



The Court rules on two activists' placement under home curfew, ordered to ensure security at COP21 during state of emergency in France

In today's **Chamber judgment**¹ in the case of **Domenjoud v. France** (applications nos. 34749/16 and 79607/17) 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 in respect of Cédric Domenjoud, and

by a majority (six votes to one), that there had been **a violation of Article 2 of Protocol No. 4 (freedom of movement)** in respect of Joël Domenjoud.

The case concerned home-curfew orders issued against two French nationals, Cédric and Joël Domenjoud, on the basis of state-of-emergency legislation. The measures were taken in the context of the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change ("COP21").

The Minister of the Interior justified the home-curfew orders by the need to ensure security at the COP21 event, against the backdrop both of a serious terrorist threat and of violent incidents at other major events in neighbouring countries in 2015. His decision was also based on information brought to his attention by the intelligence services in "white note" memos, which indicated that activists were preparing violent protests around the summit and that the two applicants were likely to take part.

As regards Cédric Domenjoud, the Court found that the measure, although restrictive, had been based on relevant and sufficient reasons and on specific aspects of his behaviour and criminal record, which had pointed to a serious risk of involvement in highly violent disruptions. The measure taken against him had not therefore been disproportionate to the aims pursued (protecting national security and public safety and maintaining public order). The Court further held that adequate procedural safeguards had been in place for the judicial scrutiny of the measure, particularly concerning the consideration to be given to the Minister's "white notes".

As regards Joël Domenjoud, the Court observed that there was nothing to suggest that he had personally envisaged taking part in violent protests or helping to organise them. Nor had it been established that he had encouraged or even supported such acts. There was no solid evidence to support the intelligence service's claim that the applicant was a violent activist. It thus did not appear that the preventive measure taken against him had been the result of an individual and detailed assessment of his behaviour or actions that had made it possible to substantiate the risk that he might contribute to the disruptions feared by the domestic authorities. The Court further found that the judicial scrutiny of the measure taken against the applicant had not been accompanied by adequate procedural safeguards. Lastly, it held that the measure was not covered by the derogation notified by France to the Council of Europe under Article 15 of the Convention.

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

Principal facts

Terrorist attacks took place in Saint-Denis and Paris during the night of 13 to 14 November 2015. On 14 November 2015 the French President declared a state of emergency in accordance with the Law of 3 April 1955 on states of emergency (“the State of Emergency Act”).

Plans to host COP21 were not, however, cancelled and the event 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.

In that connection, the Minister of the Interior placed Cédric and Joël Domenjoud (two French nationals who were born in 1985 and 1982) under home curfew in their local municipalities (at the relevant time the two brothers lived in Ivry-sur-Seine and Malakoff respectively). The measures lasted 16 days, from 26 November to 12 December 2015, and included obligations to report three times a day to a police station and not to leave their homes between 8 p.m. and 6 a.m.

In the relevant orders, which were issued under section 6 of the State of Emergency Act, the Minister said he feared violent disruptions by “black bloc” activists, as had occurred at the inauguration of the European Central Bank headquarters in Frankfurt in March 2015 and at the Milan Expo in May 2015. He further indicated that the applicants were among the “main leaders of the [far-left] radical protest movement” in the Paris region and that both individuals had previously been involved in “violent protest activities”. Lastly, he advanced that they were likely to take part in highly violent protest activities during COP21.

On 27 November 2015 the applicants both lodged urgent applications for the interim protection of a fundamental freedom (*référé-liberté*), with the aim of having the execution of their home-curfew orders stayed. Their applications were dismissed by the competent administrative courts.

Cédric Domenjoud lodged an appeal with the *Conseil d’État*. On 11 December 2015 that institution decided to refer a preliminary question on constitutionality (*question prioritaire de constitutionnalité*) to the Constitutional Council concerning section 6 of the State of Emergency Act, and refused to order interim measures. The Constitutional Council ruled on 22 December 2015 that the first nine paragraphs of the aforementioned section complied with the constitution. On 20 January 2016 the *Conseil d’État* found that it was unnecessary to proceed further in the matter, as the effects of the ministerial order had lapsed since 12 December 2015. Cédric Domenjoud did not lodge an appeal on the merits with the administrative courts.

Joël Domenjoud, for his part, lodged an appeal on points of law with the *Conseil d’État*. On 11 December 2015 that institution overturned the decision of the urgent-applications judge, on the grounds that the urgency criterion had been incorrectly assessed. The *Conseil d’État* rejected, however, his application for a stay of execution, holding that the Minister had not committed a serious and manifestly unlawful violation of the applicant’s freedom of movement by placing him under home curfew.

Joël Domenjoud subsequently lodged an application for judicial review of the ministerial order, challenging the accuracy of the “white notes” produced against him and arguing that there was no evidence that he had ever used violence in his activist activities. The Administrative Court dismissed his application. The applicant appealed against that decision, presenting six statements from individuals in support of the peaceful nature of his political activism. That appeal was also dismissed. He then appealed on points of law to the *Conseil d’État*, which declared his appeal inadmissible.

Complaints

Relying in particular on Article 5 (right to liberty and security) of the Convention and on Article 2 of Protocol No. 4 (freedom of movement) to the Convention, the applicants complained about being

placed under home curfew. They further argued that those measures were not covered by Article 15 (derogation in time of emergency) of the Convention.

Procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 10 June 2016 and 17 November 2017.

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

Georges **Ravarani** (Luxembourg), *President*,
Lado **Chanturia** (Georgia),
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
María **Elósegui** (Spain),
Kateřina **Šimáčková** (the Czech Republic),
Jean-Marie **Delarue** (France), *ad hoc Judge*,

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

Decision of the Court

Article 5

The Court noted that the measures had not deprived the applicants of the ability to have a social life and maintain relations with the outside world. Cédric Domenjoud had been placed under home curfew in an area where other COP21 opponents had been staying, while Joël Domenjoud had been able to give daily interviews to the media and host informal anti-COP21 discussion groups in a community library. In addition, the fact that the measures had included a prohibition on the applicants' leaving their homes at night was not harsh enough for them to be characterised as "a deprivation of liberty". Lastly, the applicants had been able to request permission to leave their municipality temporarily during the home curfew. In the light of the duration of the measures, their effects and their combined manners of implementation, the Court held that they should be regarded as a mere restriction of liberty. The complaint under Article 5 of the Convention therefore had to be rejected.

Article 2 of Protocol No. 4

The Court considered that the restriction of the applicants' freedom of movement pursued legitimate aims, namely protecting national security and public safety and maintaining public order.

It further observed that the legal basis of the measures had been foreseeable. In particular, the State of Emergency Act sufficiently circumscribed the discretion granted to the executive, provided that the domestic-law safeguards against abuse were effectively implemented. In those circumstances, the Court held that there could be an indirect link between the aim pursued when declaring the state of emergency, and the justification for the measures taken on the basis thereof, provided that the link was strong enough to eliminate any possibility of abuse.

The Court then noted that the measures had primarily aimed to prevent police confrontations and damage within the framework of security arrangements for an international summit. They had had no direct link to the fight against terrorism. The Court therefore conducted its proportionality analysis in the light of the risk of violent disruptions identified by the domestic authorities.

As regards Cédric Domenjoud

The Court observed that the “white notes” produced by the Minister of the Interior before the courts adjudicating on the applicant’s case had provided detailed allegations regarding his actions and behaviour. Although the applicant had been entitled to request clarifications, he had not asked the domestic courts to make use of their investigative powers. In addition, he had merely denied the allegations before the urgent-applications judge, without attempting to establish their inaccuracy. Lastly, he had not lodged an appeal on the merits. In those circumstances, the Court held that adequate procedural safeguards had been in place for the judicial scrutiny of the applicant’s placement under home curfew.

Regarding the assessment of the risk, the Court noted that the applicant had either led or taken part in six meetings to prepare protests around COP21 between 5 September and 26 October 2015. Those meetings had been attended by activists belonging to the radical protest movement, who were known for their violent behaviour and particularly strong determination. The protest activities envisaged had included, in particular, blocking official motorcades and carrying out “more violent action” – of an unspecified nature – against institutional sites and companies sponsoring the summit. A memo sent to the *Conseil d’État* on 9 December 2015 had further indicated that the applicant had set up a squat in Ivry-sur-Seine in March 2015 to accommodate opponents of the summit, and that he had announced plans at a meeting on 1 October 2015 to have himself recruited by a service provider so that he could enter the climate-conference venue. Lastly, the Court noted that the applicant had already been convicted for damaging property. In those circumstances, it held that the domestic authorities had had legitimate reasons to believe, in the light of the applicant’s behaviour and criminal record, that there had been a serious risk that he would take part in violent protests during COP21.

The Court further observed that the measure had been ordered only days after the 13 November 2015 attacks, when protecting the population was undoubtedly a pressing need and when large gatherings had been particularly exposed to the terrorist threat. In those highly specific circumstances, it found that there had been a sufficient link between the measure and the context of the state of emergency. In addition, the measure, although restrictive, had been relatively short and had ended at the same time as the summit. Lastly, it had been based on relevant and sufficient reasons and on specific aspects of the applicant’s behaviour and criminal record, which had pointed to a serious risk of involvement in highly violent disruptions. The Court thus found that the measure taken against Cédric Domenjoud had not been disproportionate to the aims pursued. **Accordingly, there had been no violation of Article 2 of Protocol No. 4 in respect of this applicant.**

As regards Joël Domenjoud

The Court observed that neither the reasons for the ministerial order nor the “white notes” produced before the domestic courts indicated what actions or behaviour had led the Minister of the Interior to consider that the applicant was likely to take part in violent protests. Yet those factual elements were all the authorities had produced before the domestic courts. Such a deficiency of information called for strong counterbalancing safeguards. In view of the proceedings as a whole, the Court considered that the failure to provide the applicant with sufficient information on the specific elements used to justify the measure taken against him had not been counterbalanced such as to preserve the very essence of his procedural rights.

Regarding the assessment of the risk and the proportionality of the home curfew, the Court pointed out that a preventive measure had to be aimed at stopping a specific risk from materialising and had to meet a pressing social need. In that connection, the “white notes” showed that Joël Domenjoud had taken part in several meetings to prepare protest activities during COP21. While it had been established that he had been in contact with activists, these had not been the only people to attend the meetings, and nothing in the documents produced before the Court indicated that the applicant had personally envisaged taking part in violent protests or helping to organise them. Nor had it been

established that he had encouraged or even supported such acts. Furthermore, there was no solid evidence to support the intelligence service's claim that the applicant was a violent activist. Regarding the applicant's criminal record, he had stated that he had no criminal convictions, and that assertion had not been challenged. It thus did not appear that the preventive measure taken against him had been the result of an individual and detailed assessment of his behaviour or actions that had made it possible to substantiate the risk that he might contribute to the disruptions feared by the domestic authorities. The Court held that the applicant's radical political opinions were not sufficient in the present case to cause such a risk to materialise and reiterated that being related to a person likely to commit offences was not enough to justify a preventive measure.

The Court could not therefore consider, despite the domestic authorities' discretion ("margin of appreciation"), that Joël Domenjoud's placement under home curfew had been "necessary in a democratic society" within the meaning of Article 2 of Protocol No. 4. It accordingly held that the measure had not fully met the substantive and procedural requirements of that provision.

Article 15

The Court next considered whether the measure taken against Joël Domenjoud had been covered by the right of derogation provided for in Article 15 of the Convention. France had notified its exercise of that right on 24 November 2015, stating that it had adopted various measures "to prevent the commission of further terrorist attacks".

First, the Court considered that at the relevant time a "public emergency" had indeed threatened "the life of the nation". It further held that the formal requirements of Article 15 § 3 had been met. However, the Court found that it had not been established that Joël Domenjoud had been placed under home curfew within the framework of the fight against terrorism and that such action had been "strictly required by the exigencies of the situation" within the meaning of Article 15. The Court therefore held that the measure was not covered by the French derogation. **It followed that there had been a violation of Article 2 of Protocol No. 4 in respect of Joël Domenjoud.**

Just satisfaction (Article 41)

The Court held that France was to pay Joël Domenjoud 1,500 euros (EUR) in respect of non-pecuniary damage and EUR 10,000 in respect of costs and expenses.

Separate opinion

Judge Mourou-Vikström expressed a dissenting opinion, which is annexed to the judgment.

The judgment is available only in French.

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Press contacts

echrpess@echr.coe.int | tel.: + 33 3 90 21 42 08

We are happy to receive journalists' enquiries via either email or telephone.

Inci Ertekin (tel.: + 33 3 90 21 55 30)

Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)

Denis Lambert (tel.: + 33 3 90 21 41 09)

Neil Connolly (tel.: + 33 3 90 21 48 05)

Jane Swift (tel.: + 33 3 88 41 29 04)

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.