EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law 237

February 2020

Gaughran v. the United Kingdom - 45245/15

Judgment 13.2.2020 [Section I]

Article 8

Article 8-1

Respect for private life

Disproportionate character of indefinite retention of DNA profile, fingerprints and photograph of person convicted of minor offence, in the absence of any real review: *violation*

Facts – The applicant was convicted of a minor offence in Northern Ireland. He complained about the taking and indefinite retention of his DNA profile, fingerprints and photo by the police.

Law – Article 8: The retention of the applicant's DNA profile and fingerprints amounted to an interference with the applicant's private life. Given that the applicant's custody photograph had been taken upon his arrest and would be held indefinitely in a local database for use by the police, with the police possibly also applying facial recognition and facial mapping techniques to the photograph, the taking and retention of the applicant's photograph amounted to an interference with his right to private life.

The interference was in accordance with the law and pursued the legitimate purpose of prevention of crime. While the original taking of this information pursued the aim of linking a particular person to the particular crime of which he or she was suspected, its retention pursued the broader purpose of assisting in the identification of persons who might offend in the future.

There was a narrowed margin of appreciation available to States when setting retention limits for the biometric data of convicted persons. However, the duration of the retention period was not necessarily conclusive in assessing whether a State overstepped the acceptable margin of appreciation in establishing the relevant regime. Also of importance was whether the regime took into account the seriousness of the offence and the need to retain the data, and the safeguards available to the individual. Where a State put itself at the limit of the margin of appreciation in allocating to itself the most extensive power of indefinite retention, the existence and functioning of certain safeguards became decisive.

The Government had submitted that the more data was retained, the more crime was prevented. Accepting such an argument in the context of a scheme of indefinite retention would in practice be tantamount to justifying the storage of information on the whole population and their deceased relatives, which would definitely be excessive and irrelevant. The Government had also highlighted that those who had been convicted were in fact most likely to be convicted again after a relatively short period of two years.

Investigating 'cold cases' was in the public interest, in the general sense of combating crime. However the police had to discharge their duties in a manner which was compatible with the rights and freedoms of other individuals.

Having chosen to put in place a regime of indefinite retention, there had been a need for the State to ensure that certain safeguards had been present and effective for the applicant, someone convicted of an offence. However, the applicant's biometric data and photographs had been retained without reference to the seriousness of his offence and without regard to any continuing need to retain that data indefinitely. Moreover, the police were vested with the power to delete biometric data and photographs only in exceptional circumstances. There was no provision allowing the applicant to apply to have the data concerning him deleted if conserving the data no longer appeared necessary in view of the nature of the offence, the age of the person concerned, the length of time that had elapsed and the person's current personality. Accordingly, the review available to the individual would appear to be so narrow as to be almost hypothetical.

The indiscriminate nature of the powers of retention of the DNA profile, fingerprints and photograph of the applicant as a person convicted of an offence, even if spent, without reference to the seriousness of the offence or the need for indefinite retention, and in the absence of any real possibility of review, had failed to strike a fair balance between the competing public and private interests. The State had retained a slightly wider margin of appreciation in respect of the retention of fingerprints and photographs. However, that widened margin was not sufficient to conclude that the retention of such data could be proportionate in the circumstances, which included the lack of any relevant safeguards including the absence of any real review.

Accordingly, the respondent State had overstepped the acceptable margin of appreciation in this regard, and the retention in issue constituted a disproportionate interference with the applicant's right to respect for private life and could not be regarded as necessary in a democratic society.

Conclusion: violation (unanimously).

Article 41: Finding of a violation constituted sufficient just satisfaction in respect of non-pecuniary damage.

(See also *Trajkovski and Chipovski v. North Macedonia*, 53205/13 and 63320/13, 13 February 2020; *S. and Marper v. the United Kingdom* [GC], 30562/04 and 30566/04, 4 December 2008, Information Note 114; *Gardel v. France*, 16428/05, 17 December 2009, Information Note 125; *M.K. v. France*, 19522/09, 18 April 2013, Information Note 162; *Peruzzo and Martens v. Germany* (dec.), 7841/08 and 57900/12, 4 June 2013, Information Note 164; *Aycaguer v. France*, 8806/12, 22 June 2017, Information Note 208; *Catt v. the United Kingdom*, Information Note 225).
