



## Gillberg v. Sweden

Application No. 41723/06; [2010] ECHR 1676

**Country:** Sweden

**Region:** Europe

**Year:** 2012

**Court:** European Court of Human Rights European Court of Human Rights

**Health Topics:** Health information

**Human Rights:** Freedom of expression, Right to privacy

### Facts

The applicant is a 50-year old professor specializing in child and adolescent psychiatry, at the University of Gothenburg.

A neuropsychiatry research project, the Gothenburg Study, focusing on Attention-Deficit Hyperactivity Disorder (ADHD) in children was carried out from 1977 to 1992 at the University of Gothenburg. The researchers assured "the children's" parents and later to the young people themselves concerning confidentiality. The research file contained a large number of records, test results, interview replies, questionnaires and video and audiotapes, most of it privacy-sensitive data about the children and their relatives. The research had been used for multiple doctoral theses. The applicant was director of the Department of Child and Adolescent Psychiatry where the data was being stored.

In 2002, a sociologist, K, and a pediatrician, E, both requested access to the background material of the Gothenburg Study in accordance with the principle of public access to official documents, subject to the conditions set out in the Secrecy Act. Neither was interested in the personal data, only the research methodology. The University of Gothenburg denied both requests, because K and E had not shown any connection between the requested material and any research, and on the ground that the material contained data on individuals' health status which, if disclosed, might harm an individual or persons related to that individual.

K and E brought suit in the Administrative Court of Appeal against the University of Gothenburg to compel access to the data, and the court found in their favor. The University's appeal to the Supreme Administrative Court was refused. Participants in the study also appealed to the Supreme Administrative Court but their cases were refused because they were not parties to the case. The University ultimately allowed access but with conditions, and the applicant was requested to arrange for the transfer of the documents. Applicant persistently refused to turn over the data, and in 2004 three of his colleagues destroyed the data. In January 2005, the Parliamentary Ombudsman initiated criminal proceedings against the applicant. The applicant was convicted of the offence of misuse of office and the offence was considered a serious one as the applicant willfully disregarded the constitutional right of access to public documents.

The applicant claimed that the civil proceedings and his criminal conviction violated articles 8 (right to family and private life) and 10 (freedom of expression).

### Decision and Reasoning

The Court held that neither article 8 nor article 10 was violated in the instant case.

The Court noted that it has jurisdiction to only look at admissible claims and that the Grand Chamber is able to declare parts of an application as inadmissible. Here the Court declared that complaints concerning the outcome of the civil proceedings before the administrative courts as inadmissible for being lodged out of time.

The Court stated that Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one's own actions such as, for example, the commission of a criminal offence. "There is no Convention case law in which the Court has accepted that a criminal conviction in itself constitutes an interference with the convict's right to respect for private life." The Court noted that the conviction of misuse of office refers to the applicant's public official capacity and that the applicant could not point to any concrete repercussions on his private life from the conviction.

As regards article 10, 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. Applicant argued that he has a "negative" right within the meaning of article 10 to refuse to make the disputed research material available, and that consequently his conviction was in violation of article 10. There is little case law on the negative right of Article 10, and the Court acknowledges that there is a negative right protected under article 10 but notes that the issue should be determined on a case by case basis. The Court considers that "the crucial question can be narrowed down to whether the applicant, as a public employee, had an independent negative right within the meaning of Article 10 of the Convention not to make the research material available, although the material did not belong to him but to his public employer,..." And the Court answers that such a view would violate the property rights of the University of Gothenburg and K's and E's rights under Article 10 and Article 6. Finally, the Court notes the applicant was not the research participants' doctor and thus "he had no duty of professional secrecy towards them."

## Decision Excerpts

¶67. Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one's own actions such as, for example, the commission of a criminal offence.

¶68. The Court does not ignore that such a criminal conviction may entail personal, social, psychological and economic suffering for the convicted person. In the Court's view, though, such repercussions may be foreseeable consequences of the commission of a criminal offence and can therefore not be relied on in order to complain that a criminal conviction in itself amounts to an interference with the right to respect for "private life" within the meaning of Article 8 of the Convention.

¶86. The Court does not rule out that a negative right to freedom of expression is protected under Article 10 of the Convention, but finds that this issue should be properly addressed in the circumstances of a given case.

¶93. In the Court's view, finding that the applicant had such a right under Article 10 of the Convention would run counter to the property rights of the University of Gothenburg. 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, and on their rights under Article 6 to have the final judgments of the Administrative Court of Appeal implemented.