European Court of Human Rights: Frasilă and Ciocirlan v. Romania

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The case concerns the ineffectiveness of the enforcement of a court decision giving journalists the right of access to the premises of a local radio station where they worked (Radio M Plus). Access to their work premises had been obstructed by the representatives of the broadcasting company Tele M, situated in the same building. In a decision of 6 December 2002 the Neamţ County Court ordered Tele M to grant Frasilă and Ciocirlan access to the Radio M Plus editorial office and held that the obstruction of their access by representatives of the Tele M company constituted an unlawful act that might be detrimental to the activities of the radio station of which they were the manager and editor respectively. Several attempts to have the court decision enforced failed, including a criminal complaint against the representatives of Tele M. Relying on Article 10 Frasilă and Ms Ciocirlan complained in Strasbourg that the authorities had failed to assist them in securing the enforcement of a final judicial decision ordering third parties to grant them access to the editorial office at the radio station where they worked as journalists.

The Court emphasized that genuine, effective exercise of freedom of expression is a precondition of a functioning democracy. The right to freedom of expression does not depend merely on the State's duty not to interfere but could require positive measures of protection, even in the sphere of relations between individuals. In determining whether the State had a positive obligation in that regard, the Court reiterated that it took into account the nature of the freedom of expression at stake, its capacity to contribute to public debate, the nature and scope of the restrictions imposed on freedom of expression, the existence of alternative means of exercising this freedom and the weight of the competing rights of others or the general public.

Although in this case the authorities did not bear any direct responsibility for the restriction on the applicants' freedom of expression, it was still necessary to determine whether or not the authorities had complied with any positive obligation they might have had to protect freedom of expression from interference by others. The Court observed that the case concerned the practice of a profession that played a crucial "watchdog" role in a democratic society, and that an essential element of freedom of expression, namely the means of exercising it, had therefore been at stake for Frasilă and Ciocirlan. The Court reiterated that the State was the ultimate guarantor of pluralism and that this role became even more crucial where the independence of the media was at risk as a

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result of outside pressure from those holding political and economic power, as it had been reported. As to whether the State had complied with its positive obligation, the Court observed that Frasilă and Ciocirlan had taken sufficient steps on their own initiative and made the necessary efforts to secure the enforcement of the court decision, but that the main legal means available to them for achieving this had proved inadequate and ineffective. Accordingly, the Court found that by refraining from taking the necessary measures to assist Frasilă and Ciocirlan in the enforcement of the court decision, the national authorities had deprived the provisions of Article 10 of the Convention of all useful effect. There had therefore been a violation of the right to freedom of expression.

Judgment by the European Court of Human Rights, case of 10 May 2012, Frasilă and Ciocirlan v. Romania, nr. 25329/03

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