

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

FIFTH SECTION

CASE OF ROMANENKO v. UKRAINE

(Applications nos. 51010/13 and 2843/16)

JUDGMENT

STRASBOURG

18 April 2024

This judgment is final but it may be subject to editorial revision.



In the case of Romanenko v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:

Lado Chanturia*, President*,
Stéphanie Mourou-Vikström,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 31 July 2013 and 20 December 2015 by a Ukrainian national, Andriy Anatoliyovych Romanenko ("the applicant"), represented by Mr O. Burmagin, a lawyer practising in Kyiv;

the decision to give notice of the applications to the Ukrainian Government ("the Government"), represented, most recently, by their Agent, Ms M. Sokorenko;

the parties' observations;

Having deliberated in private on 7 December 2023 and 28 March 2024,

Delivers the following judgment, which was adopted on the latter date:

SUBJECT MATTER OF THE CASE

1. The applications concern the refusal by the authorities, allegedly in breach of Article 10 of the Convention, of two requests by the applicant for access to information.

2. At the material time the applicant was a journalist and a deputy editor-in-chief of the newspaper *Novosti Kramatorska* ("Kramatorsk News"). In May 2011 and April 2013, using the newspaper's official letterhead, he submitted two requests for information to the Kramatorsk City Council.

3. In the first request he asked for copies of the mayor's and his family members' declarations of income, stating that he needed them in order to "report on the activities of the local authorities".

4. That request was rejected on the basis of section 6(6) of the Law on Access to Public Information ("the Law on Access"). Section 6 provides, in so far as relevant, as follows:

> "1. Information subject to restricted access shall comprise: (i) confidential information; (ii) secret information; and (iii) official information.
>
> 2. Access to information may be limited in accordance with the law and in compliance with the following requirements:
>
> (1) exclusively in the interests of national security, territorial integrity or public order in order to prevent riots or crime, to protect public health, to protect the reputation or rights of other people, to prevent the disclosure of information obtained in confidence, or to maintain the authority and impartiality of the judiciary;

(2) where the disclosure of information may cause significant damage to the above-mentioned interests;

(3) where the harm from the dissemination of such information would outweigh the public interest in obtaining it. ...

6. Declarations of income of (i) persons, and members of their families, who are candidates for, or who occupy, elected posts in bodies of power and (ii) State and local officials of the first and second grades, shall not belong to the [category of] information with restricted access. ..."

As the mayor's post was of the third grade within the system of the local bodies of power, his declaration was found not to be public.

5. The applicant challenged that refusal before the courts, claiming that as the mayor's post was an elected one, his declarations were public. While the applicant's claims had been granted by the local court, the Donetsk Administrative Court of Appeal reversed the decision and dismissed the claims. It reasoned, with reference to the Law on Access and the Law on Service in Local Self-Government Authorities, that the mayor's post was of the third grade in the system of local authorities, and that therefore his declarations were not public. On 20 February 2013 that judgment was upheld by the High Administrative Court, which fully endorsed the appellate court's reasoning.

6. In the second request, regarding copies of declarations of the mayor and some other local council officials, no reference was made by the applicant as to why he needed the information sought. This request was rejected as, pursuant to the amended version of section 6(6) of the Law on Access, only financial information contained in the declarations was public and not the declaration as a document itself. It was also noted that in accordance with the Law on Preventing and Fighting against Corruption, financial information from the officials' declarations had to be published in official media outlets.

7. The applicant challenged that refusal before the courts. He relied on, *inter alia*, section 6(7) of the Law on Access, according to which restrictions applied to information, and not to a document. Furthermore, should a document forming the subject of a request contain restricted information alongside open information, the open information had to be provided. He also referred to the Court's case-law on the issue of access to State-held information.

8. After one re-examination of the case, on 30 September 2015 the High Administrative Court upheld the appellate court's decision, which allowed the applicant's claims in part by ordering that the open information contained in the declarations be disclosed. The courts concluded, however, that copies of the declarations could not be provided to the applicant, as part of the information contained therein (such as addresses and individual tax numbers) was confidential.

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

9. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

A. Admissibility

10. The Government claimed that there was no interference with the applicant's rights under Article 10 of the Convention, as three of the four criteria established in *Magyar Helsinki Bizottság v. Hungary* ([GC], no. 18030/11, §§ 158-80, 8 November 2016) had not been met; according to them, only the criterion of the "watchdog" role of the applicant had been complied with. In respect of the first request, they argued that the copy of the mayor's declaration could not be provided in accordance with the legislation and that, as regards the mayor's family members, the applicant had failed to "provide objective grounds for the public importance of [that] information". In respect of the second request, the Government contended that the domestic courts had eventually secured the applicant's right of access to information by ordering that he be provided with the part of the information in the declarations of the local officials which was public. Accessing documents which contain restricted data could not be regarded, even in the light of the applicant's journalistic activities, as "necessary for freedom of expression". The applicant's persistent attempts to obtain access to the copies of declarations thus indicated, according to the Government, "other reasons than obtaining public information in order to inform the public". In that connection they emphasised that copies of the declarations (without restricted information) were subject to publication in the media, and in order to inform the public the applicant could have used that information.

11. The applicant disagreed. He stated that he had requested, in his capacity as a journalist, information which was clearly open to the public; he had made no attempt to intrude into the private life of the persons concerned and had no other intention than to investigate possible corruption or abuse of power. He also referred to the wider context of the fight against corruption in Ukraine and submitted that accessing – and assessing – the declarations of public officials was one aspect of that fight. Having access to a copy of an original document was also important to avoid tampering. He further stated that the domestic legislation did not require that reasons be given for a request for public information.

12. The Government's arguments relate to the question of the applicability of Article 10, which pertains to the Court's jurisdiction

ratione materiae. Seeing no reason to join this question to the merits (compare *Studio Monitori and Others v. Georgia*, nos. 44920/09 and 8942/10, § 32, 30 January 2020), the Court will analyse it at the admissibility stage.

13. The Court reiterates that a right of access to information held by a public authority may arise where such access is instrumental for the individual's exercise of his or her right to freedom of expression, and where its denial would constitute an interference with that right. The threshold criteria for such an assessment are the purpose of the information request; the nature of the information sought; the role of the applicant; and whether the information was ready and available (see *Magyar Helsinki Bizottság*, cited above, §§ 149-80).

14. Applying the above-mentioned test, the Court notes, firstly, that the journalistic role of the applicant – which was not disputed by the Government either – is undeniably compatible with the scope of the right to request access to State-held information. The Court also considers that accessing information about the income earned by civil servants contributes to transparency in public affairs and that, therefore, such information is of public interest (see *Mikiashvili and Others v. Georgia* (dec.), nos. 18865/11 and 51865/11, § 54, 19 January 2021).

15. As regards the purpose of the information request, the Court observes that the applicant clearly stated the reason in his first request, namely "to report on the activities of the local authorities". However, he provided no reasons in the second request. During the ensuing domestic proceedings, while not stating exactly what his purpose was, the applicant persistently claimed that he had requested open information of public interest and that he had acted in his capacity as a journalist. In view of the above, and having regard to the very nature of the information requested, which – as noted above – related directly to public spending, the Court considers that the purpose of the applicant's requests should have been sufficiently clear to the authorities. The Court is also mindful that the domestic legislation did not require that reasons be given for requests for access to public information (see *Centre for Democracy and the Rule of Law v. Ukraine*, no. 10090/16, § 119, 26 March 2020).

16. Lastly, while the Government argued that the "ready and available" criteria had not been met, they failed to advance any specific arguments in that respect. In the Court's view, there is nothing to show that additional efforts would have been necessary to gather the information sought by the applicant and that it was therefore not "ready and available".

17. The information sought by the applicant was therefore necessary for his right to receive and impart information on a matter of public interest in the context of his journalistic activities. It follows from this that Article 10 is applicable and that the denial of access to information to the applicant constituted an interference with his rights under that Article.

18. The Government's preliminary objections must therefore be dismissed.

19. The Court further notes that the applications are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

20. The applicant complained that the interference with his right to freedom of expression had not been justified. He contended that the interpretation and application of the national legislation by the domestic authorities, including the courts, had not been predictable. As to the legitimate aim pursued by the interference, he argued that the domestic authorities had failed to assess the situation in the light of the status of the officials concerned (public political figures) and the fact that the information requested was open and important to society. The applicant further contended that the interference had not been proportionate, as the authorities had failed to balance the competing interests, giving clear precedence to the need to protect the right to respect for private life, whereas the applicant had requested information which was strictly public and did not encroach on the private sphere of the persons concerned. He also emphasised that it was impossible to form an opinion without having access to reliable sources of information, that is, original documents. Lastly, he noted that the format of publishing financial information from the declarations of officials, namely "as a solid data set with minimal punctuation marks", meant that it was complicated and impractical to analyse. He did not, however, provide any reference to or copy of the publication of such information in an official media outlet.

21. The Government stated, as to the first request, that the Law on Access did not provide that the declarations of local officials of the third grade were public and, as to the second request, that the copies of declarations could not be provided as they contained confidential information. Thus, the refusals to provide information had been lawful. They had also pursued the aim of protecting personal and confidential information. The Government further noted that the refusal of the first request and the partial granting of the second had been proportionate, in view of the need to protect the privacy of the persons concerned. As to the second request, they also noted that the declarations in question had been made public, as required by law. They did not, however, provide any reference to or copy of the publication of such information in an official media outlet.

22. The Court reiterates that in order to be justified, an interference with the right to freedom of expression must be "prescribed by law", pursue one or more of the legitimate aims mentioned in paragraph 2 of Article 10, and be "necessary in a democratic society".

23. In rejecting the applicant's request of May 2011, the domestic courts referred to the provisions of section 6(6) of the Law on Access, pursuant to which only declarations of income of persons occupying elected posts and of State and local officials of the first and second grades were open. Having regard to the fact that in Ukraine mayors are elected by universal vote, it would not be unreasonable to infer from that wording that a mayor's post would fall within the first category mentioned, that is, an "elected post", and this was the applicant's position as also upheld by the local court. The appellate court, however, concentrated on the fact that a mayor was an official of the local bodies of power and this post was of the third grade, as specified by the Law on Service in Local Self-Government Authorities. It did not explain why a mayor could not be considered an "elected official of a body of power", nor did it refer to any other pieces of legislation or court practice where the relevant concepts might be explained. For the Court this raises an issue in the context of the lawfulness of the interference, in particular in terms of the quality of the law.

24. The Court, however, does not consider it necessary to decide on that matter, as the interference in issue did not in any event comply with the requirement of proportionality. In particular, having established that the declarations of third-grade officials were not public, the courts stopped there and made no attempt to consider the relationship between the applicant's interest in having access to information of public importance and any other interest involved, in particular the possible need to protect the privacy of the persons concerned. The Court observes that such balancing was also required by the domestic legislation, as can be seen from the wording of section 6 of the Law on Access, according to which any limitation of access to information must be assessed in the light of the three-part test provided for in that section (see paragraph 4 above).

In view of this, the Court cannot but conclude that such an approach by the domestic courts excluded any meaningful assessment of the applicant's right to freedom of expression, in a situation where a restriction on his journalistic activities, which were intended to contribute to a debate on a matter of general interest, would have required special justification.

25. As to the applicant's request of April 2013, the Court observes that both the domestic authorities and the courts agreed that at that time section 6(6) of the Law on Access, as amended, clearly provided that financial information from the declarations of local officials was public (unlike other, personal information, also contained in the declarations). Alongside those provisions, section 6(7) of that Law provided that restrictions on access applied to information and not to an entire document, and that should a document contain both restricted and open information, the open information should be provided. Having analysed both provisions, the domestic courts granted the applicant access only to open information from the declarations, and not to the documents themselves.

26. In the Court's view, despite the somewhat confusing wording of section 6(7), the above approach cannot be said to have been manifestly unreasonable. On the basis of this, and as the restriction at stake served to protect private life, the Court is ready to accept that the criteria of lawfulness and legitimate aim have been met in this case. However, it considers that the domestic courts' approach was too formalistic and restrictive as there must have existed, in principle, a possibility of satisfying the applicant's request, for example, by providing the declarations with the personal data redacted in order to preserve the rights of the persons concerned under Article 8 of the Convention (see *Volodymyr Torbich v. Ukraine* [Committee], no. 14957/13, § 30, 13 July 2023). In so finding, the Court is mindful of the applicant's argument that he needed the copies of the original declarations, and not the extracts from them, in order to have trustworthy information from an original source to avoid any tampering, this being in keeping with the duties and responsibilities connected with the function of a journalist and the consequent obligation of responsible journalism (see, for instance, *Pentikäinen v. Finland* [GC], no. 11882/10, § 90, ECHR 2015). While the availability of the publications by the media outlets of either copies of declarations or financial information from them could have been an important factor in the assessment of proportionality (depending on the actual form in which they are published), the fact that neither party provided any references to, or copies of such publications precludes the Court from taking it into account. In the light of the above considerations, the Court considers that the restriction of the applicant's freedom of expression was not proportionate to the legitimate aim pursued.

27. There has accordingly been a violation of Article 10 of the Convention in respect of both the applicant's requests.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. The applicant submitted that the finding of a violation of his rights under Article 10 would constitute sufficient just satisfaction.

29. The Government submitted that there was no call to make any award to the applicant.

30. The Court agrees that the violation of Article 10 of the Convention must have caused non-pecuniary damage to the applicant. In view of the applicant's position in this respect, the Court concludes that the finding of a violation would constitute in itself sufficient just satisfaction under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 10 of the Convention;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

Done in English, and notified in writing on 18 April 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Lado Chanturia President