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

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# The administrative surveillance of dangerous prisoners after they had finished serving their prison term was a preventive measure rather than a penalty

In today's **Chamber** judgment[1] in the case of Timofeyev and Postupkin v. Russia (applications nos. 45431/14 and 22769/15) the European Court of Human Rights held:

- unanimously, that there had been **a violation of Article 6 § 1 (right to a fair trial: free legal aid)** of the European Convention on Human Rights in respect of Mr Timofeyev;

- by a majority (six votes to one) that there had been **no violation of Article 2 of Protocol no. 4 (freedom of movement)** of the European Convention in respect of Mr Postupkin.

The case concerned the administrative surveillance of Mr Timofeyev and Mr Postupkin after they had served their prison sentences.

The Court found in particular that Mr Timofeyev's inability to obtain legal aid in order to secure the assistance of a lawyer must have placed him at a distinct disadvantage as compared with the opposing party (the representative of the correctional colony), who had been assisted by the public prosecutor throughout the proceedings. It also noted that Mr Timofeyev, who had had no first-hand experience or specialist knowledge of the law, had mentioned his difficulties and had requested the court's assistance, with reference to his financial difficulties.

The Court also ruled that the administrative surveillance measures implemented in respect of Mr Postupkin had been proportionate to the aim pursued, that is to say the prevention of crime. It noted that at the material time the law had described in detail the categories of persons concerned by administrative surveillance and relied on objective criteria, and that none of those criteria had left any margin of discretion for the domestic courts as regards the addressees of such preventive measures.

The Court dismissed Mr Timofeyev's complaint under Article 7 (no punishment without law) of the Convention, considering that the obligations and restrictions imposed on him in the framework of administrative surveillance had not amounted to "punishment" and that they should be regarded as preventive measures to which the principle of non-retroactivity set out in that provision was inapplicable. It also considered that the imposition of the said measures on Mr Postupkin had not been tantamount to "punish(ing him) again in criminal proceedings" within the meaning of Article 4 of Protocol No. 7 to the Convention, and also dismissed that complaint.

## Principal facts

The applicants, Vasiliy Timofeyev and Arkadiy Postupkin, are Russian nationals who were born in 1965. They live in Vladimir and Rybinsk (Russia) respectively.

The case concerns their placement under administrative surveillance on completion of their prison sentences.

*Mr Timofeyev*

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/surveillance/execution.

In October 2003 Mr Timofeyev was found guilty of murder and was sentenced to 11 years, six months and 10 days' imprisonment.

In September 2013 the director of the correctional colony where he was serving his sentence requested the District Court to place him under administrative surveillance under Law no. 64-FZ on administrative surveillance of persons released from prison. The prison management cited as reasons for the request the fact that Mr Timofeyev had been convicted of an offence qualifying as dangerous recidivism, that he had not complied with the prison rules and that 27 disciplinary punishments had been imposed on him, seven of which had not yet been served.

In November 2013 the District Court ordered Mr Timofeyev's placement under administrative surveillance. During the proceedings the applicant requested that a lawyer be appointed to represent him, pleading a lack of funds. The judge refused the request.

In January 2014 Mr Timofeyev lodged an appeal. During the proceedings he applied for free legal aid. A lawyer studied his file but in February 2014 informed the court hearing the appeal that he could not represent Mr Timofeyev without a legal-aid agreement.

On 14 March 2014 the court suspended the hearing to allow Mr Timofeyev and his lawyer to draw up a legal-aid agreement. On resumption of the hearing Mr Timofeyev informed the court that the agreement had not been drawn up as the lawyer had been unavailable. On the same day the court dismissed the applicant's appeal, finding that he had had sufficient time to prepare for the hearing of his case and to find a representative.

Mr Timofeyev was released in March 2014 and placed under administrative surveillance. The restrictions imposed on him were subsequently eased to enable him to travel for work. However, his application to have the administrative surveillance measure lifted early was refused in August 2015.

*Mr Postupkin*

In April 2007 Mr Postupkin was sentenced to seven years and six months' imprisonment for drug trafficking.

In November 2013 the director of the correctional colony where he was serving his sentence requested the Town Court to place the applicant under administrative surveillance, citing as reasons the fact that he had been convicted of an offence qualifying as dangerous recidivism, that he had not complied with the prison rules and that 23 disciplinary penalties had been imposed on him.

In December 2013 the court ordered Mr Postupkin's placement under administrative surveillance. The applicant appealed, alleging that this amounted to a double punishment and that the obligations imposed on him were too harsh. He also lodged a cassation appeal. Both appeals were unsuccessful.

## Complaints, procedure and composition of the Court

Relying on Article 7 (no punishment without law), Mr Timofeyev alleged that the administrative surveillance measures imposed on him had amounted to a penalty that had not existed at the time he had committed the offence of which he had been convicted.

Under Article 6 (right to a fair trial), Mr Timofeyev complained about the refusal of his application for free legal aid.

Relying on Article 2 of Protocol No. 4 to the Convention (freedom of movement), Mr Postupkin alleged a violation of his right to freedom of movement and to choose his residence freely, on account of the restrictions imposed on him in the context of his administrative surveillance.

Under Article 4 of Protocol No. 7 to the Convention (right not to be tried or punished twice), Mr Postupkin complained that he had been punished a second time on account of his placement under administrative surveillance.

The applications were lodged with the European Court of Human Rights on 1 September 2014 and on 24 April 2015 respectively.

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

Paul **Lemmens** (Belgium), *President*,
Georgios A. **Serghides** (Cyprus),
Dmitry **Dedov** (Russia),
Georges **Ravarani** (Luxembourg),
María **Elósegui** (Spain),
Anja **Seibert-Fohr** (Germany),
Peeter **Roosma** (Estonia),

and also Olga **Chernishova**, *Deputy Section Registrar.*

## Decision of the Court

### Article 7 (no punishment without law)

The Court considered that the main question before it was whether the administrative surveillance measures imposed on Mr Timofeyev had amounted to "punishment" within the meaning of Article 7 of the Convention or whether they had fallen outside the ambit of that provision.

It noted that pursuant to Law No. 64 FZ, any person who was released from prison in which he or she had been a prisoner convicted of a criminal offence qualifying as dangerous or highly dangerous recidivism was automatically subject to administrative surveillance. In the present case, Mr Timofeyev, who had been convicted of a criminal offence qualifying as dangerous recidivism, fell within that category of persons.

As regards the characterisation of administrative surveillance in domestic law, the Court held that the main aim of the impugned measures was to prevent recidivism. They had therefore had a preventive aim and could not be seen as punitive or as constituting a penalty.

In connection with the similarity between the measures and those constituting the penalty of limitation of liberty, the Court noted that under Article 60 § 3 of the Penal Code (PC), the sentencing process had to take account of any aggravating or mitigating circumstances in the commission of the offence, and therefore of the extent of the perpetrator's culpability. However, the implementation of administrative surveillance depended not on the culpability of the person in question but on the "dangerousness" of a person convicted of an offence qualifying as recidivism. Viewed from that angle the measure was not punitive in nature.

As to the procedure for ordering and implementing administrative surveillance, the Court noted that that procedure had come under civil law up until 15 September 2015, but that it now fell under administrative law, and not criminal law.

Lastly, as regards the severity of the impugned measures, the Court observed that although the requirements on Mr Timofeyev to report to the competent authority and to declare any change of address within three working days had been burdensome and had been accompanied by additional restrictions impacting considerably on the applicant's life, the severity of the impugned measures was not decisive in itself, given that many non-criminal measures of a preventive nature could, like properly penal measures, have a substantial impact on the person concerned.

Consequently, the Court considered that the obligations and restrictions imposed on Mr Timofeyev in the framework of administrative surveillance had not amounted to "punishment" within the meaning of Article 7 § 1 of the Convention and that they should instead be regarded as preventive measures to which the principle of non-retroactivity set out in that provision was inapplicable. Therefore, the

complaint under Article 7 of the Convention was incompatible *ratione materiae* with the provisions of the Convention.

### Article 6 (right to a fair trial / free legal aid) – Mr Timofeyev

The Court considered that it should consider the complaint concerning Mr Timofeyev's inability to obtain free legal aid in the framework of the administrative surveillance procedure under the civil head of Article 6 § 1 of the Convention. It observed that the Convention did not require the provision of legal aid in all civil disputes.

In the instant case, the Court noted that domestic law at the material time had not provided for the possibility of granting free legal aid in the framework of an administrative surveillance procedure. Furthermore, the request for placement under administrative surveillance order had, in principle, been lodged by the prison in question. Mr Timofeyev had therefore been the defendant in proceedings initiated by the domestic authorities.

Secondly, it noted that the issue at stake for Mr Timofeyev in those proceedings had undeniably been important: the restrictions imposed on him had had serious repercussions on his private life and on the exercise of his rights, particularly his right to freedom of movement.

Moreover, the assessment of the request for an administrative surveillance order had concerned legal issues requiring some knowledge of the law and the relevant case-law. Mr Timofeyev, who had had no first-hand experience or specialist knowledge of the law, had mentioned his difficulties at one hearing, and had requested the court's assistance in particular in gathering evidence to demonstrate that a certificate concerning his psychological evaluation had been forged. Nevertheless, the judge had granted him no assistance, having decided to dismiss all his procedural requests to that effect.

If Mr Timofeyev had been represented by a lawyer, he could have prepared his defence in order to challenge the evidence presented by the opposite party. The Court took the view that it had been especially important to provide Mr Timofeyev with proper defence because, in imposing administrative restrictions on the applicant the first-instance judge had taken into account his "personality" and the "negative opinion" of the prison authorities. Furthermore, Mr Timofeyev's opponent, that is to say the representative of the correctional colony, had benefited from the public prosecutor's assistance throughout the proceedings.

Moreover, the domestic courts had adjourned proceedings on several occasions so that Mr Timofeyev could find a legal representative. In fact, the reason why he had requested free legal laid was that he had had insufficient funds to pay for a lawyer, not that he had not had enough time to find one. The adjournments had therefore done nothing to remedy his situation because he had been serving a prison sentence when the court of first instance had examined the case, and thus he had had little prospect of any improvement in his financial situation.

Lastly, having regard to the situation facing Mr Timofeyev, who had been a prisoner serving a sentence until one week before the hearing before the Regional Court, and to his difficulties in preparing his defence, the Court held that he must have suffered much greater physical and emotional stress during the proceedings than would have been the case for an experienced lawyer.

Having regard to the foregoing considerations, and in particular to the seriousness of the issue at stake for Mr Timofeyev in the proceedings concerning his eight-year placement under administrative surveillance and to the difficulties which he had faced in preparing his defence, of which he had in fact informed the courts, the Court considered that Mr Timofeyev's inability to obtain free legal aid in order to secure the assistance of a lawyer must have put him at a distinct disadvantage as compared with his opponent. **Consequently, there had been a violation of Article 6 § 1 of the Convention.**

## Article 2 of Protocol No. 4 to the Convention (freedom of movement) - Mr Postupkin

According to the Court's case-law, any measure restricting the right to freedom of movement must be prescribed by law, pursue a legitimate aim and be necessary in a democratic society.

The Court noted that the impugned measures had had a legal basis in Russian domestic law, Law no. 64 FZ (in force since 1 July 2011), which had fulfilled the accessibility requirement.

Having regard to its conclusion that the impugned measures had not constituted punishment within the meaning of Article 7 of the Convention, the Court deemed unproblematic the imposition under Law no. 64 FZ on persons serving prison terms of preventive measures taking account of their conduct prior to the entry into force of that Law.

The Court noted in that connection that at the material time Law no. 64 FZ had described in detail the categories of persons concerned by administrative surveillance and relied on objective criteria such as the existence of a "convicted person status" which had not been erased or spent, the seriousness of the offence, the type of recidivism, the assignment of "persistent rule-breaker" status by the prison system and the perpetration of specific criminal or administrative offences. None of those criteria had left any margin of discretion for the domestic courts as regards the persons on whom such preventive measures should be imposed. Under Law no. 64 FZ the duration of administrative surveillance could not exceed that of "convicted person status", pursuant to Article 86 PC. Consequently, the Court considered that Law no. 64 FZ had been sufficiently foreseeable as regards the category of persons to whom it was likely to be applicable and its temporal scope. Thus, Mr Postupkin had belonged to the category of persons who, when the Law had come into force, had been convicted of offences qualifying as dangerous recidivism and were automatically subject to administrative surveillance, regardless of their conduct while serving sentence.

As regards the aims of the impugned measures, the Court considered that the measures restricting Mr Postupkin's freedom of movement had pursued the aim of the "prevention of crime".

As regards the proportionality of a measure restricting freedom of movement, the Court noted that under domestic law the duration of administrative surveillance was established by law and was not a discretionary matter for the judge, who had no jurisdiction to reduce such duration depending on the specific circumstances of the person in question. Indeed, pursuant to Law no. 64 FZ, persons convicted of an offence qualifying as dangerous recidivism were automatically placed under administrative surveillance for the duration of their "convicted status", which, according to the version of Article 86 § 3 (d) PC in force since 3 August 2013, was eight years. However, Law no. 64 FZ allowed persons under administrative surveillance to submit a request for the partial lifting of the restrictions imposed on them, and the domestic courts could take into account any available information on the person's behaviour in order to determine whether or not to lift the said restrictions. The Court deduced that the Law in question provided the possibility of periodical judicial reviews of the need to maintain restrictions whose imposition was not compulsory for the purposes of Article 4, including the prohibition on leaving the home between 10 p.m. and 6 a.m. However, Mr Postupkin had not submitted any such request.

As regards compulsory measures, including the requirement to report once a month to the authority responsible for administrative surveillance, which had been imposed on Mr Postupkin in the present case, the Court noted that the frequency of the periodical reviews of the necessity of their maintenance was governed by section 9 (2) and (3) of Law no. 64 FZ. Indeed, the provision laid down that persons placed under administrative surveillance could request early termination of the measure as such halfway through the period for which the latter had been implemented, and that should that request be rejected, a fresh request for early termination of administrative surveillance could only be lodged six months after that rejection.

The Court noted that Mr Postupkin had been convicted of a serious criminal offence, and that the courts had considered that his "convicted status" would lapse six years after he had finished serving

his sentence. It follows that the review of the need to continue to monitor the applicant, and therefore to continue to report to the competent authority once a month, could only have been carried out at the applicant's request after an initial period of three years. Nevertheless, having regard to the nature of the impugned restriction and in particulier to the fact that Mr Postupkin had only had to report once a month, the Court considered that that circumstance could not be deemed incompatible with the periodical review requirement. It further noted that after that initial period the necessity of maintaining the impugned measure could have been the subject of judicial review at six-monthly intervals between each rejection of any request for early termination of the measure submitted by the applicant.

Consequently, the Court ruled that the administrative surveillance measures imposed on Mr Postupkin had been proportionate to the aims sought to be achieved. **There had therefore been no violation of Article 2 of Protocol No. 4 to the Convention.**

## Article 4 of Protocol No. 7 to the Convention (right not to be tried or punished twice) - Mr Postupkin

The Coeur pointed out that it had found that the administrative surveillance measures had not amounted to punishment within the meaning of Article 7 of the Convention (no punishment without law). Accordingly it considered that the imposition of those measures on Mr Postupkin had not been tantamount to "punish(ing him) again in criminal proceedings" within the meaning of Article 4 of Protocol No. 7 to the Convention. That complaint was therefore incompatible *ratione materiae* with that provision.

## Just satisfaction (Article 41)

The Court held that Russia was to pay M. Timofeyev 4,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,000 in respect of costs and expenses.

*The judgment is available only in French.*

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During the current public-health crisis, journalists can continue to contact the Press Unit via echrpress@echr.coe.int

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