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

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ECHR 181 (2023)
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The home curfew imposed on the applicant in the context of the state of emergency did not infringe his freedom of movement

In today's **Chamber** judgment[1] in the case of Fanouni v. France (application no. 31185/18) 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 home curfew imposed on the applicant in the context of a state of emergency, prohibiting him from leaving the municipality of Champagne-sur-Oise.

The Court considered, first of all, that the legal basis for the measure complained of, namely the Act of 3 April 1955, had fulfilled the requirements of foreseeability of the law both before and after its amendment by the Act of 20 November 2015. The Court went on to find that the aims pursued – to preserve national security and public safety and maintain public order – had been legitimate.

As to the factual basis for the measure, the Court noted that the administrative authority had relied on precise information provided by the intelligence services and reported in a "*note blanche*" indicating, in particular, that a large quantity of prohibited weapons and ammunition had been found at the applicant's home. It noted that the consideration of these factors by the administrative courts had been accompanied by sufficient procedural safeguards, and found that the conclusions which the courts had drawn had been neither arbitrary nor manifestly unreasonable.

In view of the pressing social need to prevent acts of terrorism, the applicant's behaviour and the procedural safeguards actually provided to him, the Court concluded that the home curfew imposed on the applicant had not been disproportionate to the aims pursued. There had therefore been no violation of Article 2 of Protocol No. 4.

Principal facts

The applicant, Mistafa Fanouni, is a French national who was born in 1970.

On 26 January 2015 the prefect of the Val d'Oise *département* ordered Mr Fanouni to surrender to him all the weapons and ammunition in his possession, and prohibited him from acquiring or possessing any weapons or ammunition.

On the night of 13 November 2015 a series of coordinated attacks, claimed by Daesh, were carried out in Saint-Denis and in Paris. A state of emergency was declared on 14 November 2015.

In two orders of 16 November and 18 December 2015, the Minister of the Interior imposed a home curfew on Mr Fanouni, prohibiting him from leaving the municipality of Champagne-sur-Oise and requiring him to report four times a day to a gendarmerie station and to remain at home between the hours of 8 p.m. and 6 a.m. In two judgments of 18 February 2016, the Cergy-Pontoise Administrative Court set aside those orders for abuse of authority.

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.

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On an appeal by the Minister of the Interior, on 21 June 2016 the Versailles Administrative Court of Appeal quashed those two judgments and set aside the lower court's findings. Mr Fanouni appealed on points of law against that judgment.

In a decision of 28 December 2017 the *Conseil d'Etat* quashed the judgment on the grounds that the adversarial principle had been breached. Then, ruling on the merits, it quashed the two judgments of 18 February 2016.

Complaints, procedure and composition of the Court

Relying on Article 2 of Protocol No. 4 (freedom of movement), the applicant alleged that his right to freedom of movement had been breached. He contested the foreseeability of section 6 of the State of Emergency Act of 3 April 1955, and the assessment of the facts carried out by the domestic courts on the basis of a "*note blanche*" (a confidential document prepared by the intelligence services) submitted by the Minister of the Interior. He also contended that the judicial review of the home curfew had been deficient.

The application was lodged with the European Court of Human Rights on 28 June 2018.

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

Carlo **Ranzoni** (Liechtenstein), *President*,
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
María **Elósegui** (Spain),
Mattias **Guyomar** (France),
Kateřina **Šimáčková** (the Czech Republic),
Mykola **Gnatovskyy** (Ukraine),

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

Decision of the Court

Article 2 of Protocol No. 4

The Court noted that the home curfew imposed on the applicant had been based on two successive ministerial orders issued on 16 November and 18 December 2015, which had been enforced until they were set aside by the Cergy-Pontoise Administrative Court on 18 February 2016. In view of the effects and the manner of enforcement of the home curfew, the Court considered that it amounted to a mere restriction on freedom of movement falling within the scope of Article 2 of Protocol No. 4.

The Court reiterated that section 6 of the Act of 3 April 1955, as amended by the Act of 20 November 2015, fulfilled the requirements of foreseeability of the law, as it had held in the case of Pagerie v. France.

The earlier version of that section had laid down stricter implementing conditions. The Court therefore found, *a fortiori*, that its provisions had been foreseeable and had defined with sufficient clarity the scope and manner of exercise of the discretion conferred on the Minister of the Interior.

Turning to the legitimacy of the aims pursued, the Court considered that the objectives pursued by the interference complained of, namely to preserve national security and public safety and maintain public order, had been legitimate.

As to the necessity of the restriction in issue, the Court noted that the Minister of the Interior, in imposing the home curfew on the applicant, had relied on the seriousness of the terrorist threat and on various reports brought to his attention by the intelligence services.

The Court further noted that the Administrative Court of Appeal and the *Conseil d'État* had also considered the measure to be justified by the fact that weapons and a large quantity of ammunition had been found at the applicant's home on 16 November 2015, although he had been prohibited from possessing weapons by an order of 26 January 2015.

In that connection the Court stressed, firstly, that the home curfew orders in question had been based on a set of precise factors relating specifically to the applicant. Secondly, the Court noted that both the orders made against the applicant had been the subject of a judicial review during which he had been effectively able to put forward his arguments. It observed that the *Conseil d'État* had remedied the breach of the adversarial nature of the proceedings alleged by the applicant, by quashing the Versailles Administrative Court of Appeal judgment of 21 June 2016 and ruling on the merits. In the course of their judicial review the domestic courts (the Administrative Court, the Administrative Court of Appeal and the *Conseil d'État*) had examined the merits and the proportionality of the home curfew orders.

In those circumstances, the Court considered that the submission of the "*note blanche*" had been accompanied by sufficient procedural safeguards and that the conclusion reached by the domestic courts could not be regarded as either arbitrary or manifestly unreasonable.

As to the justification for the measure, the Court noted that the domestic authorities had relied on information to the effect that the applicant had engaged in proselytism, had compared jihadists to resistance fighters, had made remarks and displayed behaviour that raised concerns at the firing range he frequented – asking repeatedly for a dummy head to be used instead of the target so that he could "put a bullet between his eyes" – and had fitted his weapon with a silencer and boasted that he regularly carried it around outside the firing range. The Court observed that the measure had also been justified by the fact that a large quantity of weapons and ammunition had been found at the applicant's home on 16 November 2015, although he had been prohibited on 26 January 2015 from possessing weapons. The Court stressed that the measure had been ordered a few days after the attacks of 13 November 2015, at a time when the protection of the population and the prevention of a further terrorist attack had constituted a pressing need. It reiterated that the effectiveness of a preventive measure frequently depended on the speed of its implementation. In such a context, the Court considered that the reasons adduced by the domestic authorities to justify the measure were relevant and sufficient. Furthermore, while the means of implementation of the measure had been stringent, they had been appropriate to its purpose. The Court also noted that the applicant had not made any request to the authorities to adjust the arrangements or to be allowed to leave the area covered by the home curfew temporarily for family or work-related reasons. Lastly, the judicial review of the measure had encompassed not just the principle of the home curfew but also its proportionality.

In view of the pressing social need to prevent acts of terrorism, the applicant's behaviour and the procedural safeguards actually provided to him, the Court concluded that the home curfew had not been disproportionate to the aim pursued. There had therefore been no violation of Article 2 of Protocol No. 4.

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.