



CASE OF GÃœÃ† v. TURKEY

Application no. 15374/11

Country: Turkey

Region: Europe

Year: 2018

Court: The European Court of Human Rights

Health Topics: Child and adolescent health, Mental health, Violence

Human Rights: Right to bodily integrity, Right to due process/fair trial

Facts

The applicant, a caretaker employed by an education center, had been taken into police custody on suspicion of child molestation. The local prosecutor lodged an indictment against the applicant, charging him with sexual abuse, sexual assault and unlawful detention of a minor. The court, however, ordered the applicant's acquittal, holding that it was not possible to establish beyond all reasonable doubt that he had committed the sexual acts forming the basis of the charge. The psychiatrist report stated that the child suffered from autism and was weak and timid.

Concurrent with these criminal proceedings, the applicant was also under a disciplinary investigation to investigate allegations of harassment. Following this investigation, the relevant authorities established that the applicant should be dismissed as a civil servant on account of the alleged child molestation. The applicant appealed this decision but did not get any relief.

The applicant alleged that his dismissal from the civil service and the reasoning employed by the administrative courts in reviewing his dismissal were incompatible with the guarantees of Article 6 Â§ 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Decision and Reasoning

When applying Article 6 to the instant case, the Court noted that a distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration of guilt. The central issue in the case revolved around whether the disciplinary and administrative authorities allowed doubt to be cast on the applicant's innocence even though he had not been found guilty by a criminal court. Because the disciplinary and administrative authorities conducted their own examination and used narrow language to describe the incident and the applicant, the Court concluded that the statements at issue did not equate to an imputation of criminal guilt to the applicant.

Decision Excerpts

â€œThe Court has acknowledged in its case-law the existence of two aspects as regards the protection afforded by the presumption of innocence: a procedural aspect relating to the conduct of the criminal trial, and a second aspect which aims to ensure respect for the applicant's established innocence in the context of subsequent proceedings where there is a link with the criminal proceedings which have ended with a result other than a convictionâ€• (Para 32)

â€œThere is nothing in the disciplinary report that suggests that the inspectors drew premature inferences from the criminal proceedings that were pending against the applicant. In that respect, the Court concludes that the disciplinary authorities conducted a separate inquiry into the facts of the case. At the end of their investigation, and on the basis of a less strict burden of proof, the inspectors concluded that they had the strong impression that the applicant had committed harassment against the minor.â€• (Para 41)

â€œâ€¦In the opinion of the Court, the use of the term â€œharassmentâ€• does not in itself present a problem, as it is not used solely in connection with criminal law actions, but also in contexts where a person's private sphere, including his or her bodily integrity, is violated by non-consensual physical or verbal contact. Read in the context of the present disciplinary proceedings, the choice of words implies that the disciplinary authorities formed the opinion that the applicant's physical contact with the minor amounted to harassment but they did not comment on whether it could also be classified as sexual harassment within the meaning of

criminal law.â€• (Para 41)

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