



French crime database system in breach of Convention for storing information on individuals against whom proceedings have been dropped

In today's **Chamber judgment**¹ in the case of **Brunet v. France** (application no. 21010/10) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned a complaint about Mr Brunet's details being recorded in a crime database after the discontinuance of criminal proceedings against him.

The Court found in particular that Mr Brunet had not had a real possibility of seeking the deletion from the database of the information concerning him and that the length of retention of that data, 20 years, could be assimilated, if not to indefinite retention, at least to a norm rather than to a maximum limit.

The Court concluded that the State had overstepped its discretion to decide ("margin of appreciation") on such matters: the retention could be regarded as a disproportionate breach of Mr Brunet's right to respect for his private life and was not necessary in a democratic society.

Principal facts

The applicant, Francois Xavier Brunet, is a French national who was born in 1959 and lives in Yerres (France).

On 10 October 2008 Mr Brunet had a violent row with his partner, who filed a complaint with the public prosecutor of Evry. The applicant was taken into police custody. He in turn filed a complaint against his partner for assault, but it was never followed up. He was released and summoned for criminal mediation.

On 12 October 2008 Mr Brunet and his partner wrote to the public prosecutor to express their disagreement with the detailed classification of the offence the applicant was said to have committed, as stated in his summons for criminal mediation. The mediation nevertheless went ahead and the proceedings were then discontinued. As a result of the accusation, Mr Brunet was listed in the recorded crimes database (the "STIC" system), which contains information from investigation reports based on files drawn up by officers of the police, gendarmerie and customs. In a letter of 11 April 2009 Mr Brunet asked the public prosecutor to delete his details from the database, arguing that their inclusion was unjustified because his partner had withdrawn her complaint. The public prosecutor rejected his request on the ground that the proceedings had been "discontinued on the basis of a cause other than: no offence ... or insufficiently established offence ...". The applicant was informed that no appeal lay against that decision.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying on Articles 8 (right to respect for private and family life) and 13 (right to an effective remedy), Mr Brunet complained about the inclusion of his details in the “STIC” recorded crimes database. Under Articles 6 (right to a fair hearing) and 17 (prohibition of abuse of rights), he also complained about the investigation and the police custody measure in the proceedings against him, together with the failure to follow up the complaint that he himself had filed against his partner.

The application was lodged with the European Court of Human Rights on 29 March 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Mark Villiger (Liechtenstein), *President*,
Ann Power-Forde (Ireland),
Ganna Yudkivska (Ukraine),
Vincent A. de Gaetano (Malta),
André Potocki (France),
Helena Jäderblom (Sweden),
Aleš Pejchal (the Czech Republic),

and also Claudia Westerdiek, *Section Registrar*.

Decision of the Court

[Article 8 \(right to respect for private and family life\)](#)

The Court observed that the inclusion in the STIC database of data concerning Mr Brunet had constituted an interference with his right to respect for his private life; an interference which was in accordance with the law and which pursued the legitimate aims of the prevention of disorder and crime and the protection of the rights and freedoms of others.

It then examined whether that interference met a “pressing social need” and, in particular, whether it was proportionate to the legitimate aim pursued and whether the grounds given by the domestic authorities to justify it appeared “relevant and sufficient”.

The Court observed that Mr Brunet had complained about the potential interference with his private and family life because of his inclusion in the database, arguing that, if he and his partner separated and there were proceedings before the family judge, consultation of the database could lead to the rejection of his application for custody of their child. However, as that judge was not one of the officials who had access to the database in question, the Court found that the situation complained of by the applicant was not likely to materialise.

Mr Brunet also complained about the abusive nature of his inclusion in the STIC database. On that point the Court noted that the information contained in the database was quite intrusive in nature. While that information did not contain the individuals’ fingerprints or DNA profile, it consisted of details on identity and personality, in a database that was supposed to be used for researching crimes. In addition, the retention time of the personal record, 20 years, was particularly lengthy in view of the fact that Mr Brunet had not been found guilty by a court and that the proceedings had been discontinued.

The Court then looked at whether such a retention time was proportionate, taking account of the possibility for the individual concerned to seek early deletion of personal data. In that connection, it noted that the law, as it stood at the relevant time and as currently in force, entitled the public prosecutor to order the deletion of a personal record only in a limited number of situations and, in the case of discontinuance, only if that decision had been justified by insufficient evidence. In rejecting Mr Brunet’s request, the public prosecutor of Evry had applied the law strictly. He did not

have the power to verify the pertinence of maintaining the information in question in the STIC database in the light of its purpose, or having regard to factual and personality-related elements. Consequently, the Court took the view that the public prosecutor had no power of discretion to assess the appropriateness of retaining such data, such that his supervision could not be regarded as effective. The Court further noted that at the relevant time no appeal lay against the public prosecutor's decision.

Therefore, even though the retention of the information in the STIC database was limited in time, Mr Brunet had not had any real possibility of requesting the deletion of the data concerning him and, in a situation such as his, the envisaged duration of 20 years could in practice be assimilated, if not to indefinite retention, at least to a norm rather than to a maximum limit.

In conclusion, the Court took the view that the State had overstepped its margin of appreciation in such matters, and that the rules for the conservation of records in the STIC database, as applied to Mr Brunet, did not strike a fair balance between the competing public and private interests at stake. Accordingly, the impugned retention could be regarded as a disproportionate interference with Mr Brunet's right to respect for his private life and was not necessary in a democratic society.

There had thus been a violation of Article 8 of the Convention.

[Article 13 \(right to an effective remedy\)](#)

Having regard to the finding of a violation of Article 8, the Court did not find it necessary to rule on the complaint under Article 13.

[Articles 6 and 17](#)

The Court observed that the applicant had not raised any complaints under these Articles before the domestic courts, so it rejected this part of the application for non-exhaustion of domestic remedies.

[Just satisfaction \(Article 41\)](#)

The Court held that France was to pay the applicant 3,000 euros in respect of non-pecuniary damage.

The judgment is available only in French.

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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.