

ΔΙΚΑΙΩΜΑΤΑ ΣΤΗΝ ΠΟΙΝΙΚΗ ΔΙΑΔΙΚΑΣΙΑ

Δικαίωμα σε αποτελεσματική προσφυγή και δίκαιη δίκη

Άρ. 47 Χάρτη Θεμελιωδών Δικαιωμάτων, που αποτελεί από το 2009 πρωτογενή πηγή ενωσιακού δικαίου και άρ. 6 παρ. 1 και άρ. 13 ΕΣΔΑ.

Τεκμήριο Αθωότητας και δικαίωμα υπεράσπισης

Άρ. 48 Χάρτη Θεμελιωδών Δικαιωμάτων και άρ. 6 παρ. 2 και 3 ΕΣΔΑ.

ΔΙΚΑΙΩΜΑΤΑ ΤΟΥ ΘΥΜΑΤΟΣ

Οδηγός: https://help.elearning.ext.coe.int/pluginfile.php/424132/mod_resource/content/0/Odigos-el-en-fr.pdf

Οδηγία 2012/29/ΕΕ για τη θέσπιση ελάχιστων προτύπων σχετικά με τα δικαιώματα, την υποστήριξη και την προστασία θυμάτων της εγκληματικότητας – ενσωματώθηκε με το Ν. 4478/2017

Άρ. 1: (...) Τα θύματα αναγνωρίζονται και αντιμετωπίζονται με σεβασμό, ευαισθησία, εξατομικευμένη, επαγγελματική και χωρίς διακρίσεις προσέγγιση λόγω της φυλής, του χρώματος, της εθνικότητας, της εθνότητας, της γλώσσας, της θρησκείας, της κοινωνικής προέλευσης, των πολιτικών ή άλλων πεποιθήσεων, της περιουσιακής κατάστασης, της ηλικίας, του φύλου, του σεξουαλικού προσανατολισμού, της ταυτότητας ή των χαρακτηριστικών φύλου, της αναπηρίας ή οποιασδήποτε άλλης κατάστασης αυτού, σε κάθε επαφή με τις αρμόδιες υπηρεσίες υποστήριξης θυμάτων ή τις υπηρεσίες αποκαταστατικής δικαιοσύνης, στις περιπτώσεις που αυτό προβλέπεται από το νόμο ή κάθε άλλη αρμόδια αρχή, που ενεργούν στο πλαίσιο της ποινικής διαδικασίας. (...)

Κατοχυρώνει σειρά διαδικαστικών εγγυήσεων για το σεβασμό της αξιοπρέπειας και της ιδιωτικής ζωής του θύματος και την αποφυγή δευτερογενούς θυματοποίησής του.

International Convention on the Elimination of All Forms of Racial Discrimination (art. 4)

Διεθνής Σύμβαση για την Κατάργηση κάθε Μορφής Φυλετικών Διακρίσεων (όπως κυρώθηκε με το ν.δ. 494 της 24 Μαρτίου / 3 Απριλίου 1970: «περί κυρώσεως της εν Ν. Υόρκη υπογραφείσης την 7ην Μαρτίου 1966 Διεθνούς Συμβάσεως Περί Καταργήσεως Κάθε Μορφής Φυλετικών Διακρίσεων» (ΦΕΚ Α΄ 77)

Άρθρο 4: The article also has an expressive function in underlining the international community's abhorrence of racist hate speech, understood as a form of other-directed speech which rejects the core human rights principles of human dignity and equality and seeks to degrade the standing of individuals and groups in the estimation of society.

ECRI (European Commission against Racism and Intolerance) GENERAL POLICY RECOMMENDATION NO. 15

<https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

Considering that hate speech is to be understood for the purpose of the present General Policy Recommendation as the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of "race", colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status.

ΑΡΧΗ ΜΗ ΔΙΑΚΡΙΣΗΣ (άρθρο 14 ΕΣΔΑ και άρ. 1 Πρωτ. 12)

Επιτάσσει μεταξύ άλλων και την τροποποίηση του Κώδικα Δεοντολογίας και την αποτελεσματική εφαρμογή του.

https://www.echr.coe.int/Documents/Guide_Art_14_Art_1_Protocol_12_ENG.pdf

Επικουρική αρχή σε σχέση με τα δικαιώματα και τις ελευθερίες που κατοχυρώνει η ΕΣΔΑ και ο νόμος (μη διάκριση στην απόλαυση αυτών των δικαιωμάτων). Δεν προϋποθέτει ωστόσο παραβίαση του βασικού δικαιώματος και υπ' αυτή την έννοια είναι έννοια αυτόνομη.

Το ΕΔΔΑ δέχεται το horizontal effect της αρχής αυτής, στην ιδιωτική σφαίρα, υπό την έννοια της παραβίασης θετικών υποχρεώσεων του κράτους (π.χ. για αποτελεσματική διερεύνηση και δίωξη συμπεριφορών, αλλά και για πρόληψη και αποτροπή τους).

The prohibition of discrimination under Article 14 of the Convention duly covers questions related to sexual orientation and gender identity (Identoba and Others v. Georgia, 2015, § 96). The Court has also recognised that gender identity and sexual orientation were two distinctive and intimate characteristics. Any confusion between the two would therefore constitute an attack on one’s reputation capable of attaining a sufficient level of seriousness for touching upon such an intimate characteristic of a person (Sousa Goucha v. Portugal, 2016, § 27).

In Beizaras and Levickas v. Lithuania, 2020, the applicants were a homosexual couple who received a number of serious threats and offensive comments after they published on Facebook a photograph of them kissing. The competent authorities refused to prosecute finding that the applicants’ behaviour had been “eccentric” and did not correspond to “traditional family values” in the country. The Court concluded that the applicants had suffered discrimination on the grounds of their sexual orientation, without good cause, given that the hateful comments by private individuals directed against them and the homosexual community in general had been instigated by a bigoted attitude towards that community. The same discriminatory state of mind was subsequently at the core of the authorities’ failure to discharge their positive obligation to investigate in an effective manner.

Εν προκειμένω, με τις δημόσιες ομοφοβικές, σεξιστικές, χλευαστικές δηλώσεις, δεν πλήττεται μόνο το δικαίωμα στην ιδιωτική ζωή, αλλά και το δικαίωμα στη δικαστική προστασία, στο βαθμό που η προσβολή κατατείνει στην υποβάθμιση της αξιοπιστίας του προσώπου υπό το ρόλο που επιτελεί ως παθόν στη δικαστική διαδικασία.

Committee on the Elimination of Racial Discrimination

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhssyNNtgI51ma08CMA6o7Bglz8iG4SuOjovEP%2Bcqr8joDoVEbW%2BQ1MoWdOTNEV99v6FZp9aSSA1nZya6gtpTo2JUBMI0%2BoOmjAwk%2B2xJW%2BC8e>

- **ΕΛΕΥΘΕΡΙΑ ΕΚΦΡΑΣΗΣ ΔΙΚΗΓΟΡΟΥ (εδδα)**

<https://www.coe.int/en/web/help/freedom-of-expression-of-lawyers>

[Morice v. France \(n° 29369/10\)](#)

... a French lawyer has been criminally and civilly punished for defamation due to criticism of two judges published in an article in a leading daily. This article repeated, on one hand, the terms of a letter addressed by Mr Morice to the Minister of Justice requesting an administrative investigation into the judges' conduct, and on the other hand, comments made to the journalist author of the article in question. Mr Morice was sentenced with a fine and ordered to reimburse costs, pay damages and to publish statement in the daily in question.

By a judgment of 23 April 2015, adopted unanimously, the Court found a violation of article 10 of the Convention. It was stated in particular that Mr Morice had expressed himself through value judgments, which relied on a sufficient factual basis. His words dealt with a subject of general interest, namely the functioning of justice and the progress of a case which addressed a matter of wide importance and a high level of media coverage.

Όμως:

[Fuchs v. Allemagne \(n° 29222/11 and 64345/11\)](#)

a German lawyer had been disciplinarily and penally condemned for defamatory speech towards an expert in informatics, expressed in written observations given to a tribunal and relating to an indictment.

While he was representing a client accused of having downloaded child pornography on his computer, Mr Fuchs had argued that a private expert who was mandated by the Prosecutor's Office to decrypt the data files, who was sworn in before taking up his duties before the judicial authorities, could have manipulated the files in order to obtain the evidence required by the Prosecutor's Office. The expert filed a complaint for defamation, and Mr Fuchs was sentenced, in particular, to a fine.

Subsequently, the disciplinary commission of lawyers reprimanded Mr Fuchs and imposed a fine for having failed to meet his obligation to conduct his professional activities in a conscientious manner and to deserve the trust associated to this profession.

By a decision of 27 January 2015, adopted unanimously, the Court declared the application was manifestly ill-founded and therefore inadmissible. The sanctions imposed on Mr Fuchs constituted an interference with his right to freedom of expression, but they were provided for by law (the penal code and the code of legal professions), they pursued a legitimate goal (protection of reputation and protection of the rights of the sworn in expert), and they were necessary in a democratic society.

The Court assessed that Mr Fuchs could not, in the name of defence of his client's interests, generally suggest that the expert falsified the evidence. Moreover, the comments at issue did not include any objective criticism of the expert's work on the trial, though they were aimed at generally denigrating his work and declaring his conclusions unworkable. Thus they were not justified by the legitimate defence of the client's interests. Furthermore, they were not made in public. Finally, the Court does not judge the fines imposed in the framework of criminal and disciplinary procedures to be disproportionate.

It is the first case where the Court has ruled on a challenge by a lawyer on the integrity of a sworn in expert. According to the Court, sworn in experts "must be able to perform their duties in conditions free of undue perturbation if they are to be successful in performing their tasks. It may therefore be necessary to protect them from offensive and abusive verbal attacks when on duty".

It is an important decision. Firstly, because the use of sworn in experts is relatively frequent in European countries, particularly in criminal matters. Secondly, and more importantly, because the Court does not forbid lawyers to criticise the experts' work at any point, although it sets some reasonable limits in this regard.