

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

FOURTH SECTION

DECISION

Application no. 49933/20
Cristian-Vasile TERHEŞ
against Romania

The European Court of Human Rights (Fourth Section), sitting on 13 April 2021 as a Chamber composed of:

Yonko Grozev, *President*,
Tim Eicke,
Faris Vehabović,
Iulia Antoanella Motoc,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Ana Maria Guerra Martins, *judges*,
and Andrea Tamietti, *Section Registrar*,

Having regard to the above application lodged on 11 November 2020,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Cristian-Vasile Terheş, is a Romanian national who was born in 1978 and lives in Zalău. He was represented before the Court by Mr C.L. Popescu, a lawyer practising in Bucharest.

A. Circumstances of the case

2. The facts of the case, as set out by the applicant, may be summarised as follows.

3. The applicant had been elected to the European Parliament in 2019 from the list of the Romanian Social Democratic Party and was in Romania at the material time.

1. Background to the case

4. On 11 March 2020 the World Health Organization declared that the world was facing a pandemic caused by a novel coronavirus, SARS-CoV-2, responsible for an infectious respiratory disease termed COVID-19.

5. On 16 March 2020 the Romanian President accordingly issued the State of Emergency Decree (Decree no. 195/2020) (see paragraph 23 below). Decree no. 195/2020 introduced a thirty-day state of emergency in Romania with immediate effect. Its Article 2 provided for restriction of the exercise of certain fundamental rights, including freedom of movement. The right to liberty and security of person was not among the rights so restricted.

6. On 21 March 2020 the Minister of Internal Affairs, acting under the relevant provisions of the State of Siege and State of Emergency (Legal Regime) Emergency Ordinance (Government Emergency Ordinance no. 1/1999 – see paragraph 20 below) and Decree no. 195/2020, issued Military Ordinance no. 2/2020, sections 4 and 5 of which advised that people should not be outside of their homes between 6 a.m. and 10 p.m. and prohibited them from being out between 10 p.m. and 6 a.m.

7. On 24 March 2020 the Minister of Internal Affairs, again acting under Decree no. 195/2020, issued Military Ordinance no. 3/2020 (see paragraph 29 below), whereby it was prohibited, with immediate effect, for any person to be outside of his or her home except under certain specified circumstances. Anyone leaving home had to be able to show a supporting document to satisfy the competent authorities that he or she had a valid reason for doing so. The competent authorities for the purpose of enforcing the measures were the police and the gendarmerie. Persons in breach could be fined for a minor offence.

8. On 14 April 2020, the Romanian President, having made an assessment of the public-health situation in the country, issued Decree no. 240/2020, which extended the state of emergency for thirty days to 14 May 2020 and provided that the measures taken under Decree no. 195/2020 (see paragraphs 26-27 below) were to remain in effect.

9. The state of emergency was lifted at midnight on 14 May 2020.

2. The applicant's situation and legal challenges to the measure taken by the authorities

10. According to the applicant, the measure put in place by the authorities from 24 March 2020 to 14 May 2020 inclusive (see paragraph 7 above) was applicable to him; during that time, he did not have SARS-CoV-2, displayed none of the symptoms of the illness, had no contact with anyone who had the virus and did not travel to any countries in respect of which Romania had imposed health protection measures.

(a) The claim brought on the basis of Article 5 § 4 of the Convention

11. On 7 May 2020 the applicant brought a claim in the Bucharest County Court on the basis of Article 5 § 4 of the Convention. He submitted that he was being held in "administrative detention" and requested the County Court to order his immediate release and hold that he was entitled to leave his home

for any reason without having to provide a supporting document and without risking a penalty. He requested that the case be tried on an urgent basis and that the resulting judgment be made immediately enforceable.

12. The first hearing was scheduled for 12 June 2020.

13. On 10 June the applicant applied to the County Court for a finding that his claim had become otiose now that the lockdown had been lifted (see paragraph 9 above).

14. According to the most recent information from the applicant, provided on 11 November 2020, the case remained pending in the County Court at that date.

(b) The claim for judicial review of the legislation

15. On 8 and 25 May 2020 the applicant sought reconsideration of Decrees nos. 195/2020 and 240/2020, the parliamentary orders approving those decrees (see paragraphs 25-28 below) and Military Ordinance no. 3/2020 (see paragraph 29 below). He argued that those pieces of legislation infringed his right to liberty and security of person and asked the authorities that had issued them to revoke them. His applications for reconsideration were rejected on the ground that Article 5 § 1 of the Administrative Courts Act (Law no. 554/2004 – see paragraph 19 below) precluded administrative review of the legislation in question.

16. On 5 October 2020 the applicant brought a claim in the Civil and Administrative Division of the Cluj-Napoca Court of Appeal for an order quashing part of the legislation referred to at paragraph 15 above. He argued that the prohibition on leaving home amounted to an extrajudicial administrative deprivation of liberty which violated Article 5 of the Convention.

17. According to the most recent information from the applicant, provided on 11 November 2020, the proceedings in question remained pending in the national courts at that date.

3. Notifications by Romania for the purposes of a derogation under Article 15 of the Convention

18. On 17 March 2020 the Permanent Representation of Romania to the Council of Europe informed the Secretary General of the Council of Europe that Romania intended the make a derogation under Article 15 of the Convention. A copy of Decree no. 195/2020 was enclosed. The Romanian authorities subsequently kept the Secretary General regularly informed by *note verbale* of the various measures adopted until the state of emergency was lifted at midnight on 14 May 2020 (see paragraph 9 above).

B. Relevant domestic law and practice

1. The Administrative Courts Act (Law no. 554/2004)

19. Section 5 § 1 of the Administrative Courts Act (Law no. 554/2004) provides that neither any administrative act of a public authority concerning its relationship with Parliament nor any military command document may be challenged in administrative law proceedings.

2. The State of Siege and State of Emergency (Legal Regime) Emergency Ordinance (Government Emergency Ordinance no. 1/1999)

20. Section 3 of the State of Siege and State of Emergency (Legal Regime) Emergency Ordinance (Government Emergency Ordinance no. 1/1999) defines a state of emergency as a special legal regime whereunder exceptional political, economic or public order measures are put in place throughout the country or in particular administrative localities in the event of an actual or imminent serious threat to national security or to the functioning of constitutional democracy. It may be declared or maintained only to the extent required by the circumstances occasioning it and in accordance with Romania's obligations under international law (section 3 § 1 of Government Emergency Ordinance no. 1/1999). Under a state of emergency the exercise of fundamental rights and freedoms may be curtailed, but even during the state of emergency restrictions on the right to life are prohibited, as are torture, ill-treatment, conviction and punishment for offences not existing under national or international law and restrictions on access to justice (sections 3 *bis* and 4 of Government Emergency Ordinance no. 1/1999).

21. Section 9 of Government Emergency Ordinance no. 1/1999 places public authorities and individuals under an obligation to comply with and give effect to all measures prescribed by the ordinance itself, by related legislation or by military ordinances issued to implement the necessary measures imposed under a state of emergency. Section 28 of the ordinance makes non-compliance with the provisions of section 9 an administrative offence for which an individual may be fined 2,000-20,000 Romanian lei (RON).

22. By Decision no. 152/2020 of 6 May 2020 the Constitutional Court declared section 28 of Government Emergency Ordinance no. 1/1999 unconstitutional on the ground that the penalty to be imposed was not contemplated in respect of an offence clearly defined by law. As a result of that ruling the operation of section 28 of Government Emergency Ordinance no. 1/1999 was suspended from 13 May to 27 June 2020 and the section was repealed with effect from 28 June 2020.

3. The State of Emergency Decree (Decree no. 195/2020)

23. The State of Emergency Decree (Decree no. 195/2020), made under section 3 of Government Emergency Ordinance no. 1/1999 in accordance with the Romanian Constitution, was published in the Official Gazette on 16 March 2020. The relevant parts of the decree read as follows:

> "Taking into account developments in the international epidemiological situation, namely the spread of the SARS-CoV-2 virus to more than 150 countries, with some 160,000 persons infected and more than 5,800 dead, and the statement by the International Health Organization on 11 March 2020 characterising the outbreak as a 'pandemic';
>
> Taking into account not only the experiences of the countries that have been seriously affected by the spread of the virus but also the measures that have delivered a positive impact by limiting that spread – namely public health initiatives, the restriction or suspension of non-essential economic and social activity, and in particular the curtailment of the exercise of certain fundamental rights and freedoms – without which other actions undertaken would not have had the desired effect;
>
> Acting within the scope of the measures adopted by European States – chiefly those neighbouring Romania but also those with large communities of Romanian citizens – twelve of which have declared the existence of exceptional circumstances and adopted special measures to prevent community transmission of the virus;
>
> Having regard to developments in the epidemiological situation in Romania and to the assessed near-term public health risk, both of which point to a massive increase in SARS-CoV-2 infections;
>
> Taking into account that a failure promptly to pursue urgent social and economic measures of an exceptional nature to curb SARS-CoV-2 infections in the population will seriously compromise the exercise, first and foremost, of the right to life and, secondly, of the right to health;
>
> Underscoring that a declaration of a state of emergency is necessary to mitigate the adverse economic impact that will arise from the measures taken at national and international level to fight the spread of the SARS-CoV-2 virus;
>
> Taking into account that the foregoing factors make out the existence of unforeseeable exceptional circumstances affecting the general public interest and amounting to an extraordinary state of affairs, calling for the use of exceptional measures;
>
> Taking into account that restrictions on the exercise of rights must not impair the essence of those rights and must serve a lawful purpose which is necessary in a democratic society and proportionate to the aim in view;
>
> ...,
>
> The President of Romania declares:
>
> **Article 1**
>
> A state of emergency shall be in effect throughout Romania for a period of thirty days.
>
> **Article 2**
>
> For the purposes of preventing the spread of the COVID-19 epidemic and managing the consequences of developments in the epidemiological situation, the exercise of the

following rights shall be restricted, during the state of emergency, in a manner that is proportionate with regard to the criteria set out in Article 4 (4):

(a) freedom of movement;

(b) the right to personal, family and private life;

(c) the sanctity of the home;

(d) the right to education;

(e) freedom of assembly;

(f) the right to private property;

(g) the right to strike;

(h) economic freedom.

...

Article 4

(1) In pursuit of the purposes referred to in Article 2, the emergency measures (...) shall be introduced on a phased basis.

(2) The phased emergency measures listed in paragraphs 1-7 of Schedule 2 may be introduced by the Minister of Internal Affairs or his or her lawful representative, with the consent of the Prime Minister, by military ordinance.

...

(4) The phased emergency measures shall be introduced in conformity with paragraphs 2 and 3, in accordance with the assessment delivered by the National Emergency Board, by agreement with the Prime Minister, on the basis of the following criteria:

(a) the intensity of community transmission of COVID-19;

(b) the rate of emergence of new clusters in a particular geographic area;

(c) the number of patients in critical condition relative to the capacity of the healthcare system;

(d) the capacity and business continuity of the social and public services;

(e) the ability of the public authorities to implement and enforce measures of public order and security;

(f) foreign measures with an impact on the people or economic situation of Romania;

(g) capacity for the implementation of quarantine measures;

(h) other emergencies arising."

24. So far as relevant to the present case, paragraph 42 (1) of Schedule 1 to Decree no. 195/2020 provides:

"During the state of emergency, court activity shall continue in respect of any extremely urgent matters ..."

25. By Order no. 3 of 19 March 2020, Parliament approved Decree no. 195/2020.

4. The State of Emergency (Extension) Decree (Decree no. 240/2020)

26. The State of Emergency (Extension) Decree (Decree no. 240/2020), published in the Official Gazette on 14 April 2020, extended the state of emergency for thirty days to 14 May 2020. The recitals to the decree stated in part:

> "Whereas the world is witnessing a surge of infections and deaths from SARS-CoV-2, with no clear sign of a potential slowdown of the pandemic or stabilisation of the number of cases, despite unprecedented restrictions put in place by States worldwide;
>
> Taking into consideration that recorded cases and deaths alike from SARS-CoV-2 have remained on the rise since a state of emergency was introduced in Romania by Decree no. 195/2020;
>
> ...
>
> Having regard to the fact that the exceptional circumstances which led to the declaration of a state of emergency continue to be made out and that the general public interest commands an extension of the state of emergency, continuation of the measures already in place and the adoption of new measures to enable the public authorities to act effectively and with the appropriate resources to manage the crisis ..."

27. Decree no. 240/2020 provided for fundamental rights restrictions similar to those for which provision had been made by Decree no. 195/2020 (see paragraph 23 above). Article 7 provided that the measures adopted by way of implementation of Decree no. 195/2020 were to remain in effect.

28. By Order no. 4/2020 of 16 April 2020, Parliament approved Decree no. 240/2020.

5. Military Ordinance no. 3/2020

29. The COVID-19 (Preventive Measures) Military Ordinance (Military Ordinance no. 3/2020), made under the relevant provisions of Government Emergency Ordinance no. 1/1999 and Article 4 §§ 2 and 4 of Decree no. 195/2020, was published in the Official Gazette on 24 March 2020. The sections relevant to the present case provided as follows:

Section 1

> "No person may leave or be outside of his or her home except:
>
> (a) for the purposes of work, including travel between his or her home and place or places of work;
>
> (b) to purchase essential goods (for persons or for pets or other domestic animals), or goods needed for the purposes of work;
>
> (c) to seek medical care which cannot be postponed or provided remotely;
>
> (d) on compelling grounds such as care or accompaniment of a child, assistance to a person who is ill, disabled or of advanced age, or the death of a family member;
>
> (e) for short periods, in the vicinity of the home, to take individual physical exercise (not including any team sport) or see to the needs of a pet;

(f) to give blood at a blood transfusion centre;

(g) for the purposes of providing humanitarian or voluntary services;

(h) for the purposes of farming;

(i) if he or she is a farmer, for the purposes of selling agricultural food products."

Section 4

"(1) When called on to show a valid reason for leaving or being outside of the home:

...

(b) a sole trader ... shall provide a completed self-declaration.

(2) When called on to show a valid reason for leaving or being outside of the home, a person not falling under paragraph (1) shall provide a completed self-declaration.

..."

Section 14

"(1) Authority to implement and enforce the provisions of this military ordinance is vested:

(a) in the Romanian Police, the Romanian Gendarmerie and the local police in respect of the measures for which provision is made in sections 1 to 4;

...

(2) Any person who fails to comply with the measures for which provision is made in sections 1 to 5 ... shall bear disciplinary, civil, administrative or criminal liability in accordance with section 27 of Government Emergency Ordinance no. 1/1999 as amended and supplemented.

..."

C. WHO Director-General's opening remarks on 11 March 2020

30. At a media briefing on COVID-19 on 11 March 2020 the Director-General of the World Health Organization gave the following statement:

"In the past two weeks, the number of cases of COVID-19 outside China has increased 13-fold, and the number of affected countries has tripled.

There are now more than 118,000 cases in 114 countries, and 4,291 people have lost their lives.

Thousands more are fighting for their lives in hospitals.

In the days and weeks ahead, we expect to see the number of cases, the number of deaths, and the number of affected countries climb even higher.

WHO has been assessing this outbreak around the clock and we are deeply concerned both by the alarming levels of spread and severity, and by the alarming levels of inaction.

We have therefore made the assessment that COVID-19 can be characterized as a pandemic.

...

WHO has been in full response mode since we were notified of the first cases.

And we have called every day for countries to take urgent and aggressive action.

We have rung the alarm bell loud and clear.

...

We cannot say this loudly enough, or clearly enough, or often enough: all countries can still change the course of this pandemic.

If countries detect, test, treat, isolate, trace, and mobilize their people in the response, those with a handful of cases can prevent those cases becoming clusters, and those clusters becoming community transmission.

...

All countries must strike a fine balance between protecting health, minimizing economic and social disruption, and respecting human rights.

WHO's mandate is public health. But we're working with many partners across all sectors to mitigate the social and economic consequences of this pandemic.

This is not just a public health crisis, it is a crisis that will touch every sector – so every sector and every individual must be involved in the fight.

I have said from the beginning that countries must take a whole-of-government, whole-of-society approach, built around a comprehensive strategy to prevent infections, save lives and minimize impact.

..."

COMPLAINT

31. The applicant complained that the lockdown imposed in Romania from 24 March to 14 May 2020, with which he had been required to comply, had amounted to a deprivation of liberty contrary to Article 5 § 1 (e) of the Convention.

THE LAW

32. The applicant complained that the lockdown to which he had been subjected for fifty-two days had been a non-individualised, extrajudicial, administrative deprivation of liberty imposed to prevent the transmission of a contagious disease. In support of his case he submitted that he had been prohibited from leaving home save on exceptional grounds, that the police had been responsible for enforcing the prohibition and that they had had the power to impose penalties on him should he fail to comply with it.

He relied on Article 5 § 1 (e) of the Convention, the relevant part of which reads as follows:

> "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:
>
> ...
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> ..."

33. The applicant further contended that the measure complained of had lacked a clear and foreseeable legal basis and had not been necessary in a democratic society.

34. He expressly stated in his application that his only complaint was under Article 5 § 1 (e) of the Convention. He did not wish at this stage to complain to the Court of a violation of Article 5 § 4 of the Convention, as he intended to wait, in that regard, for the outcome of the domestic proceedings. He maintained, however, that under the applicable legal provisions no act having effect in law in relation to the state of emergency had been open to review or suspension by a court during the period in issue, and therefore he had not had an effective remedy for the infringement of his right to liberty and security of person. Accordingly, in his view, the six-month period prescribed by Article 35 § 1 of the Convention had begun to run from the time that the measure complained of had been lifted, at midnight on 14 May 2020 (see paragraph 9 above).

35. Bearing in mind that, within the Convention system, the Court is intended to be subsidiary to the national systems safeguarding human rights (see, for example, *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 154, ECHR 2009), the Court reiterates that it is duty-bound to examine whether it has jurisdiction at every stage of the proceedings (see *Tănase v. Moldova* [GC], no. 7/08, § 131, ECHR 2010). Accordingly, in its view, given the way in which the applicant's complaint is framed, it must begin by looking at whether Article 5 § 1 of the Convention is applicable to the present case. Specifically it must determine whether the nationwide blanket lockdown imposed by the Romanian authorities – and which the applicant, by his account, was required to heed – amounted to a deprivation of liberty such as to engage Article 5 § 1 of the Convention in the present case.

A. General principles

36. The well-settled principles applicable in this regard, so far as the distinction between deprivations of liberty and restrictions on freedom of movement is concerned, are set out in the cases of *Austin and Others v. the United Kingdom* ([GC], nos. 39692/09 and 2 others, §§ 57 and 59, ECHR 2012) and *De Tommaso v. Italy* [GC], no. 43395/09, §§ 80-81, 23 February 2017). In particular, in order to determine whether someone has been "deprived of his liberty" within the meaning of Article 5 of the Convention,

the starting-point must be his concrete situation, and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question, the effects of which must be considered "cumulatively and in combination" (see *De Tommaso*, cited above, § 80). Furthermore, the context in which the measure is taken is an important factor, since situations commonly occur in modern society where the public may be called on to endure restrictions on freedom of movement or liberty in the interests of the common good (ibid., § 81).

37. The Court reiterates that, while the Convention is a living instrument, this does not mean that to respond to present-day needs, conditions, views or standards the Court can create a new right apart from those recognised by the Convention or create a new "exception" or "justification" which is not expressly recognised in the Convention (see, *mutatis mutandis*, *Austin and Others*, cited above, § 53, and references therein).

B. Application of those principles to the present case

38. In the present case the Court observes at the outset that the applicant has not relied on Article 2 of Protocol No. 4 to the Convention before it and has instead endeavoured to show that the blanket lockdown was not merely a restriction on the right to freedom of movement but a deprivation of the right to liberty. Whether in a given case there has been a deprivation of liberty depends on the particular facts of the case.

39. As a preliminary point, the Court would note that there was a particular context to the measure complained of by the applicant. Specifically, it was taken during the state of emergency that had been declared in Romania on 16 March 2020 (see paragraph 5 above) for public health reasons. In Romanian law, a state of emergency is a special legal regime under which a range of exceptional measures may be taken which depart from the established constitutional order. Accordingly, it may be declared in the event of an imminent or ongoing threat, for a specified time, and enables the State to take measures which have the effect of restricting the exercise of certain fundamental freedoms (see paragraph 20 above). In the Court's view there is no doubt that the COVID-19 pandemic was capable of having very serious consequences not just for health but for society, the economy, the functioning of the State and life in general, so that the situation had to be characterised as one of "exceptional and unforeseeable circumstances" (see in this regard the recitals to Decree no. 195/2020, quoted at paragraph 23 above).

40. The Court further observes that the measure complained of in this case was imposed for the purpose of isolating and locking down the entire population in response to what the competent national authorities had judged to be a serious and urgent public health situation. As stated in the recitals to Decree no. 195/2020, the Romanian President had decided to declare a state of emergency after consultation with the competent bodies and in response to

unforeseeable and exceptional circumstances owing to developments in the international epidemiological situation, namely the fact that SARS-CoV-2 was spreading around the world and WHO had characterised it as a pandemic (see paragraphs 23 and 30 above). The Decree also stated that, if the authorities did not promptly take exceptional steps to curb the spread of the virus in the population, their inaction would have very serious consequences first and foremost for the right to life and secondly for the right to health (paragraph 23 above). Thus it was to mitigate the economic and social impact of the pandemic, and to protect the right to life, that the Romanian State phased in emergency measures, including a lockdown.

41. To determine whether the measure complained of amounted to a deprivation of liberty, the Court must analyse the applicant's concrete situation in the light of the criteria identified in its previous judgments (see paragraph 36 above). In that connection the Court notes that the measure complained of was in place for fifty-two days, from 24 March to 14 May 2020 (see paragraphs 7 and 9 above). However, it must also take into consideration the type, effects and manner of implementation of the measure in the light of the circumstances in which it arose.

42. As regards the type and manner of implementation of the measure complained of, the Court notes that what the applicant experienced was not an individual preventive measure. It was a blanket measure imposed on everyone through legislation enacted by the various Romanian authorities (see paragraphs 23, 26 and 29 above). As a consequence of the introduction of the measure the applicant was obliged to remain at home except in certain circumstances expressly laid down by law and in which he had to carry a document certifying his reason for going out (see paragraph 29 above).

43. The Court therefore notes that the applicant was free to leave his home for various reasons, and to go to various destinations, at whatever time of day it was necessary to do so (see paragraph 29 above). He was not individually monitored by the authorities. He has not claimed that he was compelled to live in a closely confined area; nor was he unable to have social contact (see, *mutatis mutandis*, *De Tommaso*, cited above, §§ 85 and 89; by way of comparison see, *mutatis mutandis*, *Guzzardi v. Italy*, 6 November 1980, § 95, Series A no. 39, where a court order had required the applicant to reside in a particular district under special supervision and the Court found a deprivation of liberty on account of the extremely small size of the area, the near-constant supervision of the applicant and his all but complete lack of opportunity for social contact). Accordingly, in view of the degree of severity of the measure complained of, it cannot be regarded as equivalent to house arrest (on the characterisation of such a measure as a deprivation of liberty within the meaning of Article 5 of the Convention, see, among other authorities, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 104, 5 July 2016).

44. The Court also attaches weight to the fact that the applicant has not explained in concrete terms how the measure affected him. He has not

claimed that he was unable to rely on any of the legal grounds for going out and so had to remain shut inside his home throughout the state of emergency. More generally, he has not adduced anything concrete by way of description of his actual experience of lockdown.

45. In view of the foregoing the Court is of the opinion that the degree to which the applicant's freedom of movement was restricted was not so great as to support a finding that the blanket lockdown imposed by the authorities amounted to a deprivation of liberty. It therefore considers that the applicant cannot be regarded as having been deprived of his liberty within the meaning of Article 5 § 1 of the Convention. Accordingly, the Court sees no need to examine whether the measure in issue was justified under Article 5 § 1 (e).

46. Lastly the Court notes that it was Romania's intention to derogate, under Article 15 of the Convention, from the obligations imposed by Article 2 of Protocol No. 4 to the Convention, which secures freedom of movement (see paragraphs 18 and 23 above), a right on which the applicant has not relied before it. In any event, the inapplicability of Article 5 § 1 of the Convention in this case also obviates any need to consider the validity of the derogation lodged by Romania with the Council of Europe (see paragraph 18 above and, *mutatis mutandis*, *A. and Others v. the United Kingdom*, cited above, § 161).

47. It follows that the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in French and notified in writing on 20 May 2021.

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Andrea Tamietti
Registrar

Yonko Grozev
President