The case also draws attention to tensions regarding freedom of speech that may shock, disturb or offend, and the appeal of those affected by that speech for culpability. Here, the principle was reaffirmed that a certain level of seriousness must be attained in order for art.8 to have been violated. However, the forum comments were not considered by the domestic courts to amount to such grievousness so as to constitute defamation, and the Court was unwilling to overrule this. Its judgment demonstrates that content cannot be censored just because it may be offensive and reiterates the Court's reluctance to impose liability on an online forum for comments posted by third party actors, which may in part have to do with the negative repercussions for freedom of expression on the internet.

Emily Turner

Reasoned judgments

Referring a question to the CJEU—preliminary ruling—adequate reasoning for refusal—right to a fair trial—art. 6

Germany; Reasons; References to European Court; Right to fair trial

Harisch v Germany (Application No.50053/16)

European Court of Human Rights (Fifth Section): Judgment of 11 April 2019

Facts

The applicant, Mr Klaus Harisch, is a German national who lives in Munich. He was one of the two founders of T.AG, a directory enquiry (or assistance) service. The T.AG received, for a fee, the required subscriber information from Deutsche Telekom AG (DTAG). In 2007 and 2008, DTAG was ordered to refund T.AG part of the fees paid, as they had been excessive. Later, Mr Harisch claimed to the Regional Court he had suffered sustained damage because of the excessive prices paid by T.AG to DTGA. He argued that this situation reduced his shares in the company before its stock market launch. It also resulted in a lower valuation of the company on the day of the launch. In 2013, this claim was dismissed. Mr Harisch appealed, and during an oral hearing before the Court of Appeal, he asked the court to suspend the process for a preliminary ruling before the Court of Justice of the European Union (CJEU). The Court of Appeal dismissed the request by arguing that Mr Harisch's claim was not covered by the protective purpose of EU law, providing a detailed account of why Mr Harisch opinion was not supported by CJEU case-law and the relevant case-law of the German Federal Court of Justice. Mr Harisch complained against the decision before the Federal Court of Justice, which rejected the request for a referral to the CJEU and the request of leave to appeal on points of law. Lastly, Mr Harisch, arguing a lack of adequate reasoning for the refusal of a referral to the CJEU by the Federal Court of Justice, complained before the German Federal Constitutional Court, invoking his right to be heard. This court also rejected the complaint, stating that the decision of a court of the last instance did not require more detailed reasoning.

The applicant complained before the European Court of Human Rights (the Court) that his right to a fair hearing under art.6 had been breached because of the domestic courts' refusal to refer questions to the CJEU for a preliminary ruling, and the failure to provide satisfactory reasons to deny that referral.

Held

(1) The application was declared admissible (unanimous).

(2) There had been no violation of art.6 (unanimous).

The Court reiterated that it is for the national courts to interpret if domestic law conforms with EU law. It also reminded that the Convention does not guarantee, as such, the right to have a case referred by a domestic court to the CJEU for a preliminary ruling and that such a decision is left with national courts. However, this must be evaluated considering art.6 of the Convention since a national court's refusal to refer a case to the CJEU may infringe fairness where the judgment proves to be arbitrary. The refusal to grant a referral might be deemed arbitrary in cases where the applicable rules allowed no exception to the granting of a referral or where the refusal was based on reasons other than those provided for by the rules, or where the refusal was not duly reasoned. The Court noted that reasoned judgments are a vital safeguard against arbitrariness because it allows the contesting parties to understand the delivered decision and to demonstrate that parties have been heard and, in this form, contribute to the acceptance of the ruling. This obligation of reasoning must be evaluated on a case-by-case basis, according to its context and the nature of the decision.

Nevertheless, this does not mean that courts must provide a detailed answer to every argument present. To address that duty satisfactorily, the Court points out that it must be considered, among other factors, such as the diversity of submissions that a litigant may bring before the courts, the local rules, customary rules, legal opinion and the presentation and drafting of judgments. Therefore, it is acceptable for the Court that a national superior court may dismiss a complaint by referring to the relevant legal provisions whenever the matter raises no fundamentally important legal issues, particularly in cases concerning applications for leave to appeal. In dismissing an appeal, a superior court may refer to what it was reasoned by the lower court to justify dismissing an appeal, or even the reasons may be implied in the circumstances in some cases. In the case at hand, the Court pointed out that the Federal Court of Justice of Germany was the last resort and noted that it just briefly indicated the reasons for refusing leave to appeal, in accordance with national law. However, the Court underpinned that EU law was already thoroughly analysed by the Court of Appeal which had largely referred to the CJEU's case-law and explained during oral hearings that the case-law of the CJEU was clear and EU law was not applicable in this case. Therefore, Mr Harisch's complaint was thoroughly considered and so his referral request denied by refusing to leave to appeal on points of law. The Court concluded that Mr Harisch had been able to understand the reasons underlying the German Federal Court's decision by the detailed ruling provided by the Court of Appeal after discussing the issue with the parties. These developments give ground to conclude that Mr Harisch was able to understand the Federal Court's decision and that justifies the Federal Court's decision to dispense more comprehensive reasoning.

Cases considered

Dhahbi v Italy (App. No.17120/09), judgment of 8 April 2014
García Ruiz v Spain [GC] (2001) 31 E.H.R.R. 22
Sawoniuk v United Kingdom (App. No.63716/00), judgment of 29 May 2001
Schipani v Italy (App. No.38369/09), judgment of 21 July 2015

Commentary

The obligation of national courts to provide sufficient reasons for their rulings can be found in art.6 of the Convention. A reasoned judgment has an important communicative effect on the parties and the community as it guarantees the right to be heard. Moreover, the applied outcome and reasoning in a judgment serve as a basis to request an appeal to a higher court. At the European level, the justification of judgments also serves to narrow the margin of appreciation that national courts have when assessing a particular case. However, it is reasonable not to provide a detailed answer to every argument presented before a court. As this case shows, the complexities of providing a reasoned judgment vary and can only be determined on the basis of the circumstances of each case. This case reaffirms what the Court had ruled in previous cases, that there is no infringement of art. 6 when a national higher court endorses the lower court's decision. For the Court, the most important duty to fulfil under art.6 is that national courts address the essential issues submitted by the party and not just endorse without further ado the findings reached by a lower court.

Ricardo Buendia

Presumption of innocence

Administrative offences—timing of appeals—time limits—exhaustion of remedies—presumption of facts—presumption of innocence—art.6(2)

Latvia; Multiple offending; Pending appeals; Presumption of innocence; Road traffic offences; Time

Kangers v Latvia (Application No.35726/10)

European Court of Human Rights (Fifth Section): Judgment of 14 March 2019

Facts

This case was an application brought by a Latvian national who had been the subject of a number of administrative offence proceedings related to driving. The original administrative offence report by the police stated that the applicant had been found driving with his blood alcohol concentration exceeding the legal limit, but on 1 December 2008 these offence proceedings were terminated by the Jūrmala City Court, lacking *corpus delicti*. The prosecutor appealed against this decision and the Riga Regional Court reinstated the proceedings. The Regional Court found against the applicant in a judgment of 27 February 2009, and a sentence including a two-year driving ban was imposed. Those proceedings took place in the applicant's absence after an application for postponement was denied. The applicant complained to the Ministry of Justice that the prosecutor had no right to appeal the 1 December 2008 decision, and appealed to the Riga Regional Court that the sentence be suspended. Both applications were denied.

The applicant was then subject to two further sets of administrative offence proceedings, brought against him for driving a car while disqualified. After the first incidence of these proceedings, the applicant appealed the fine issued to the administrative courts, and the administrative appeal courts. The second incidence of these proceedings was brought as a repeat offence, for committing the same offence within a year. In both instances, the applicant argued that the decision of 27 February 2009 was incorrect as the Riga Regional Court should not have been able to set aside the decision of 1 December 2008; and further