European Court of Human Rights: Gillberg v. Sweden (Grand Chamber)

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The Grand Chamber of the European Court has, more firmly than in its Chamber judgment of 2 November 2010 (see IRIS 2011/1-1), confirmed that a Swedish professor, Mr. Gillberg, could not rely on his right to privacy under Article 8, nor on his (negative) right to freedom of expression and information under Article 10 of the Convention to justify his refusal to give access to a set of research materials belonging to Gothenburg University, on request of two other researchers, K and E. Mr. Gillberg was convicted of misuse of office. He was given a suspended sentence and a fine of the equivalent of EUR 4,000. In Strasbourg Mr. Gillberg complained that his criminal conviction breached his rights under Articles 8 and 10.

As to the alleged breach of Article 8 of the Convention, the Court is of the opinion that the conviction of Mr. Gillberg did not affect his right to privacy. The Court confirmed that Article 8 cannot be relied on in order to complain of a loss of reputation that is the foreseeable consequence of one's own actions such as, for example, the commission of a criminal offence. As there was no indication that the impugned conviction had any repercussions on Mr. Gillberg's professional activities that went beyond the foreseeable consequences of the criminal offence of which he was convicted, his rights under Article 8 had not been affected.

Regarding the alleged breach of Article 10, the Court clarified that in the present case the applicant was not prevented from receiving and imparting information or in any other way prevented from exercising his "positive" right to freedom of expression. Indeed Mr. Gillberg argued that he had a "negative" right to refuse to make the disputed research materials available, and that consequently his conviction was in violation of Article 10 of the Convention. The Court is of the opinion that the finding that Mr. Gillberg would have a right under Article 10 of the Convention to refuse to give access to the research materials in this case would not only run counter to the property rights of the University of Gothenburg, but "it would also impinge on K's and E's rights under Article 10, as granted by the Administrative Court of Appeal, to receive information in the form of access to the public documents concerned".

The Court also rejected the claim by Mr. Gillberg that he could invoke a right similar to that of journalists in having their sources protected under Article 10 of the Convention. The Court is of the opinion that Mr. Gillberg's refusal to comply

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with the judgments of the Administrative Court of Appeal, by denying K and E access to the research materials, hindered the free exchange of opinions and ideas on the research in question, notably on the evidence and methods used by the researchers in reaching their conclusions, which constituted the main subject of K's and E's interest. In these circumstances the Court found that Mr. Gillberg's situation could not be compared to that of journalists protecting their sources. On these grounds the Grand Chamber reached the conclusion that the rights of Mr. Gillberg under Articles 8 and 10 of the Convention had not been affected and that these rights did not apply in the instant case.

Judgment by the European Court of Human Rights (Grand Chamber), case of Gillberg v. Sweden, No. 41723/06 of 3 April 2012

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