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

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Applicant's freedom of movement not infringed by curfew orders made under 2015 state of emergency

In today's **Chamber** judgment[1] in the case of Pagerie v. France (application no. 24203/16), following a public hearing on 18 October 2022, the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 2 of Protocol No. 4 (freedom of movement) to the European Convention on Human Rights.

The case concerned a curfew order confining the applicant to the municipality of Angers, made by the Minister of the Interior acting under the state of emergency declared following the wave of terrorist attacks committed in France in November 2015. For more than 13 months the applicant had been placed under strict requirements to, among other things, report to a police station three times a day and remain at home between the hours of 8 p.m. and 6 a.m.

As a preliminary point the Court underscored that it was fully aware of the challenges posed by the fight against terrorism, and that the Convention required States, in waging that fight, to strike a balance between protecting the public and effectively safeguarding rights. In performing its review the Court would pay particular attention to the nature and practical scope of the safeguards in place against abuse and arbitrariness.

In this case the Court found, first, that the Law of 3 April 1955, which was the legal basis for the measure complained of, had established with sufficient clarity the scope and manner of exercise of the discretion afforded to the Minister of the Interior and prescribed suitable safeguards against abuse and arbitrariness.

Turning to whether the curfew had been necessary, the Court noted that the Minister of the Interior had relied on a set of factors probative of a "course of conduct" giving rise to substantial grounds to believe that the applicant posed a threat to public order and security, and had done so with a view to preventing terrorism. It noted that the applicant's curfew had been reviewed on a regular basis, with the Minister of the Interior revisiting his individual case eight times. Furthermore the Court observed that all the administrative decisions taken in respect of the applicant had been subjected to scrutiny by the domestic courts, in which he had had the opportunity to put his arguments, and those courts had undertaken a careful review of the grounds for the curfew each time it had been extended.

Mindful of the pressing need to prevent terrorism and having regard to the conduct of the applicant, the procedural safeguards afforded to him and the fact that the need for the curfew had been periodically reviewed, the Court found that the curfew had not been disproportionate. There had therefore been no violation of Article 2 of Protocol No. 4.

A legal summary of this case will be available in the Court's HUDOC database (link).

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/monitoring/execution.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Principal facts

The applicant, David Pagerie, is a French national who was born in 1988 and lives in Verrières-en-Anjou. After the Saint-Denis and Paris attacks of 13 November 2015, France declared a state of emergency and notified the Secretary General of the Council of Europe that it intended to exercise its right of derogation under Article 15 of the Convention.

From 22 November 2015 to 11 June 2017 Mr Pagerie was the subject of five curfew orders made by the Minister of the Interior. He was incarcerated from 5 August 2016 to 18 January 2017 and from 11 June to 15 November 2017. He was then made the subject of an individual administrative control and monitoring order.

Mr Pagerie filed a number of challenges to those decisions. All of his challenges were rejected by the administrative courts.

They consisted, in part, of two urgent applications for interim relief to suspend the effect of administrative decisions on grounds of illegality. Proceedings in respect of the first application were discontinued by order of 29 February 2016 as it was no longer relevant. The second application was dismissed on 11 March 2016. The applicant did not seek to have those administrative court decisions reviewed on points of law by the *Conseil d'État*.

Mr Pagerie also made urgent interim applications to suspend the five curfew orders on grounds of interference with a fundamental freedom.

Those applications were dismissed by the Nantes and Rennes Administrative Courts in four decisions of 29 January 2016, 4 July 2016, 26 January 2017 and 10 April 2017. The applicant appealed against the decisions of 29 January 2016 and 10 April 2017.

The *Conseil d'État* judge responsible for interim matters dismissed those appeals by decisions of 10 February 2016 and 19 May 2017.

At the substantive stage Mr Pagerie made five separate applications for judicial review to set aside both the curfew orders and a 30 March 2017 refusal to vary his reporting requirement. Those claims were joined and dismissed by a judgment of the Nantes Administrative Court of 13 February 2018. The applicant appealed against that judgment by seven separate appeal notices.

By decision of 2 August 2018 the President of the Nantes Administrative Court of Appeal dismissed the appeals as clearly lacking merit. Mr Pagerie did not seek to have that decision reviewed on points of law by the *Conseil d'État*.

Mr Pagerie also made three applications for interim relief to suspend the individual administrative control and monitoring order on grounds of interference with a fundamental freedom. Those applications were dismissed, as were the appeals against their dismissal.

Complaints, procedure and composition of the Court

The applicant relied on Articles 8 (right to respect for private and family life), 9 (right to freedom of thought, conscience and religion) and 14 (prohibition of discrimination) of the Convention and on Article 2 of Protocol No. 4 (freedom of movement). He argued in particular that the curfew orders had lacked a sufficiently foreseeable legal basis and had been disproportionate. During proceedings before the Court he also raised similar complaints regarding the individual administrative control and monitoring order to which he had later been made subject.

The Government argued that there had been no violation of those Articles and, in the alternative, that France had validly exercised its right of derogation under Article 15 of the Convention.

The application was lodged with the European Court of Human Rights on 26 April 2016. Notice of it was given to the Government on 15 December 2020, and a hearing was held on 18 October 2022.

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

Síofra **O'Leary** (Ireland), *President*,
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),
Mattias **Guyomar** (France),
Mykola **Gnatovskyy** (Ukraine),

and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

Preliminary objections

The Court determined, first, that the complaints concerning the individual administrative control and monitoring order to which the applicant had been made subject with effect from 14 November 2017 had been lodged out of time and were therefore inadmissible.

Second, the Court noted that the applicant had not raised even the substance of his complaints under Articles 8, 9 and 14 of the Convention in his *Conseil d'État* appeals relating to his applications for interim relief on grounds of interference with a fundamental freedom (*référé-liberté*), whereas it would have been open to him to rely on a violation of the right to respect for private and family life, an infringement of freedom of religion, or discrimination in respect of the exercise of that freedom.

As no application had been made to the *Conseil d'État* for a review on points of law in respect of the judicial review claims, the Court concluded that those complaints fell to be rejected for non-exhaustion of domestic remedies.

Third, the Court considered that the applicant had duly exhausted the domestic remedies by arguing his complaint as to a violation of Article 2 of Protocol No. 4 before the *Conseil d'État* in the appeals relating to his applications for interim relief on grounds of interference with a fundamental freedom. It noted in particular that French law had facilitated access to interim relief against curfew orders under a state of emergency by recognising a presumption of urgency, and that applications for interim relief on grounds of interference with a fundamental freedom afforded a prompt remedy for serious and manifestly unlawful interference with the relevant freedoms. It accordingly determined that the applicant had not been under a requirement to pursue his judicial review claims all the way to the highest court having jurisdiction to conduct a review on points of law and therefore dismissed the Government's objection as to non-exhaustion in this regard.

Article 2 of Protocol No. 4

In examining this application the Court considered that it had first to ascertain whether the measure complained of was compatible with the Convention rights and freedoms relied on by the applicant. If it was compatible, there was no need to determine the validity of the derogation under Article 15.

The Court noted at the outset that it had to take into account the particular context of the case, namely the wave of terrorist attacks committed in France from 2015 onwards. It was fully aware of the challenges posed by the fight against terrorism – a fight that had to be waged in a manner consistent with the obligations assumed under the Convention, by striking a balance between the need to protect the public and the safeguarding of rights. In performing its review the Court had to pay particular attention to the nature and practical scope of the safeguards in place against abuse and arbitrariness in such circumstances.

Looking at the conditions of the curfew imposed on the applicant – which had prohibited him from leaving Angers and had required him to remain at home from 8 p.m. to 6 a.m. and to report to the police station three times a day – and its total duration, the Court concluded that it had amounted to an interference with his freedom of movement.

As the measure complained of had considerably restricted the applicant's freedom of movement, the Court had to ascertain whether that interference had been in accordance with law, in pursuit of a legitimate aim and necessary in a democratic society.

The Court first noted that the legal basis for the curfew had been section 6 of the Law of 3 April 1955 as interpreted by the *Conseil d'État* and the Constitutional Council.

Regarding the applicant's argument that the concepts used in the legislation were vague, the Court noted that the level of precision required of domestic legislation depended to a considerable degree on the content of the law in question, the field it was designed to cover and the number and status of the persons to whom it was addressed. In this case the provisions complained of were applicable only under a state of emergency and in the areas where such a state was in effect. Under French law a state of emergency could be declared only in exceptional circumstances strictly fixed by statute. The legislation in issue, which carved out an exception to the general law, was intended to apply only on an exceptional basis, within restrictions as to time and place.

The Court went on to observe that a curfew order had to be supported by "substantial grounds" to believe that a particular course of conduct posed a threat; it could not be made on the basis of mere suspicion. It noted that an even higher threshold, that of a "particularly serious" threat, had to be met where the order was to have effect for more than 12 months. The Court also pointed out that "national security", "public safety" and the maintenance of "public order" were specifically among the legitimate aims capable of justifying interference with the rights guaranteed by Article 2 of Protocol No. 4. It would be unrealistic to require national legislators to lay down an exhaustive list of the forms of conduct capable of justifying the exercise of public order powers by the administrative authorities. A long line of authority held that the law had to be able to keep pace with changing circumstances and could not, in any case, provide for every eventuality, so that many laws were couched in terms which, to a greater or lesser extent, were vague and whose interpretation and application were questions of practice. Be that as it may, the Court observed that it was impermissible under any circumstances for such special legislation to contravene the rule of law and decided that it therefore needed to undertake a close review of the safeguards against arbitrariness in place under French law, so as to determine whether they effectively governed and constrained the discretion afforded to the administrative authorities.

As regards the presence of safeguards against arbitrariness, the Court noted, first, that the operation of the state of emergency was strictly regulated by domestic law in that legislation was needed to extend it, periodically, on advice of the *Conseil d'État*, and its implementation was subject to parliamentary scrutiny. Second, the Court noted that the curfew order regime was clearly delineated in domestic law. Third, it observed that curfew orders were open to legal challenge by application for interim relief on grounds of interference with a fundamental freedom (*référé-liberté*), which in the Court's view afforded an effective remedy, since the judge hearing such an application would have to scrutinise both the legality and the proportionality of the curfew order. The Court accordingly found that the provisions in issue, as interpreted by the domestic courts, laid down with sufficient clarity the scope and manner of exercise of the Minister of the Interior's discretion and prescribed suitable safeguards against abuse and arbitrariness. It concluded that this provided a foreseeable legal basis.

As to the legitimacy of the aims pursued, the Court was of the view that the aims of the interference in issue, which had been to protect national security and public safety and to maintain public order, had been legitimate.

Lastly, as to whether the interference complained of had been necessary, the Court observed that the degree of interference with the applicant's freedom of movement had been particularly high. Moreover, the interference had occurred over a total of more than 13 months.

The curfew had initially been imposed on the basis of the applicant's "religious radicalisation", violent tendencies and criminal history and the fact that he had attempted to contact the leader of an Islamist organisation that was in favour of armed jihad and advocated the creation of a caliphate and the enforcement of Sharia in France.

The Court pointed out, first, that such a restriction on freedom of movement could not be based solely on an individual's beliefs or religious practice. It reiterated, however, that Article 9 did not protect every act motivated or inspired by a religion or belief.

The Court further noted that the Minister of the Interior had relied on a set of factors probative of a "course of conduct" giving rise to substantial grounds to believe that the applicant posed a threat to public order and security, and had done so with a view to preventing terrorism, as the *Conseil d'État* had found. The applicant's curfew and the conditions imposed on him had thereafter been reviewed on a regular basis, with the Minister of the Interior revisiting his individual case eight times.

Furthermore the Court noted that all the administrative decisions taken in respect of the applicant had been subjected to scrutiny by the courts. The applicant had always been granted legal aid and had been afforded the opportunity to put his case to the domestic courts, which had undertaken a careful review of the grounds for the curfew each time it had been extended. Regarding the reliance placed on intelligence reports, the Court found that sufficient safeguards had been in place, as the applicant had had notice of the reports and an opportunity to reply, such that he had been effectively informed of the basis for the curfew order and had been able to seek clarification. Much of that basis had gone unchallenged by the applicant, who had missed several hearings and had never requested the domestic courts to activate their investigative powers. The domestic courts had found the reports to be sufficiently precise and detailed as to the facts. Accordingly, the Court concluded that the applicant had in the circumstances of the case been afforded appropriate procedural safeguards.

Mindful of the pressing need to prevent terrorism and having regard to the conduct of the applicant, the procedural safeguards afforded to him and the periodic review of the necessity of the curfew, the Court found that the curfew had not been disproportionate. There had thus been no violation of Article 2 of Protocol No. 4.

Having so found, the Court did not need to determine whether France had validly exercised its right of derogation under Article 15 in this case.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.