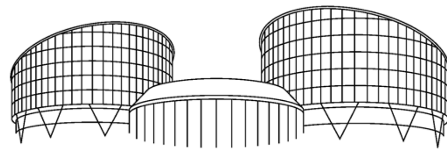

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law 247

January 2021

Timofeyev and Postupkin v. Russia - 45431/14 and 22769/15

Judgment 19.1.2021 [Section III]

Article 7

Article 7-1

Retroactivity

Administrative surveillance for preventive purposes, after convicted persons have served their sentences, not constituting a penalty and not subject to the principle of retroactivity: *inadmissible*

Article 6

Civil proceedings

Article 6-1

Fair hearing

Failure to grant applicant free legal aid to obtain the assistance of a lawyer during a procedure to place him under administrative surveillance for eight years: *violation*

Article 2 of Protocol No. 4

Article 2 para. 1 of Protocol No. 4

Freedom of movement

Proportionality of administrative surveillance measures imposed for six years after the sentence had been served, subject to periodical review of their necessity: *no violation*

Article 4 of Protocol No. 7

Right not to be tried or punished twice

Administrative surveillance of a convicted person in order to present recidivism after having served his sentence, not amounting to a second "criminal penalty": *inadmissible*

Facts – The first and second applicants had been convicted, in 2003 and 2007 respectively, of criminal offences qualifying as dangerous recidivism.

They had been placed under administrative surveillance by judicial decisions of 2013 based on Law No. 64-FZ of 6 April 2011, which provided that any person released from

prison as a person convicted of a criminal offence qualifying as dangerous or highly dangerous recidivism was automatically placed under administrative surveillance.

Restrictions had been imposed on the applicants, including a requirement to report in person between one and three times a month to the authority responsible for administrative surveillance, to report any change of address within three working days, and a prohibition on leaving home between 10 p.m. and 6 a.m.

Law – Article 7

The first applicant was placed under administrative surveillance on the basis of a judicial decision several years after his criminal conviction, but it was nonetheless linked to and followed on from that conviction.

As regards the characterisation of administrative surveillance in domestic law, it should not automatically lead to the conclusion that Article 7 is inapplicable.

In the present case the measures had the preventive aim of preventing recidivism and cannot be punitive in nature or to constitute a penalty.

As for the similarity between the measures imposed in the framework of administrative surveillance and those constituting punishment restrictive of personal liberty, the imposition 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. The measure was therefore not punitive in nature.

The procedure for the adoption and implementation of administrative surveillance was a civil-law procedure which now falls under administrative law and is not a matter for the criminal justice system.

The penalties in question could only have been imposed in the framework of separate judicial proceedings under which the competent court could have assessed whether or not the breach had been abusive.

Finally, as regards the severity of the impugned measures, some of them had been burdensome and others invasive. Nevertheless, the severity of the measures had not been 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.

Thus the obligations and restrictions imposed on the first applicant in the framework of administrative surveillance had not constituted "punishment" within the meaning of Article 7 § 1 and should be regarded as preventive measures to which the principle of non-retroactivity set out in that article was inapplicable.

Conclusion: inadmissible (incompatible *ratione materiae*).

Article 4 of Protocol No. 7

Having regard to its finding that the administrative surveillance measures had not amounted to punishment within the meaning of Article 7 of the Convention, the Court considered that the imposition of those measures on the second applicant had not amounted to "punish(ing him) again in criminal proceedings" within the meaning of Article 4 of Protocol No. 7.

Conclusion: inadmissible (incompatible *ratione materiae*).

Article 6 § 1 (civil)

The Convention does not require the provision of legal aid in all civil disputes.

No provision of domestic law at the material time had provided for the possibility of granting free legal aid in the framework of an administrative surveillance procedure. However, introducing a legal aid system was only one of a range of means of guaranteeing the fairness of proceedings.

The first applicant had been the defendant in proceedings brought by the domestic authorities, in this case the prison authorities.

The seriousness of the issue at stake for the first applicant in those proceedings had been undeniably important: the restrictions imposed on him had had serious repercussions on his private life and on the exercise of his rights, particularly his freedom of movement.

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. The first applicant had no first-hand experience or specialist knowledge of the law. The judge had failed to assist him, having dismissed all his procedural requests for legal aid. Had the first applicant been represented by a lawyer, he could have prepared his defence in order to challenge the evidence presented by the opposite party. Furthermore, it had been especially important to provide him with proper defence facilities 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, the first applicant's opponent, that is to say the representative of the correctional colony, had benefited from the public prosecutor's assistance throughout the proceedings.

The domestic courts had adjourned the proceedings several times so that the first applicant could find a legal representative. But 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 could therefore not have helped remedy his situation.

Finally, having regard to the situation of the first applicant , 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, he must have suffered much greater physical and emotional stress during the proceedings than any experienced lawyer would.

In view of the foregoing considerations, the applicant'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.

Conclusion: violation (unanimous).

Article 2 of Protocol No. 4

The obligations and restrictions imposed on the second applicant during his administrative surveillance had comprised several measures which, taken separately or in combination, had constituted an interference with his right to freedom of movement. That interference had had an accessible legal basis in domestic law. On the other hand, the applicant disputed the foreseeability of the law in question on the grounds that it had been applied retroactively to persons convicted before its entry into force.

Having regard to its finding that the impugned measures had not constituted punishment within the meaning of Article 7 of the Convention, the Court considered that the imposition by a law on persons sentenced to prison terms of preventive measures while

taking into account their conduct prior to the entry into force of that law raised no issues.

The law had been sufficiently foreseeable as regards the categories of persons to whom it was applicable, leaving no margin of discretion for the domestic courts, and its time-frame, because the period of administrative surveillance could not outlast the person's "convicted status".

The second applicant had belonged to the categories of persons covered by the law, that is to say persons who, at the time when the law had come into force, had been convicted of a criminal offence qualifying as dangerous recidivism and were automatically subject to administrative surveillance, regardless of their conduct while serving their sentence.

The second applicant had not contested the foreseeability of the law in question as regards the scope of the limitations and obligations laid down. That being the case, it was not necessary to consider whether their scope had been sufficiently foreseeable.

As regards the aims of the impugned measures, the domestic courts had justified the second applicant's administrative surveillance with the need to prevent recidivism. The measures restricting the applicant's freedom of movement had therefore pursued the aim of "prevention of crime".

As to the proportionality of a measure limiting freedom of movement, domestic law fixed the duration of administrative surveillance to coincide with the period of existence of "convicted person status", i.e. eight years (under the current version of the relevant provision of the Russian Penal Code), and that period did not depend on the discretion of the court.

Nevertheless, the law provided for the possibility of periodical judicial review of the need to maintain such restrictions as were not compulsory, including the prohibition on leaving home between 10 p.m. and 6 a.m. Given that it did not transpire from the case file submitted to the Court that the second applicant had lodged any request to that effect, it was not necessary to consider whether the extent of the judicial review conducted had, in practice, been adequate.

In connection with measures which were compulsory pursuant to the law, particularly the second applicant's obligation to report to the authority responsible for administrative surveillance on a monthly basis, the frequency of periodical reviews of the need to maintain them was governed by the law. Indeed, persons under administrative surveillance could request early termination of the surveillance as such halfway through the period for which the latter had been ordered, and should that request be rejected, a fresh request for early termination of administrative surveillance could only be lodged six months after that rejection.

The second applicant had been convicted of a serious offence, and the courts had ruled that the deadline for the erasure of his convicted person status was six years following the completion of his sentence (pursuant to the version of the relevant provision of the Penal Code in force at the material time). It followed that the review of the need to continue the applicant's administrative surveillance, and therefore to require him to report to the competent authority once a month, could only be conducted, at the applicant's request, after the end of an initial three-year period. However, having regard to the nature of the restriction in question, particularly the fact that the applicant had only had to report in person once a month, that fact could not be deemed incompatible with the periodical review requirement. Furthermore, after that initial period, the necessity of maintaining the impugned measure could have been reviewed at six-monthly intervals between each rejection of any request by the applicant for early termination of the measure.

The administrative surveillance measures imposed on the second applicant had therefore been proportionate to the aims sought to be achieved.

Conclusion: no violation (six votes to one).

Article 41: EUR 4,000 in respect of non-pecuniary damage.

(See also for Article 6 : *Steel and Morris v. the United Kingdom*, 68416/01, 2 May 2005, Legal Summary; and for Article 2 of Protocol No. 4 : *De Tommaso v. Italy* [GC], 43395/09, 23 February 2017, Legal Summary)

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