



## Professor's criminal conviction for refusal to make research material available did not affect his Convention rights

In today's Grand Chamber judgment in the case [Gillberg v. Sweden](#) (application no. 41723/06), which is final<sup>1</sup>, the European Court of Human Rights held, unanimously, that **Article 8 (right to respect for private and family life) and Article 10 (freedom of expression)** of the European Convention on Human Rights **did not apply in the case.**

The case essentially concerned a professor's criminal conviction for misuse of office in his capacity as a public official, for refusing to comply with two administrative court judgments granting access, under specified conditions, to the University of Gothenburg's research on hyperactivity and attention deficit disorders in children to two named researchers.

The Court found in particular that the professor could not rely on Article 8 to complain about his criminal conviction and that he could not rely on a "negative" right to freedom of expression, the right not to give information, under Article 10.

### Principal facts

The applicant, Christopher Gillberg, is a Swedish national, who was born in 1950. He is a professor and Head of the Department of Child and Adolescent Psychiatry at the University of Gothenburg. For several years, he was responsible for a long-term research project on hyperactivity and attention-deficit disorders in children. Certain assurances were made to the children's parents, and later to the young people themselves, concerning confidentiality. According to Mr Gillberg, the university's ethics committee had made it a precondition for the project that sensitive information about the participants would be accessible only to him and his staff, and he had therefore promised absolute confidentiality to the patients and their parents.

In 2002, requests by a sociological researcher and a paediatrician to be granted access to the research material were refused by the University of Gothenburg. Both researchers appealed against the decisions and, in February 2003, the Administrative Court of Appeal found that they should be granted access to the material, as they had shown a legitimate interest and could be assumed to be well acquainted with the handling of confidential data. The university was to specify the conditions for access in order to protect the interests of the individuals concerned. In August 2003, the Administrative Court of Appeal lifted some of the conditions imposed by the university and subsequently a new list of conditions was set for each of the two researchers, which included restrictions on the use of the material and prohibited the removal of copies from the university premises.

Notified in August 2003 that the two researchers were entitled to immediate access by virtue of the judgments, Mr Gillberg refused to hand over the material. Following discussions about the matter, the university decided in January and February 2004 to refuse access to the sociological researcher and to impose a new condition on the

<sup>1</sup> Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

paediatrician, asking him to demonstrate that his duties required access to the research material in question. Those university decisions were annulled by two judgments of the Administrative Court of Appeal on 4 May 2004. A few days later, colleagues of Mr Gillberg destroyed the research material.

In January 2005, the Swedish Parliamentary Ombudsman brought criminal proceedings against Mr Gillberg, and in June he was convicted of misuse of office. He was given a suspended sentence and a fine of the equivalent of 4,000 euros. The university's vice-chancellor and the officials who had destroyed the research material were also convicted. Mr Gillberg's conviction was upheld in February 2006 by the Court of Appeal. In April 2006, leave to appeal to the Supreme Court was refused.

## Complaints, procedure and composition of the Court

Mr Gillberg complained in particular that his criminal conviction breached his rights under Articles 8 and 10.

The application was lodged with the European Court of Human Rights on 10 October 2006. In its [Chamber judgment](#) of 2 November 2010 the Court held that there had been no violation of Articles 8 and 10 of the Convention. On 11 April 2011 the case was referred to the Grand Chamber at the request of the applicant<sup>2</sup> and a hearing was held on 28 September 2011.

Judgment was given by the Grand Chamber of 17, composed as follows:

Nicolas **Bratza** (the United Kingdom), *President*,  
Jean-Paul **Costa** (France),  
Françoise **Tulkens** (Belgium),  
Nina **Vajić** (Croatia),  
Dean **Spielmann** (Luxembourg),  
Corneliu **Bîrsan** (Romania),  
Karel **Jungwiert** (the Czech Republic),  
Elisabeth **Steiner** (Austria),  
Elisabet **Fura** (Sweden),  
Egbert **Myjer** (the Netherlands),  
Danutė **Jočienė** (Lithuania),  
Päivi **Hirvelä** (Finland),  
Ledi **Bianku** (Albania),  
Mihai **Poalelungi** (Moldova),  
Nebojša **Vučinić** (Montenegro),  
Kristina **Pardalos** (San Marino),  
Paulo **Pinto de Albuquerque** (Portugal), *Judges*,

and also Erik **Fribergh**, *Registrar*.

---

<sup>2</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

## Decision of the Court

The Court underlined that the Grand Chamber had jurisdiction to examine only the parts of the case that had been declared admissible by the Chamber judgment of 2 November 2010, namely the question whether Mr Gillberg's criminal conviction had infringed his rights under Article 8 and 10. His complaints concerning the outcome of the civil proceedings before the administrative courts could not be examined, as they had been declared inadmissible as being lodged out of time.

In its Chamber judgment, the Court had left open whether the complaint fell within the scope of Article 8 and Article 10, and whether there had been an interference with Mr Gillberg's right to respect for his private life and with his right to freedom of expression, because even assuming that there had been an interference with those rights, it had found that there had been no violation of Article 8 or Article 10.

### Article 8

The Court recalled that Mr Gillberg was not the children's doctor or psychiatrist, and that he did not represent the children or their parents. The issue for the Court to examine was whether his criminal conviction for misuse of office amounted to an interference with his "private life" under Article 8.

The Court noted that according to its case-law, Article 8 could not be relied on – as Mr Gillberg did – in order to complain of a loss of reputation which was the foreseeable consequence of one's own actions such as committing a criminal offence. Furthermore, there was no case-law in which the Court had accepted that a criminal conviction in itself – which might entail personal suffering – constituted an interference with the convict's right to respect for private life.

Mr Gillberg's conviction of misuse of office in his capacity as a public official under the penal code had not been the result of an unforeseeable application of the relevant provisions. The offence in question had no obvious bearing on his right to respect for private life, as it concerned professional acts and omissions by public officials in the exercise of their duties. Mr Gillberg had furthermore not pointed to any concrete repercussions on his private life directly linked to his conviction, nor had he defined the nature and extent of his suffering connected to it. However, he had pointed out that he had chosen to refuse to comply with the court rulings obliging him to grant access to the research material, with the risk that he would be convicted of misuse of office. His conviction and the suffering it might have entailed were therefore foreseeable consequences of his committing the criminal offence.

Likewise, the fact that Mr Gillberg might have lost income as a consequence of the criminal conviction, as he had argued, had been a foreseeable consequence of committing a criminal offence. In any event, he had not shown that there had been any causal link between his conviction and his dismissal by the Norwegian Institute of Public Health. His claim that he had lost income from at least five books he could have written during the time taken up by the court proceedings remained unsubstantiated. Finally, he had maintained his position as professor and head of Department at the University of Gothenburg, and according to his own statements he was supported by numerous renowned and highly respected scientists who agreed with his conduct. The repercussions of the conviction on his professional activities had thus not gone beyond the foreseeable consequences of the criminal offence for which he had been convicted.

The Court therefore concluded that Mr Gillberg's rights under Article 8 had not been affected.

## Article 10

The Court did not rule out that a “negative” right to freedom of expression, as relied on by Mr Gillberg, was protected under Article 10. However, as regards the circumstances of his case, the Court noted that the material he had refused to make available belonged to the University of Gothenburg. It accordingly consisted of public documents subject to the principle of public access under the applicable Swedish legislation, namely the Freedom of the Press Act and the Secrecy Act. That entailed that secrecy could not be determined until a request for access was submitted, and it was impossible in advance for a public authority to enter into an agreement with a third party exempting certain official documents from the right to public access.

The Swedish courts convicting Mr Gillberg had held that the assurances of confidentiality given to the participants in the study had gone further than permitted by the Secrecy Act. Moreover, the criminal courts were bound by the administrative courts’ judgments, which had settled the question of whether and on what conditions the documents were to be released to the two researchers. According to the Swedish courts, international declarations drawn up by the World Medical Association, on which Mr Gillberg relied in arguing that research ethics prevented him from disclosing the material, did not take precedence over Swedish law. In that context, the Court noted that Mr Gillberg was not bound by professional secrecy as if he had been the research participants’ doctor or psychiatrist.

Furthermore, Mr Gillberg had not been prevented from complying with the administrative courts’ judgments by any statutory duty of secrecy or any order from his public employer. He had not submitted any evidence to support his claim that his assurances of confidentiality to the research participants had been a requirement of the university’s ethics committee.

The Court could not share Mr Gillberg’s view that he had an independent “negative” right to freedom of expression, despite the fact that the research was owned by the university. Finding so would have run counter to the university’s property rights. It would also have impinged on the two researchers’ rights under Article 10 to receive information and on their rights under Article 6 of the Convention (right to a fair trial) to have the final judgments of the administrative courts implemented.

Finally, the Court found that Mr Gillberg’s situation could not be compared to that of journalists protecting their sources or that of a lawyer bound by a duty vis-à-vis his clients. The information diffused by a journalist based on his or her source generally belonged to the journalist or the media, whereas in Mr Gillberg’s case the research material was owned by the university and thus in the public domain. Since he had not been mandated by the research participants he had no duty of professional secrecy towards them, as a lawyer would have.

The Court therefore concluded that Mr Gillberg’s rights under Article 10 had not been affected.

*The judgment is available in English and French.*

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court’s press releases, please subscribe to the [Court’s RSS feeds](#).

### Press contacts

[echrpres@echr.coe.int](mailto:echrpres@echr.coe.int) | tel: +33 3 90 21 42 08

**Nina Salomon (tel: + 33 3 90 21 49 79)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Denis Lambert (tel: + 33 3 90 21 41 09)

**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.