the administrative authority to deal with largely unforeseeable events of exceptional gravity (ibid., §§ 184-85), it conducted a thorough examination of the domestic law's safeguards against arbitrariness and procedural guarantees, finding that it laid down with sufficient clarity the scope and manner of exercise of the discretion conferred on the Minister of the Interior (ibid., §§ 187-91).

95. It also accepted the foreseeability of an earlier version of that provision in *Fanouni* (cited above, §§ 49-51).

96. However, both of those cases concerned counter-terrorism measures, the justification for which had been congruent with the reasons for which a state of emergency had been declared in France on 14 November 2015. The applicants have criticised the fact that section 6 of the Law of 3 April 1955, as interpreted by the *Conseil d'État* in the present case (see paragraph 40 above), allowed for residence restrictions to be imposed for reasons that were unrelated to those used to justify implementing a state of emergency. The Court notes that this is an issue on which it has yet to rule.

97. As a preliminary consideration, the Court would emphasise that the declaration of a state of emergency under the Law of 3 April 1955 does not have the effect of suspending the protection of fundamental rights in the domestic legal system, but merely of bestowing extraordinary public-order powers on the executive. At this stage, the Court must determine whether the discretion conferred on the Minister of the Interior to make compulsory residence orders is sufficiently circumscribed and whether his decisions are subject to appropriate scrutiny.

98. In this connection, the Court finds, firstly, that the domestic authorities are not entitled to use state-of-emergency legislation to take measures restricting freedoms if such measures bear no relation to the circumstances justifying its enactment; to proceed otherwise would be to breach the requirement of foreseeability of the law. However, in an emergency situation, those authorities might be obliged to make operational choices in order to assume their responsibilities to the full. In the Court's view, there can be an indirect link between the aim pursued when declaring a state of emergency and the justification for measures taken on the basis thereof, provided that it is strong enough to eliminate any possibility of abuse.

99. In the present case, while the *Conseil d'État* accepted that a compulsory residence order could be aimed at combating a different threat to public safety and order from the one justifying the declaration of a state of emergency (see paragraph 40 above), it nevertheless held that it was for the administrative courts to assess the merits of the measure and review its proportionality "[taking into account] the situation which led to the declaration of a state of emergency" (see paragraph 44 above). The Constitutional Council also required that a compulsory residence order be

justified and proportionate to the reasons which had prompted it “in the particular circumstances which led to the declaration of a state of emergency”, subject to review by the administrative courts (see paragraph 41 above). The Court takes the view that these clarifications in the case-law are such as to avoid any use of the state of emergency for extraneous purposes.

100. Secondly, the Court notes that domestic law provides for judicial scrutiny of both the lawfulness and the proportionality of compulsory residence orders made on the basis of a state of emergency (see paragraphs 42-44 above) – scrutiny which can be obtained within a very short time-frame by means of an urgent application for protection of a fundamental freedom (see *Pagerie*, cited above, §§ 75 and 190). Such judicial scrutiny is especially important where the executive authorities have been granted extraordinary powers in a major crisis, as the law in question provides.

101. In these circumstances, the Court sees no reason to depart from its previous assessment and reaffirms that the legal basis for the impugned measures was foreseeable. It must satisfy itself, however, that these safeguards were implemented in an effective manner and, in particular, that the existence of a sufficient link between the measures taken and the state-of-emergency context was verified. It will carry out its review when it examines the necessity of the impugned measures, as the two issues are closely related (see, *mutatis mutandis*, *Kvasnica v. Slovakia*, no. 72094/01, §§ 83-84, 9 June 2009, and *Dragojević v. Croatia*, no. 68955/11, § 89, 15 January 2015).

(b) Necessity of the restriction in issue and implementation of safeguards against arbitrariness

(i) General principles

102. The Court reiterates that 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 (see *Nada*, cited above, § 184, and *Olivieira v. the Netherlands*, no. 33129/96, § 64, ECHR 2002-IV).

103. 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).

104. The nature and severity of the risk which a preventive measure seeks to address will always be major factors in an assessment of its proportionality (see *Kurt v. Austria* [GC], no. 62903/15, § 183, 15 June 2021, and *Pagerie*, cited above, § 201). Such measures must be based on concrete elements

which are truly indicative of the continued existence of the risk that they seek to forestall (see *Pagerie*, cited above, § 194, with further references). Individual preventive measures must be adopted in the light of the conduct or acts of the individual concerned, following an individual and detailed assessment of the risk in question (see *Advisory opinion as to whether an individual may be denied authorisation to work as a security guard or officer on account of being close to or belonging to a religious movement*, request no. P16-2023-001, *Conseil d'État* of Belgium, §§ 97-98 and 100-01, 14 December 2023). This assessment may concern the individual's background, but also the degree to which he or she belongs to a movement that is considered dangerous, or his or her conduct in society (*ibid.*, §§ 97 and 110).

105. 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).

106. 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 the above-cited cases of *Bulea*, § 63; *Popoviciu*, § 92; and *Pagerie*, §§ 196 and 205-08). The Court has held that the domestic courts must evaluate whether the impugned restriction was necessary for, and capable of, achieving the legitimate aim it was intended to serve, whether it corresponded to a pressing social need and whether a less restrictive measure could be applied (see *Bartik v. Russia*, no. 55565/00, § 48, ECHR 2006-XV, and *Berkovich and Others v. Russia*, nos. 5871/07 and 9 others, § 96, 27 March 2018).

(ii) *Application to the present case*

(α) Preliminary observations

107. The Court notes that the compulsory residence orders in question restricted the applicants' freedom of movement: for 16 days, both applicants were prohibited from leaving the municipality in which they lived, confined to their homes between the hours of 8 p.m. and 6 a.m. and required to report to a police station three times a day, on pain of imprisonment (see paragraphs 11 and 16 above).

108. The Minister of the Interior justified the residence restrictions by the need to ensure security at COP21 in a context marked both by a serious terrorist threat and by violent incidents at other major events in neighbouring countries in 2015 (see paragraph 12 above). His decision was also based on information brought to his attention by the intelligence services indicating that activists were preparing violent protests in connection with the summit, protests in which the two applicants were likely to take part (see paragraphs 12 and 14-15 above). The Court notes that, as part of the security arrangements for an international summit, the impugned measures were

primarily intended to prevent clashes with the police and criminal damage, but were not directly linked to countering terrorism. It will therefore conduct its proportionality assessment in the light of the risk of violent disruptions identified by the domestic authorities.

109. It will also seek to ascertain whether the judicial scrutiny of these measures was surrounded by adequate procedural safeguards.

110. Lastly, it will examine whether the safeguards against arbitrariness provided for by the domestic legislation were effectively implemented, and in particular whether the domestic courts satisfied themselves that each of these measures was sufficiently linked to the state-of-emergency context (see paragraphs 98-99 above). In so doing, it will ascertain whether the risk of disruptions identified by the authorities was so grave as to jeopardise the aim of countering terrorism.

111. The Court considers it necessary to distinguish the applicants' respective situations in these three regards.

(β) Whether the measure imposed on Cédric Domenjoud was necessary

– *Procedural safeguards*

112. The Court notes that the first applicant was afforded the benefit of a review by the courts of both the lawfulness and proportionality of the measure taken against him. In this connection, the domestic courts examined, in particular, the reality of the risk referred to by the Minister of the Interior (see *Advisory opinion as to whether an individual may be denied authorisation to work as a security guard or officer on account of being close to or belonging to a religious movement*, cited above, §§ 95 and 112).

113. The applicant complained, however, of the weight which the administrative courts had attached to the *notes blanches* submitted by the Minister (see paragraph 49 above). The Court reiterates in this connection that, while the use of confidential material may be unavoidable where national security is at stake, this does not mean that the national authorities are immune from any supervision by the domestic courts (see *Chahal v. the United Kingdom*, 15 November 1996, § 131, *Reports of Judgments and Decisions* 1996-V, and *Pagerie*, cited above, § 206). In order to ensure that the very essence of the procedural rights of the person concerned is not undermined, that person must be informed, to the extent compatible with maintaining the confidentiality and proper conduct of any investigations into him or her, of the substance of the accusations against him or her (see *Muhammad and Muhammad v. Romania* [GC], no. 80982/12, § 151, 15 October 2020). A lack of information on the factual grounds justifying the measure and on the specific conduct of which he or she is accused entails the need for strong counterbalancing safeguards (see, *mutatis mutandis*, *Muhammad and Muhammad*, cited above, §§ 168, 170, 177, 194 and 204).

114. The Court would further point out that it has had occasion to rule on the procedural safeguards surrounding the French administrative courts' reliance on *notes blanches* in *Pagerie* (cited above, §§ 206-08) and *Fanouni* (cited above, §§ 60-61). It found that domestic law provides for three sets of safeguards in this area: firstly, it requires that such documents be subject to adversarial argument; secondly, it imposes a duty on the administrative courts to review the accuracy and precision of their content, by ascertaining whether they contain specific and detailed facts and whether or not these facts have been substantively challenged (*sérieusement contestés*); thirdly, it confers investigative powers on the administrative courts to perform this review. The Court went on to examine whether those safeguards had been effectively implemented and found that they had been sufficient in the circumstances of those two cases.

115. In the present case, the Court, like the domestic courts (see paragraphs 21 and 23 above), observes that the *notes blanches* submitted by the Minister of the Interior to the courts deciding the first applicant's case gave a detailed account of the specific acts and conduct alleged against him (see paragraph 118 above). Although the applicant was entitled to request clarifications, he did not ask the domestic courts to make use of their investigative powers (see *Pagerie*, cited above, § 207, with one further reference). The Court further notes that he simply denied the allegations before the urgent-applications judge, without seeking to demonstrate the inaccuracy of the reported facts (see paragraphs 20 and 22 above). Lastly, it observes that the first applicant failed to bring proceedings on the merits. In these circumstances, the Court finds that the judicial scrutiny of the residence restriction imposed on him was surrounded by sufficient safeguards.

– *Risk assessment*

116. The Court does not underestimate the nature of the risk against which the domestic authorities were seeking to provide protection. A number of European countries have indeed faced serious difficulties in maintaining order owing to the presence in certain rallies of particularly aggressive activists, gathered in “black blocs”, who are determined to provoke violent clashes with the police and cause serious damage in order to air their grievances (see, for example, *Cestaro v. Italy*, no. 6884/11, 7 April 2015). Such disturbances may have fatal consequences, examples of which the Court has had occasion to examine (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, ECHR 2011 (extracts)). In his orders of 25 November 2015 the Minister of the Interior pointed out that this phenomenon had once again been observed a few months prior to the making of those orders, on the sidelines of the central bank inauguration in Frankfurt and the Milan World Expo (see paragraph 12 above). In the present case, the Court notes that the domestic authorities had credible intelligence that there was a high risk of violent disruptions and vandalism at COP21.

117. It nevertheless remains for the Court to determine whether an individual and detailed assessment of Cédric Domenjoud's situation was carried out and whether his conduct or acts were such as to justify the preventive measure taken against him.

118. In the present case, it could be seen from the information conveyed in the *notes blanches* submitted to the domestic courts that he had either led or taken part in six meetings, between 5 September and 26 October 2015, to prepare protests in connection with COP21 – meetings attended by activists belonging to the radical protest movement and known for their violent behaviour and fierce determination. The planned protest activities included blocking official motorcades and taking “more violent action” of an unspecified nature against institutional sites and companies sponsoring the summit. A *note* sent to the *Conseil d'État* on 9 December 2015 further indicated that the applicant had set up a squat in Ivry-sur-Seine in March 2015 to accommodate individuals opposed to the summit and had announced, at a meeting held on 1 October 2015, that he planned to have himself recruited by a service provider so that he could gain access to the climate-conference venue.

119. Secondly, as regards Cédric Domenjoud's background, two of the *notes blanches* showed that during the night of 3 to 4 August 2015, he had taken part, in Bure, in a collective action aimed at damaging one of the sites operated by the National Agency for the Management of Radioactive Waste, an action during which Molotov cocktails had been thrown at the gendarmes. It was further specified that on 22 November 2015 the applicant had broken through a police roadblock in Paris in order to take part in a banned demonstration.

120. Although the applicant disputed the accuracy of this information, the Court notes that he questioned neither its source nor the fact that an intelligence service had been monitoring him closely. It further notes that the *notes blanches* submitted to the domestic courts are particularly detailed. In the present case, the Court has no objective evidence to suspect a misuse of authority or even a hidden agenda on the part of the public authorities (see, *mutatis mutandis*, *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, § 317, 26 September 2023).

121. Lastly, the Court notes that the first applicant had previously been convicted for causing damage and refusing to submit to DNA sampling (see paragraph 22 above).

122. In these circumstances, it finds that the domestic authorities had legitimate grounds to believe, in the light of the first applicant's conduct and background, that there was a serious risk that he would take part in violent protests during COP21.

- *Whether there was a sufficient link to the state of emergency and whether the measure was proportionate*

123. After noting that a large number of high-ranking foreign dignitaries were expected to attend the international summit, the domestic courts considered that such disruptions would have overburdened law enforcement and hindered them in their counter-terrorism efforts. The Court notes that the risk of disruption identified by the authorities (see paragraph 116 above) was of such a scale and seriousness as to require a significant number of officers to be assigned to security at COP21. It does not seem unreasonable to consider that the pressure on the police was such as to put the authorities in serious difficulty with regard to their duty to prevent terrorism, given the considerable number of sites and individuals they were required to protect at the time. The Court further observes that the measure was ordered only days after the 13 November 2015 attacks, when there was undoubtedly a pressing need to protect the population (see *Pagerie*, cited above, §§ 147-50 and 199) and large gatherings were particularly exposed to the terrorist threat. In these very specific circumstances, the Court finds that the measure was sufficiently linked to the state-of-emergency context.

124. Moreover, it notes that despite the restrictive nature of its implementation conditions, the measure was relatively short (compare *Trijonis v. Lithuania* (dec.), no. 2333/02, 17 March 2005; *Timofeyev and Postupkin v. Russia*, nos. 45431/14 and 22769/15, § 137, 19 January 2021; and *Pagerie*, cited above, § 197) and ended with the summit. The Court finds that it was based on relevant and sufficient reasons and on specific evidence drawn from Cédric Domenjoud's conduct and background, which pointed to a serious risk of involvement in particularly violent disruptions.

- *Conclusion as to compliance with Article 2 of Protocol No. 4 in respect of Cédric Domenjoud*

125. In view of all the foregoing considerations, and taking into account the margin of appreciation afforded to the domestic authorities, the Court finds that the measure taken against Cédric Domenjoud was proportionate to the aims pursued. Accordingly, there has been no violation of Article 2 of Protocol No. 4 in respect of this applicant. In view of this finding, there is no need for the Court to determine, in his case, whether France validly exercised its right of derogation.

- (γ) Whether the measure taken in respect of Joël Domenjoud was necessary
 - *Procedural safeguards*

126. Joël Domenjoud submitted, in substance, that he had not been afforded sufficient procedural safeguards. He argued that the domestic courts had considered him to be a violent protestor on the sole basis of *notes blanches*, which he alleged were inaccurate, vague and difficult to challenge.

127. Applying the principles set out above (see paragraph 113 above), the Court notes that neither the reasoning of the order made against the second applicant on 25 November 2015 (see paragraphs 12 and 15 above) nor the *notes blanches* submitted to the domestic courts provide details as to the acts or conduct relied on by the Minister of the Interior in order to determine that the second applicant was likely to take part in violent protests. Yet these were the only factual elements which the authorities submitted to the domestic courts. Such a lack of information entails the need for strong counterbalancing safeguards (see *Muhammad and Muhammad*, cited above, § 177).

128. In this connection, the Court observes, firstly, that the domestic courts did not seek further information by means of the additional enquiry procedure, although they had the power to do so (see paragraph 51 above). Secondly, in their review, the domestic courts did not draw any inferences from the incomplete nature of the evidence adduced by the authorities. On the contrary, the urgent-applications judge of the Cergy-Pontoise Administrative Court refused to examine the merits of the second applicant's urgent application on the ground that there was no urgency, even though the measure was then being enforced (see paragraph 28 above). The *Conseil d'État*, ruling under the urgent-applications procedure, went on to find that Joël Domenjoud had "[taken] part in violent protest actions, including the action targeting the ... waste burial site in Bure" by interpreting and extrapolating from the content of the *notes blanches* submitted to it (see paragraphs 30 above and 132 below). Thirdly, and lastly, it cannot be concluded from the reasoning of the judgment of the Versailles Administrative Court of Appeal that serious consideration was given to the objections raised before that court by the second applicant, who had given detailed explanations in reply to each of the points raised in the *notes* and submitted six statements from private individuals attesting to the peaceful nature of his activism (see paragraphs 33-34 above).

129. Having regard to the proceedings as a whole, the Court finds that the failure to provide the second applicant with sufficient information as to the specific evidence purportedly justifying the measure taken against him was not counterbalanced in such a manner as to preserve the very essence of his procedural rights.

– *Risk assessment and proportionality*

130. The Court reiterates that a preventive measure must be aimed at averting a specific risk and meet a pressing social need.

131. In this connection, the *notes blanches* showed that Joël Domenjoud took part in several meetings to prepare protest actions during COP21. However, while it is established that he was in contact with activists, these were not the only people to attend the meetings and there is nothing in the documents submitted to the Court to suggest that Joël Domenjoud planned to

take part in violent protests personally or to contribute to their organisation. Nor is it established that he encouraged or even supported such forms of action. Furthermore, there is no solid evidence to substantiate the intelligence services' claim that the applicant was a violent activist.

132. Secondly, as regards the second applicant's background, it can be seen from the *notes blanches* that he was one of the main organisers of the "anti-authoritarian 'summer camp'" in Bure. In particular, it is reported that he helped set it up in June 2015. Unlike in his brother's case, however, the *notes* do not show that he took part in the damage and violence that occurred during the night of 3 to 4 August 2015. Moreover, while a *note* dated 4 December 2015 states that he took part in two unannounced demonstrations in 2011 and 2014, there is no indication that he personally engaged in violent conduct or caused any damage on those occasions. Lastly, the second applicant submitted, without being contradicted, that he had never been convicted of a criminal offence.

133. In the light of the foregoing considerations, it does not appear that the preventive measure taken against Joël Domenjoud was the result of an individual and detailed assessment of his conduct or acts capable of establishing that there was a risk that he might take part in the disruptions feared by the domestic authorities. In these circumstances, the Court finds that his radical political opinions are not sufficient for such a risk to be characterised, reiterating that the fact of being related to a person likely to commit offences is not enough to justify a preventive measure (see *Labita v. Italy* [GC], no. 26772/95, § 196, ECHR 2000-IV). Consequently, despite the domestic authorities' margin of appreciation, the Court cannot find that the compulsory residence order made against the second applicant was "necessary in a democratic society" within the meaning of Article 2 of Protocol No. 4.

– *Provisional conclusion as to compliance with Article 2 of Protocol No. 4 in respect of Joël Domenjoud*

134. Having regard to all the foregoing considerations, the Court finds that the compulsory residence order made against Joël Domenjoud does not fully satisfy the substantive and procedural requirements of Article 2 of Protocol No. 4. It must therefore examine whether that measure is covered by the derogation notified by France under Article 15 (see paragraph 54 above).

(c) Application of Article 15 of the Convention

(i) The parties' submissions

(α) The Government

135. The Government submitted that Article 15 was applicable; that the derogation had been justified by the events with which France had been faced; that the notice of derogation of 24 November 2015 satisfied the formal

requirements of Article 15 § 3; and that the measures taken had not gone beyond the extent strictly required by the exigencies of the situation.

136. Firstly, the terrorist threat had been so significant at that time that it had amounted to a public emergency threatening the life of the nation within the meaning of Article 5 § 1. Attacks had already taken place in January 2015; coordinated attacks had just been carried out in Paris and Saint-Denis on 13 November 2015; and one of the perpetrators had been on the run.

137. As to the procedure, the notice of derogation of 24 November 2015 had been given with sufficient diligence and precision and neither Article 15 nor the Court's case-law required the Contracting States to specify the provisions of the Convention from which they intended to derogate. In this connection, the Government referred to paragraph 10 of Resolution 2209 (2018) (see paragraph 60 above) and pointed out that practice in such matters differed among member States.

138. Lastly, the measures complained of fell within the scope of the derogation notified by France and there was a close connection between the terrorist threat and the special deployment of domestic security forces it had entailed, both to prevent attacks and to manage violent disruptions by anti-authoritarian movements.

(β) The second applicant

139. Joël Domenjoud submitted that the measure to which he had been subjected did not fall within the material scope of the derogation by France. That scope had to be construed narrowly and could not cover measures unrelated to the exceptional circumstances which had justified the derogation. He referred, by analogy, to *Sakık and Others v. Turkey* (26 November 1997, § 39, *Reports of Judgments and Decisions* 1997-VII) and to General Comment No. 29 of the UN Human Rights Committee (see paragraph 57 above). The reasons for the residence restriction were completely unrelated to the terrorist threat and Article 15 was therefore inapplicable.

140. In the alternative, he argued that no derogation from the safeguards intended to ensure review of the proportionality of measures taken during a state of emergency should be permitted under that provision.

(γ) The third-party interveners

141. The Special Rapporteur stressed the importance of the information provided for in Article 15 § 3 of the Convention in the context of challenges to excessive or disproportionate use of extraordinary powers. She asked the Court to heighten its scrutiny of the grounds for derogation, having regard, in particular, to the length and gradual entrenchment of the state of emergency.

142. Furthermore, like the *Défenseure des droits*, she submitted that measures taken for reasons unrelated to those used to justify the derogation went beyond the "extent strictly necessary" for the purposes of Article 15 § 1.

In this connection, the third-party interveners noted with concern that the Law of 3 April 1955 had at times been applied for purposes far removed from the aim of countering terrorism (see paragraphs 46-48 above).

143. The Défenseure des droits submitted, moreover, that Article 15 did not concern Article 2 of Protocol No. 4.

(ii) *The Court's assessment*

(α) General principles

144. The Court reiterates that it falls to each Contracting State, with its responsibility for “the life of [its] nation”, to determine whether that life is threatened by a “public emergency” and, if so, how far it is necessary to go in attempting to overcome the emergency. By reason of their direct and continuous contact with the pressing needs of the moment, the national authorities are in principle better placed than the international judge to decide both on the presence of such an emergency and on the nature and scope of the derogations necessary to avert it. Accordingly, in this matter a wide margin of appreciation should be left to the national authorities (see the above-cited cases of *Ireland v. the United Kingdom*, § 207; *A. and Others v. the United Kingdom*, § 17; and *Yüksel Yalçınkaya*, § 348).

145. Nevertheless, States do not enjoy an unlimited power in this regard and the domestic margin of appreciation is accompanied by a European supervision (see *Brannigan and McBride v. the United Kingdom*, 26 May 1993, § 43, Series A no. 258-B, and *Yüksel Yalçınkaya*, cited above, § 349).

146. When the Court comes to consider a derogation under Article 15, it allows the national authorities a wide margin of appreciation to decide on the nature and scope of the derogating measures necessary to avert the emergency. Nonetheless, it is ultimately for the Court to rule whether the measures were “strictly required” (see *A. and Others v. the United Kingdom*, cited above, § 184, and *Baş v. Turkey*, no. 66448/17, § 196, 3 March 2020). In exercising the European supervision that falls to it, the Court must give appropriate weight to such relevant factors as the nature of the rights affected by the derogation and the circumstances leading to, and the duration of, the emergency situation (see *Brannigan and McBride*, cited above, § 43; *A. and Others v. the United Kingdom*, cited above, § 173; and *Dareskizb Ltd v. Armenia*, no. 61737/08, § 57, 21 September 2021). It must also examine the reasons for the derogation (see *Brannigan and McBride*, cited above, § 66) and be satisfied that the measure in issue has not been used for a purpose other than that for which it was intended (see *Lawless v. Ireland (no. 3)*, 1 July 1961, § 38, Series 1 no. 3).

147. Furthermore, the Court is competent to examine whether the notice of derogation complies with the formal requirements of Article 15 § 3 to keep the Secretary General of the Council of Europe fully informed of the measures which were taken in derogation from the Convention and the

reasons therefor (see *Aksoy v. Turkey*, 18 December 1996, §§ 85-86, *Reports of Judgments and Decisions* 1996-VI, with further references).

(β) Application to the present case

148. The Court observes at the outset that the Government did not rely on the reservation made by France in respect of Article 15 § 1 (see paragraph 53 above), and acknowledges this fact (see, to that effect, *Nodet v. France*, no. 47342/14, § 36, 6 June 2019). It finds that this reservation cannot be interpreted as releasing that Contracting State from the obligation to provide information under Article 15 § 3, or as exempting from European supervision the measures taken under the Law of 3 April 1955.

149. The Court further notes that Article 2 of Protocol No. 4 does not feature among the non-derogable rights. It is moreover regarded, under the very terms of Article 6 of that Protocol, as an additional Article of the Convention, which is to be read as a whole. Thus, neither Article 15 § 2 nor the Protocol in question prohibits derogation from freedom of movement. Article 15 is therefore applicable.

150. It is undisputed in the present case that there was a public emergency threatening the life of the nation within the meaning of Article 15 § 1. The Court would point out that it has accepted in a number of cases that the risk of a terrorist attack could be regarded as a valid ground for a derogation (see *A. and Others v. the United Kingdom*, cited above, §§ 176-180, with further references). The series of attacks which took place in France between 2015 and 2017 tragically demonstrated the reality and relevance of that threat. In the light of the evidence before it, the Court finds that this threat was so significant at that time that it amounted to a public emergency threatening the life of the French nation. The Government were therefore justified in exercising their right of derogation.

151. As to the validity of the notice of derogation, the Court observes that on 24 November 2015 the Secretary General of the Council of Europe was informed both of the measures taken by the French authorities and of the reasons therefor. It notes, however, that the notice did not specify the scope of the rights and freedoms concerned by the derogation (see paragraph 54 above). As this point has not been challenged, the Court is prepared to accept that the formal requirements of Article 15 § 3 were satisfied in the present case (see *Mehmet Hasan Altan v. Turkey*, no. 13237/17, § 89, 20 March 2018, and *Ahmet Hüsrev Altan v. Turkey*, no. 13252/17, §§ 100-02, 13 April 2021; see also *Yüksel Yalçınkaya*, cited above, § 211).

152. It remains to be determined whether the “extent strictly required” condition laid down in Article 15 § 1 was met. Here, the Court’s supervision focuses on the scope of any measures which may validly derogate from the rights and freedoms guaranteed by the Convention, and is of crucial importance.

153. In this regard, the Court notes, firstly, that French domestic law at the relevant time did not provide for an individual preventive measure that could restrict the freedom of movement of those who might pose a threat to public safety and order, outside of a state-of-emergency context. Given the scale of the terrorist threat and the pressing need to ensure the safety of the population, it finds that the domestic authorities were reasonably entitled to consider that normal legislation offered insufficient resources to cope with the situation (see *Lawless*, § 36, and *Ireland v. the United Kingdom*, § 212, both cited above).

154. It notes, however, that the Government, who were required to inform the Secretary General of the Council of Europe of the measures covered by the derogation and the reasons therefor, in accordance with Article 15 § 3 of the Convention, indicated that a state of emergency had been declared in view of the seriousness of the terrorist threat and “to prevent the commission of further terrorist attacks” (see paragraph 54 above). In the Court’s view, these reasons are of decisive importance (see, for example, *Brannigan and McBride*, cited above, § 66). The Court is of the view that only measures with a sufficiently strong link to the aim pursued by the derogation can be covered by it (see, *mutatis mutandis*, *Lawless*, cited above, § 38, and *Vedat Şorli v. Turkey*, no. 42048/19, § 46, 19 October 2021). To find otherwise would be to render ineffective the obligation to provide information under Article 15 § 3.

155. The Government have not convincingly shown, however, that Joël Domenjoud’s placement under a residence restriction was ordered to counter the threat of terrorism or that it was strictly required by the exigencies of the situation within the meaning of Article 15 § 1. The Court therefore finds that the measure was not covered by the French derogation. There has accordingly been a violation of Article 2 of Protocol No. 4 to the Convention in respect of Joël Domenjoud.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

156. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Non-pecuniary damage

157. Joël Domenjoud claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

158. The Government considered that amount to be excessive, having regard to the measure’s brevity and limited repercussions.

159. Taking into account the duration and effects of the violation found above, the Court considers it appropriate to award the applicant EUR 1,500.

B. Costs and expenses

160. Joël Domenjoud sought the reimbursement of EUR 14,850 in costs related to his representation before the domestic courts and before the Court.

161. The Government raised no objection to these claims.

162. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Regard being had to the supporting documents provided, the Court considers it reasonable to award him the sum of EUR 10,000.

C. Default interest

163. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join the applications;
2. *Declares*, unanimously, the complaints under Article 2 of Protocol No. 4 admissible and the remainder of the applications inadmissible;
3. *Holds*, unanimously, that there has been no violation of Article 2 of Protocol No. 4 to the Convention in respect of Cédric Domenjoud;
4. *Holds*, by six votes to one, there has been a violation of both the substantive and procedural limbs of Article 2 of Protocol No. 4 in respect of Joël Domenjoud;
5. *Holds*, by six votes to one,
 - (a) that the respondent State is to pay Joël Domenjoud, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 10,000 (ten thousand euros) in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses*, unanimously, the remainder of the claim for just satisfaction.

Done in French, and notified in writing on 16 May 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveyitchik
Registrar

Georges Ravarani
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Mourou-Vikström is annexed to this judgment.

G.R.
V.S.

DISSENTING OPINION OF JUDGE MOUROU-VIKSTRÖM

(Translation)

I see two great merits to the Chamber’s judgment. First, it does not take issue with reliance on *notes blanches*, their worth as intelligence or their considerable value for the administrative courts. Second, it acknowledges, in line with the *Conseil d’État* (*Conseil d’État*, Judicial Division, 11 December 2015, *M. Gauthier* and *M. Domenjoud*, nos. 394990 and 395009), the admissibility of an indirect link between a compulsory residence order and the reasons initially used to justify declaring a state of emergency.

It is thus perfectly acceptable for measures taken under a state of emergency which has been declared for the purpose of countering terrorist attacks perpetrated in the name of Daesh to target individuals who have no ties to the Islamist movement. It suffices that these individuals pose a threat to public safety and, for example, that they obstruct or hinder the work of law enforcement, who should be able to focus their efforts solely on guarding against the terrorist threat. The finding is simple and pragmatic: if dispersed, action by the police and the gendarmerie will inevitably be weakened.

Unlike the cases of *Pagerie v. France* (no. 24203/16, 19 January 2023) and *Fanouni v. France* (no. 31185/18, 15 June 2023), in which the link was direct, the present judgment establishes and admits the principle of an indirect link. The judgment applies this principle in practice and endorses the residence restriction ordered in respect of the first applicant, Cédric Domenjoud, a finding with which I agree.

My disagreement lies with the majority’s assessment of the degree to which each of the two brothers posed a threat in the particular circumstances of the case.

According to the majority, one posed a threat while the other did not.

I cannot endorse this view, which holds that the two applicants’ situations were so different, in the light of Article 2 of Protocol No. 4, as to result in the finding of no violation of that Article in respect of Cédric Domenjoud, the first applicant, and in the finding of a violation in respect of Joël Domenjoud, the second applicant.

In my view, in the case of both applicants, the compulsory residence orders were made by the French authorities in a manner compatible with freedom of movement, not only as guaranteed in principle, but also as subject to potential restrictions in accordance with the Convention.

Considering the extent to which their actions appeared to be guided by the same purpose, and their methods by the same intent, it does not seem to me that the difference in treatment which the Chamber judgment reserves for Joël Domenjoud, as compared to his brother, is based on compelling evidence.

I. CONTEXT

Although clearly presented in the judgment, the context – which was very closely tied to the timing of the measures – must be reiterated and put into perspective.

On the night of 13 to 14 November 2015, France was hit by coordinated Islamist terrorist attacks in Paris and the greater Paris area. The attacks killed 130 people, in particular at the Bataclan theatre, leaving the country and the world in a state of shock and horror.

However, this was not an isolated human tragedy, since it took place in between two other terrorist incidents perpetrated by jihadist organisations: the massacre committed on the premises of the *Charlie Hebdo* weekly on 7 January 2015 and the attack in Nice on 14 July 2016, in which 86 people died and 458 were injured.

It was against this backdrop of terror, both past and yet to come, that the French authorities decided that the COP21 summit, which had been scheduled for 30 November to 12 December 2015, should be maintained – no doubt so that fear would not deprive humanity of an international meeting that was essential for the future of the climate.

It goes without saying that the courageous political decision to maintain plans to hold the United Nations Climate Change Conference on French soil could not be made without putting in place public safety measures, a necessary corollary of which, however, was that constraints on public freedoms would have to be accepted.

Faced with the risk of violent action by left-wing extremists – the applicants among them – compulsory residence orders were issued on 25 November 2015.

However, these measures had to be strictly regulated and amenable to effective remedies.

The risk was that, amid the haste (the attacks were carried out 15 days before the start of COP21) and eagerness to ensure the safe conduct of the international conference at all costs, infringements of freedoms would go unnoticed or be tolerated. Did the extraordinary situation that justified imposing a state of emergency amount – in the words of the public rapporteur before the *Conseil d'État* – to an “unfortunate godsend” for the public authorities? Was there any abuse of which the second applicant was but a victim?

I don't think so.

It is true that the compulsory residence orders in respect of the two applicants were issued under the state of emergency declared by the French President on the very day following the attacks, and after a notice of derogation had been submitted to the Secretary General of the Council of Europe. Such public and official acknowledgements of the implementation of an exceptional framework justifying extraordinary powers are always

accompanied by fears that governments will misuse these powers to silence opponents; such fears should be kept in perspective, however, depending on the nature of the political regime in question. Compulsory residence orders have never been used abusively by the French authorities to serve ends other than that of protecting the population.

The Chamber judgment explains perfectly well how it was that the applicants, despite the obvious fact that they were by no means Islamist terrorists, could nevertheless have distracted law enforcement from their counter-terrorism assignments by mounting violent protest actions. The indirect link between the compulsory residence orders issued under the state of emergency and the cause of that emergency is therefore established.

No distinction can be made between the two brothers in this regard.

It was therefore in view of the nature of that indirect link and of the evidence adduced to establish it that the Chamber considered that it could make a distinction between the two applicants, without truly succeeding in impugning the effectiveness of the national courts' comprehensive domestic review.

II. *NOTES BLANCHES*

It is important to note that the judgment follows in the footsteps of *Pagerie* (cited above) as regards the principles governing the administrative courts' reliance on *notes blanches*. None of the guarantees existing in principle is impaired by the present judgment, which, on the contrary, rehearses them, reasserts them and contributes to their consolidation in the case-law.

If the principles remain unchanged, the question arises whether, in these particular circumstances, the content of the *notes blanches* reflected such differences between the two brothers, in terms of their dangerousness or involvement in past or projected violent action, that the residence restriction imposed on one of them might comply with the Convention while the one imposed on the other breached it.

Now, it can be seen from the *notes* prepared by the intelligence services that both brothers led and took part in preparatory meetings in the same squat in Ivry-sur-Seine. The very *raison d'être* of such a gathering place was to plan actions – some of them potentially violent – in order to disrupt the smooth functioning of COP21. These were to include blocking official motorcades and airing grievances through the use of violence against sites representing the State and its institutions and against industrial or financial firms. The applicants' presence in this activist living environment and their role in organising these activities clearly reflect a shared understanding between them. The only difference with regard to COP21 is that Cédric Domenjoud allegedly planned to get himself hired there in order to undermine it from within.

Joël Domenjoud’s role was no less important, however, since the meetings he organised were specifically aimed at planning violent protest actions.

It cannot be reasonably maintained (see paragraph 131 of the judgment) that it is not established that Joël Domenjoud supported or encouraged the protests planned during COP21. His presence in the squat and his role as “leader” of the radical movement attest, at the very least, to his wholesale endorsement of the ideas and projects of the opposition to COP21, whose intentions and methods were beyond doubt.

As to past joint actions, the two applicants had taken part in the Bure anti-authoritarian “summer camp”, where gendarmes had been targeted by incendiary devices (Molotov cocktails) during the night of 3 to 4 August 2015. While it is true that Cédric Domenjoud had personally played a direct part in these actions, it is also the case that Joël Domenjoud failed to convince the domestic courts of the eminently peaceful nature of his own activism.

It would seem that the second applicant most likely had a strategic role as the organiser and thinker behind the actions, which by no means calls into question the threat he posed, given the radical nature of his political views and their manner of expression. While he plotted actions, his brother and other opponents of COP21 carried them out.

His central role in organising the Bure camp and in preparing the actions against COP21 in the squat bringing together the most determined activists gives the lie to the image he wished to convey of himself as a committed yet peaceful environmentalist.

He thus posed no less of a threat, which is precisely what the domestic courts found in duly exercising their supervisory role.

III. CRIMINAL BACKGROUND

While it is true that the first applicant, Cédric Domenjoud, was convicted by the courts of causing damage and refusing to submit to DNA tests, that fact, although an objective consequence of the finding of criminal liability, certainly does not prove that he was more dangerous than his brother.

IV. LEGAL REMEDIES PURSUED

The domestic administrative courts ruled on the compulsory residence orders which the two applicants had challenged through different legal avenues. Is there a difference to be found in these procedural choices that might explain why Joël Domenjoud’s situation was treated differently from that of Cédric Domenjoud?

Was the first applicant afforded the benefit of more thorough and effective domestic scrutiny than the second?

The opposite seems to have been the case.

Cédric Domenjoud chose to lodge an urgent application against the residence restriction imposed on him, while seeking a preliminary ruling as to its constitutionality from the Constitutional Council. Several consequences should be drawn from the procedural avenue taken by him:

- The first applicant opted for an urgent application for protection of a fundamental freedom and thus for urgent proceedings to suspend the measure's execution. The French administrative courts, up to and including the *Conseil d'État*, decided not to grant his request;
- He decided not to have the compulsory residence order reviewed on the merits, thereby dispensing with any thorough examination of its lawfulness and appropriateness;
- In response to a request for a preliminary ruling on constitutionality, the Constitutional Council assessed the law as a whole in a decision of 22 December 2015, reiterating the principles of proportionality in the assessment of a compulsory residence order, with no interpretative reservations, and, above all, finding that, on the contrary, section 6 of the Law of 3 April 1955 was compatible with the Constitution.

Joël Domenjoud, for his part, pursued not only the avenue of an urgent application for protection of a fundamental freedom but also that of judicial review. All the remedies he used were unsuccessful.

We can conclude that his particular situation with regard to freedom of movement received a more thorough examination by the courts than that of his brother. Those courts were unanimous in rejecting his claims, both in the urgent proceedings and on the merits.

Having been subjected to closer scrutiny, it is all the more difficult to understand why the residence restriction imposed on Joël Domenjoud should have resulted in the finding of a violation. My disagreement with the Chamber's position is further exacerbated by its failure to find that the compulsory residence order against Joël Domenjoud was covered by France's derogation under Article 15.

There was thus no failure whatsoever on the part of the French public authorities, who did not give in to the temptation to provide less rigorous protection of individual freedoms, despite the context and the competing interests they were bound to defend. The finding of a violation may give the opposite impression, which is why I am decidedly unable to endorse it.

APPENDIX

List of applicants:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence	Represented by
1.	34749/16	Domenjoud v. France	10/06/2016	Cédric DOMENJOUD 1985 Marseille	Muriel RUEF
2.	79607/17	Domenjoud v. France	17/11/2017	Joël DOMENJOUD 1982 Commercy	Muriel RUEF