



The lockdown ordered by the authorities to tackle the COVID-19 pandemic not to be equated with house arrest

In its decision in the case of [Terheş v. Romania](#) (application no. 49933/20) the European Court of Human Rights unanimously declared the application inadmissible.

The case concerned the lockdown which was ordered by the Romanian government from 24 March to 14 May 2020 to tackle the COVID-19 pandemic and which entailed restrictions on leaving one's home.

The Court held that the measure complained of could not be equated with house arrest. The level of restrictions on the applicant's freedom of movement had not been such that the general lockdown ordered by the authorities could be deemed to constitute a deprivation of liberty. In the Court's view, the applicant could not therefore be said to have been deprived of his liberty within the meaning of Article 5 § 1 of the Convention.

The decision is final.

Principal facts

The applicant, Cristian-Vasile Terheş, is a Romanian national who was born in 1978 and lives in Zalău.

Mr Terheş was elected as a member of the European Parliament in 2019 on the list of the Romanian Social Democratic Party. He was in Romania at the time of the events.

On 11 March 2020 the World Health Organization declared that the world was facing a pandemic caused by the SARS-CoV-2 coronavirus, responsible for an illness known as COVID-19.

On 16 March 2020 the Romanian President enacted Decree no. 195/2020 introducing a thirty-day state of emergency in Romania with immediate effect. The decree provided for restrictions on the exercise of certain fundamental rights, including freedom of movement.

On 21 March 2020 the Minister of the Interior issued an ordinance advising people against leaving home between 6 a.m. and 10 p.m. and prohibiting them from doing so between 10 p.m. and 6 a.m. On 24 March 2020 a further ordinance prohibited all movement outside the home with immediate effect, except in a certain number of exhaustively listed circumstances. Any person leaving home had to carry a document attesting to valid reasons for doing so. Breaches of the rules were punishable by a fine.

On 14 April 2020, after assessing the public-health situation in the country, the Romanian President enacted Decree no. 240/2020 extending the state of emergency for thirty days – until 14 May 2020 – and maintaining the measures taken under Decree no. 195/2020. The state of emergency ended on 14 May 2020 at midnight.

Mr Terheş asserted that he had been personally affected by the measure put in place by the authorities from 24 March 2020 to 14 May 2020.

On 7 May 2020 Mr Terheş brought an action in the Bucharest County Court on the basis of Article 5 § 4 of the Convention (right to a speedy decision on the lawfulness of detention). Alleging that he was being subjected to "administrative detention", he requested the County Court to order his immediate release and to find that he had the right to leave his home for whatever reason, without having to produce a document attesting to valid reasons and without risking a penalty. He asked the court to examine his case urgently and deliver an enforceable judgment. On 10 June 2020 he asked

the County Court to find that his action had become devoid of purpose owing to the lifting of the lockdown.

On 8 and 25 May 2020 the applicant lodged applications for reconsideration of the decrees and the parliamentary decisions approving them, and of the second ordinance issued by the Minister of the Interior. His applications were rejected on the grounds that the legislation in question was not amenable to administrative review.

On 17 March 2020 the Permanent Representation of Romania to the Council of Europe informed the Secretary General of the Council of Europe of Romania's intention to apply the derogation provided for in Article 15 of the Convention. The Romanian authorities subsequently informed the Secretary General at regular intervals of the various measures adopted until the ending of the state of emergency on 14 May 2020 at midnight.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 11 November 2020.

Relying on Article 5 § 1 (right to liberty and security), the applicant contended that the lockdown imposed in Romania from 24 March to 14 May 2020, with which he had been required to comply, amounted to a deprivation of liberty.

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

Yonko **Grozev** (Bulgaria), *President*,
Tim **Eicke** (the United Kingdom),
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Gabriele **Kucsko-Stadlmayer** (Austria),
Pere **Pastor Vilanova** (Andorra),
Ana Maria **Guerra Martins** (Portugal),

and also Andrea **Tamietti**, *Section Registrar*.

Decision of the Court

Article 5 § 1

The Court noted at the outset that the applicant had not relied on Article 2 of Protocol No. 4 (freedom of movement) of the Convention in the proceedings before it. The applicant sought to demonstrate that the general lockdown imposed had constituted a deprivation of liberty and not simply a restriction of the right to freedom of movement.

In order to ascertain whether the measure complained of by the applicant amounted to a deprivation of liberty, the Court examined his individual situation in the light of the criteria established by its case-law.

The Court noted that the measure complained of by the applicant had lasted for fifty-two days, from 24 March to 14 May 2020. It observed that no individual preventive measures had been taken against the applicant. The measure had been a general one, applied to everyone by means of legislation enacted by the various authorities in Romania. As a result of the implementation of the measure the applicant had been obliged to stay at home, only being allowed to leave for the reasons expressly provided for in the legislation, and with the relevant exemption form.

The Court noted that the applicant had been free to leave his home for various reasons and could go to different places, at whatever time of day the situation required. He had not been subject to

individual surveillance by the authorities and did not claim to have been forced to live in a cramped space, nor had he been deprived of all social contact.

Accordingly, in view of its degree of intensity, the measure in question could not be equated with house arrest.

The Court also attached importance to the fact that the applicant had not explained what specific impact the measure had had on his personal situation. He did not allege that he had been confined indoors for the entire duration of the state of emergency. More generally, the Court noted that he had not provided any specific information describing his actual experience of lockdown.

In the Court's view, the level of intensity of the restrictions on the applicant's freedom of movement had not been such that the general lockdown ordered by the authorities could be deemed to constitute a deprivation of liberty. The applicant could not therefore be said to have been deprived of his liberty within the meaning of Article 5 § 1 of the Convention.

Lastly, the Court noted that Romania had announced its intention to derogate under Article 15 of the Convention from the obligations flowing from Article 2 of Protocol No. 4 of the Convention guaranteeing freedom of movement, a right which the applicant had not asserted before the Court. As Article 5 § 1 of the Convention was not applicable in the present case, the Court considered it unnecessary to examine the validity of the derogation notified by Romania to the Council of Europe.

The Court held that the application was incompatible with the provisions of the Convention and should therefore be rejected.

The decision 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.