

Frăsilă and Ciocîrlan v. Romania - 25329/03

Judgment 10.5.2012 [Section III]

Article 10

Positive obligations

Failure of authorities to take adequate measures to enforce court order allowing journalists access to radio station: *violation*

Facts – The first applicant was the manager of two companies, Radio M Plus and Tele M, which between them carried out various broadcasting activities. In August 2002, after Tele M had broadcast two reports about an influential local politician, the first applicant, who was facing financial pressure, was forced to sell the company in question. On the same day, the two companies formed a partnership for the production and transmission of radio programmes. The partnership agreement specified, among other things, that Radio M Plus, which was still managed by the first applicant and employed the second applicant as editor, was to continue broadcasting from its headquarters, which were in the same building as those of Tele M. However, from October 2002 onwards, both applicants were refused access to the radio station's editorial office by representatives of Tele M. In a decision of December 2002 the county court upheld an urgent application by the applicants and ordered Tele M to grant them access to the Radio M Plus editorial office. That decision was upheld on appeal, but all attempts to enforce it were unsuccessful. Before the European Court, the applicants complained that the appropriate authorities had not provided them with effective assistance in securing the enforcement of the county court's final decision of December 2002, thereby preventing them from working as radio journalists and hence infringing their right to freedom of expression.

Law – Article 10: Although the authorities had not been directly responsible for the alleged restriction on the applicants' freedom of expression, it remained to be determined whether or not the respondent State had complied with any positive obligation it might have had to protect that freedom from interference by others. The case concerned the means by which to exercise the freedom of expression of a profession acknowledged by the Court as playing a crucial "watchdog" role in a democratic society. Moreover, the State was the ultimate guarantor of pluralism, especially in the audiovisual media, which often broadcast to a very large audience. This role became even more crucial where the independence of the press was jeopardised by outside pressure from those holding political and economic power. Accordingly, the Court attached particular importance to the fact that freedom of the press in Romania had been unsatisfactory at the relevant time, with the local press being directly or indirectly controlled by leading political or economic figures in the region. In the present case, the first applicant alleged that he had been pressured into selling his stake in a television company. In those circumstances, the State had been under an obligation to take effective steps to assist the applicants in securing the enforcement of the final decision in their favour.

The applicants had taken sufficient steps on their own initiative and made the necessary efforts to have the final decision enforced. However, the main legal

means available to them, namely the bailiff system, had proved inadequate and ineffective. The bailiff had not called on the assistance of the police, as should have happened in view of the uncooperative attitude of the persons against whom the order had been made, and had taken no other steps to enforce the decision in question. By refraining from taking the necessary effective measures to assist the applicants in the enforcement of the court decision, the national authorities had deprived the provisions of Article 10 of all useful effect and had hindered the applicants in pursuing their profession as radio journalists.

Conclusion: violation (unanimously).

Article 41: EUR 18,000 jointly in respect of pecuniary and non-pecuniary damage.

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