European Court of Human Rights: Roşiianu v. Romania

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The European Court of Human Rights has again reiterated that collecting information and guaranteeing access to documents held by public authorities is a crucial right for journalists in order to be able to report on matters of public interest, helping to implement the right of the public to be properly informed on such matters. In the case of Ioan Romeo Roşiianu, a presenter of a regional television programme, the Court came to the conclusion that the Romanian authorities had violated Article 10 of the European Convention on Human Rights by refusing access to documents of a public nature, which he had requested at Baia Mare, a city in the north of Romania. The Court's judgment clarifies that efficient enforcement mechanisms are necessary in order to make the right of access to public documents under Article 10 practical and effective.

In his capacity as a journalist, Roşiianu had contacted the Baia Mare municipal authorities, requesting disclosure of several documents, as part of his investigation into how public funds were used by the city administration. His requests were based on the provisions of Law no. 544/2001 on freedom of public information. As the reply from the mayor did not contain the requested information, Roşiianu applied to the administrative court. In three separate decisions, the Cluj Court of Appeal ordered the mayor to disclose most of the requested information. The Court of Appeal noted that, under Article 10 of the European Convention on Human Rights and Law no. 544/2001 on freedom of public information, Roşiianu was entitled to obtain the information in question, which he intended to use in his professional activity. The letters sent by the mayor of Baia Mare did not represent adequate responses to those requests. The Cluj Court of Appeal ordered the mayor to pay the applicant EUR 700 in respect of non-pecuniary damages, and held that his refusal to disclose the requested information amounted to a denial of the right to receive and impart information, as guaranteed by Article 10 of the European Convention. Mr Roşiianu applied for enforcement of the decisions, but the mayor refused to comply. The decisions delivered by the Cluj Court of Appeal remained unenforced.

Roşiianu complained about the failure to execute the judicial decisions, relying on Article 6 §1 (right to a fair hearing). Relying on Article 10, he alleged that the failure to execute the decisions of the Cluj Court of Appeal amounted to a violation of his right to freedom of expression.

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With regard to the complaint under Article 6 §1 of the Convention, it is observed that the mayor had suggested that Roşiianu should come in person to the town hall to obtain several thousand photocopied pages, which would have included having to pay for the reproduction costs, but that the domestic courts had concluded that such an invitation could not possibly be considered as an execution of a judicial decision ordering the disclosure of information of a public nature. The European Court found that the non-enforcement of the final judicial decisions ordering disclosure to Mr Roşiianu of public information had deprived Roşiianu of effective access to a court, which amounted to a violation of Article 6 §1 of the Convention.

With regard to the complaint under Article 10, the Court noted that Roşiianu was involved in the legitimate gathering of information on a matter of public importance, namely the activities of the Baia Mare municipal administration. The Court reiterated that in view of the interest protected by Article 10, the law cannot allow arbitrary restrictions that may become a form of indirect censorship should the authorities create obstacles to the gathering of information. Gathering information is indeed an essential preparatory step in journalism and is an inherent, protected part of press freedom. Given that the journalist's intention had been to communicate the information in question to the public and thereby to contribute to the public debate on good public governance, his right to impart information had clearly been impaired. The Court found that there had not been adequate execution of the judicial decisions in question. It also observed that the complexity of the requested information and the considerable work required in order to select or compile the requested documents had been referred to solely to explain the impossibility of providing that information rapidly, but could not be a sufficient or pertinent argument to refuse access to the requested documents. The Court concluded that the Romanian authorities had adduced no argument showing that the interference in Roşiianu's right had been prescribed by law, or that it pursued one or several legitimate aims, hence finding a violation of Article 10 of the Convention. The Court held that Romania was to pay the applicant EUR 4,000 in respect of non-pecuniary damage and EUR 4,748 in respect of costs and expenses.

Arrêt de la Cour européenne des droits de l'homme (troisième section), affaire Roşiianu c. Roumanie, requête n° 27329/06 du 24 juin 2014

https://hudoc.echr.coe.int/eng?i=001-144999

Judgment by the European Court of Human Rights (Third Section), case of Roşiianu v. Romania, Appl. No. 27329/06 of 24 June 2014

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