



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

FOURTH SECTION

CASE OF GOGGINS AND OTHERS v. THE UNITED KINGDOM

*(Applications nos. 30089/04, 14449/06, 24968/07, 13870/08, 36363/08,
23499/09, 43852/09 and 64027/09)*

JUDGMENT
(striking out)

STRASBOURG

19 July 2011

FINAL

08/03/2012

*This judgment has become final under Article 44 § 2 of the Convention. It
may be subject to editorial revision.*

In the cases of Goggins and others v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Lech Garlicki, *President*,

Nicolas Bratza,

Ljiljana Mijović,

Sverre Erik Jebens,

Päivi Hirvelä,

Ledi Bianku,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 28 June 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The cases originated in eight applications (nos. 30089/04, 14449/06, 24968/07, 13870/08, 36363/08, 23499/09, 43852/09 and 64027/09) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by eight British nationals, Mr Ciaron Goggins, Mr John Day, Mr Michael Jackson, Mr Christopher Scott, Mr Guled Michael, Ms Carol Castley-Turner, Mr Darren Coates and Mr Jonathan Bennetts (“the applicants”) on 11 August 2004, 28 March 2006, 22 May 2007, 25 February 2008, 18 July 2008, 3 April 2009, 30 July 2009 and 11 November 2009 respectively.

2. The United Kingdom Government (“the Government”) were represented by their Agent, Ms H. Moynihan, of the Foreign and Commonwealth Office.

3. The applicants complained, *inter alia*, about the collection and retention of their DNA samples, fingerprints and associated data.

4. On 22 January 2010 the Vice-President of the Fourth Section decided to give notice of the applications to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

THE FACTS

5. The applicants are:

30089/04 Mr Ciaron Goggins, a British national who was born in 1961 and lives in Ballyjamesduff, Ireland.

14449/06 Mr John Day, a British national who was born in 1964 and lives in Witham.

24968/07 Mr Michael Jackson, a British national who was born in 1953 and lives in Leeds. He is represented before the Court by Tyndallwoods, a firm of solicitors based in Birmingham.

13870/08 Mr Christopher Scott, a British national who was born in 1952 and lives in Horsham.

36363/08 Mr Guled Michael, a British and Somali national who was born in 1977 and lives in London.

23499/09 Ms Carol Castley-Turner, a British national who was born in 1950 and lives in Radcliffe.

43852/09 Mr Darren Coates, a British national who was born in 1971 and lives in Mansfield.

64027/09 Mr Jonathan Bennetts, a British national who was born in 1971 and lives in Penzance.

A. Background facts

1. 30089/04 Goggins

6. The applicant was arrested on 13 May 2004 after an allegation of rape was made against him. At the police station, his fingerprints and photographs were taken and he provided a DNA sample.

7. On 19 July 2004 he was advised that the charges against him had been dropped.

8. To date, his DNA, photographs and fingerprints have not been destroyed.

2. 14449/06 Day

9. The applicant was arrested in 2005. At the time of his arrest, fingerprints and photographs were taken. He also provided a DNA sample. No further inquiries were made and the applicant was not convicted of any offence.

10. On 10 April 2006, Essex Police confirmed that the applicant's case was not considered to be exceptional and that his fingerprints and DNA would be retained.

11. It appears that Mr Day's DNA sample was subsequently found to have insufficient DNA material and there are accordingly no data relating to him in the DNA database.

3. 24968/07 Jackson

12. On 15 November 2004 the applicant was charged with a harassment offence following a dispute with his neighbours. He was required to provide samples of his DNA and fingerprints. It appears that photographs were also taken.

13. On 28 July 2005 he was acquitted in the Magistrates' Court. Following his acquittal, he requested the destruction of his DNA and fingerprint data.

14. By letter dated 28 March 2006 West Mercia Police refused his request on the basis that his case did not disclose any exceptional circumstances. This decision was confirmed on 27 July 2006 and 2 October 2006. The applicant subsequently sought to establish "exceptional circumstances". His request for destruction of the data was definitively rejected on 6 February 2007.

15. To date, his DNA, fingerprints and photographs have not been destroyed.

4. 13870/08 Scott

16. On 7 August 2006 the applicant voluntarily attended Crawley police station where he was arrested. The allegations against him were that he was guilty of harassment in respect of his conduct towards Mrs K.O., who had made a complaint to the police. His fingerprints and photographs were taken and he provided a DNA sample. He was not charged with any offence.

17. Following a request that his data be destroyed, he was advised by Sussex Police on 29 November 2006 that his DNA and fingerprint records would be retained.

18. The applicant subsequently complained about his arrest. On 22 March 2007, he was advised that an investigation had been carried out and that there was insufficient evidence to justify misconduct proceedings against any officer. He was advised by letter of 16 May 2007 that his appeal

against that decision had been refused by the Independent Police Complaints Commission (“IPCC”).

19. To date, his DNA, photographs and fingerprints have not been destroyed.

5. 36363/08 Michael

20. On 21 January 2005 the applicant was travelling by bus when he was asked to produce his ticket by a ticket inspector. The applicant produced a child bus ticket. The inspector asked for the applicant’s name and address, which the applicant refused to provide, offering instead to pay the relevant fine. The ticket inspector insisted that the applicant provide his name and address, whereupon the applicant wrote down a false name and his former address. At that stage, a police officer became involved and it emerged that the details provided by the applicant were false. He quickly provided the correct details, producing a formal letter to confirm his identity and address. The applicant was then arrested and taken to the police station, where a DNA sample and fingerprints were taken. He was not charged in connection with the incident.

21. In October 2006 the applicant requested the police to destroy his Police National Computer (“PNC”) record including his DNA data and fingerprints. On 22 August 2007 the applicant was advised that his data would not be destroyed as his case was not exceptional.

22. On 5 November 2007 the applicant lodged an application for judicial review arguing that his arrest was unlawful as it did not comply with the relevant legislation and he was not advised of the reasons for his arrest. He further argued that the decision to retain his data was unlawful.

23. On 28 January 2008, his application for judicial review was refused on the papers on the ground that it was misconceived and had been lodged out of time. The judge noted that the possibility of a civil action in the County Court was open to the applicant, although he observed that on the basis of the papers before him, such action seemed likely to fail.

24. At a renewed permission hearing on 15 April 2008 the court found that the application had been lodged in time but refused permission to seek judicial review. The court found that the applicant had been lawfully arrested on suspicion of deception or attempted deception. It referred to contemporaneous notes of the attending police officer which stated that the applicant had been advised that he was being arrested on suspicion of deception. The arrest having been lawful, it followed that the retention of the applicant’s data was also lawful.

25. To date, his PNC record, DNA data and fingerprints have not been destroyed.

6. *23499/09 Castley-Turner*

26. It is not clear exactly when or why the applicant's fingerprints, DNA and photographs were taken by the police authorities. Documents submitted by the applicant appear to indicate that she was arrested on 2 August 2008 on suspicion of battery, following which no further action was taken. The documents also confirm that her fingerprints and photographs were taken on 21 November 2008 in connection with a suspected theft offence.

27. On 22 March 2009 the applicant wrote to Greater Manchester Police requesting that her DNA data, fingerprints and photographs be destroyed. By letter dated 14 April 2009 she was advised that her data had been lawfully collected following her arrest in August 2008 for offences against the person. They would therefore be retained.

28. The applicant subsequently wrote to the IPCC regarding the retention of her data and raising general complaints about the police. On 22 April 2009 she was advised that her complaints regarding data retention were outside the IPCC's remit and that her general complaints appeared to be the same as complaints previously considered and dismissed by the IPCC in 2008.

29. To date, her DNA, photographs and fingerprints have not been destroyed.

7. *43852/09 Coates*

30. Following a parking incident on 20 October 2007 the applicant was arrested under caution on 12 November 2007 after attending the police station voluntarily. Fingerprints and a DNA sample were taken. On 24 December 2007, he was advised by the Crown Prosecution Service that he would not be charged with any offence.

31. On 20 January 2009 Nottinghamshire Police advised that the applicant's DNA would be retained. This was confirmed on 18 May 2009. On 11 June 2009, the applicant was definitively informed that his DNA would not be destroyed.

32. To date, his DNA and fingerprints have not been destroyed.

8. *64027/09 Bennetts*

33. Documents submitted by the applicant appear to show that a DNA sample was taken from him on 8 February 2006 following his arrest in connection with alleged public order and other miscellaneous offences. He was subsequently arrested on 8 December 2006 for suspected harassment offences. No further action was taken on either occasion.

34. Subsequently, in unrelated proceedings, on 23 July 2008 the applicant was served with an application in the County Court for a possession order against him. He did not reply but attended court on the

date indicated. At the hearing, he was told to put his defence in writing, and the case was adjourned to 6 November 2008.

35. The applicant lodged a written defence as requested. On 6 November 2008 the applicant did not attend court due to prior work commitments. A possession order was made against him. On 4 December 2008 execution of the possession order was stayed until the judge's reasons for making the order were delivered.

36. Subsequent events are unclear. It would seem that the applicant sought leave to appeal and that leave was granted on 27 January 2009. On 23 March 2009, it appears that the appeal was dismissed. The applicant alleges that he only received a copy of the transcript of the judgment in November 2009.

37. On 22 April 2009 the applicant alleges that the County Court made an eviction order. The applicant was apparently evicted on 13 May 2009.

38. By letter dated 8 June 2009, the court service advised the applicant that his application for permission to appeal and a stay of execution had not been considered by a judge because the applicant had provided insufficient papers. The letter noted the applicant's wish to proceed with his application and requested details as to how the change in circumstances, i.e. the repossession of the applicant's house, did not render his application academic. There is no evidence of any reply by the applicant.

39. In September 2009 the applicant alleges that he applied for an injunction to prevent the demolition of his former home. Documents submitted by him show that a claim was issued against an unspecified defendant on 29 September 2009. No further details have been provided.

40. On an unspecified date, and following suspected arson at the applicant's business premises, the applicant appears to have been arrested. It would seem he was subsequently arrested a second time following allegations of harassment made by his landlord. No further arrests were made nor were any charges brought in respect of the alleged arson and false allegations.

41. On 9 October 2009 the applicant was informed that his police record for the offence of harassment following his arrest in 2006 would be retained.

42. To date, his DNA data have not been destroyed.

B. Relevant domestic law and practice

1. Current law on DNA and biometric data retention in England and Wales

43. The relevant domestic law and practice regarding the collection and retention of fingerprints and samples are set out in detail in the Court's

judgment in *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, §§ 26 to 35, 4 December 2008.

44. The Police and Criminal Evidence Act 1984 (“PACE”) contains powers for the taking of fingerprints and samples and the retention of such fingerprints and samples and the records thereof. A set of guidelines for the retention of fingerprint and DNA data is contained in the Retention Guidelines for Nominal Records on the Police National Computer 2006 drawn up by the Association of Chief Police Officers in England and Wales (“ACPO”). The relevant Chief Police Officers have the discretion in exceptional circumstances to authorise the deletion of data.

2. *Protection of Freedoms Bill*

45. The Protection of Freedoms Bill was presented to Parliament on 11 February 2011. It includes provisions to amend the DNA and fingerprints retention scheme in England and Wales along the lines of the Scottish model for which, see § 38 of the above cited *S. and Marper* judgment. It is currently awaiting its report stage on the floor of the House of Commons.

3. *Supreme Court judgment of May 2011*

46. On 18 May 2011 the Supreme Court issued its ruling in the cases of *R (on the application of GC) v. The Commissioner of Police of the Metropolis* and *R (on the application of C) v. The Commissioner of Police of the Metropolis* ([2011] UKSC 21). The claimants in the cases sought to argue that following this Court’s decision in *S. and Marper*, cited above, the continued retention of their data was unlawful and that a declaration of incompatibility under the Human Rights Act 1998 should be made.

47. Lord Dyson, giving the leading judgment on the appropriate relief for the majority, found that the provisions of PACE were not incompatible with Article 8 of the Convention as they permitted a policy which was less far-reaching than the ACPO guidelines and could therefore be read to comply with the requirements of Article 8.

48. Lord Dyson noted that the Protection of Freedoms Bill included proposals to amend the scheme for retention of DNA data along the lines of the Scottish model, and that the intention of the Government was to bring the legislation into force later in 2011. He proceeded on the basis that this was likely to happen, although not certain to do so. He accordingly granted a declaration that the present ACPO guidelines were unlawful because, as clearly demonstrated by *S. and Marper*, they were incompatible with the Convention. However, since Parliament already had the matter under examination, he considered that it was neither just nor appropriate to make an order requiring a change to the legislative scheme within a specified period. Nor was it just or appropriate to make an order for the destruction of

data which it was possible it would be lawful to retain under the new scheme to be introduced by the Protection of Freedoms Bill. He concluded:

“49. In these circumstances, the only order that should be made is to grant a declaration that the present ACPO guidelines (as amended) are unlawful. If Parliament does not produce revised guidelines within a reasonable time, then the appellants will be able to seek judicial review of the continuing retention of their data under the unlawful ACPO guidelines and their claims will be likely to succeed.”

49. As regards photographs which were taken of GC when he was arrested, Lord Dyson noted that this issue received a “passing reference in the claim form and in paragraph 20 of the grounds” and that there had been no opportunity during the proceedings to hear evidence regarding the justification for the retention of photographs. He accepted that, in the absence of any evidence or any consideration of the matter by the Divisional Court, the Supreme Court should express no opinion on that part of the appeal but leave the matter to be determined if and when the point was properly raised in another case. As regards information about C held on the PNC, Lord Dyson noted that it was common ground that the retention of this information raised no separate issues from those raised by the retention of C’s DNA material and fingerprints.

C. Activities of the Committee of Ministers

50. The Committee of Ministers has responsibility for supervising the execution of the Court’s judgment in *S. and Marper*. The *S. and Marper* applicants’ fingerprints, DNA samples and profiles at issue in the case were destroyed following the Court’s judgment, although new data taken from one of the applicants following his arrest in connection with a subsequent offence are currently being retained. The cases remain before the Committee of Ministers pending the adoption of the necessary general measures to execute the Court’s judgment.

THE LAW

I. JOINDER

51. Given their similar factual and legal background, the Court decides that the eight applications should be joined pursuant to Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF THE CONVENTION IN RESPECT OF COLLECTION AND RETENTION OF DATA

52. The applicants complained about the collection and retention of their DNA and fingerprint data. Some of the applicants also complained about the retention of photographs and PNC records. They relied on Article 8 of the Convention which, in so far as relevant, provides as follows:

“1. Everyone has the right to respect for his private ... life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. ”

53. Some of the applicants also relied on Articles 3, 5, 6, 7, 10, 13, 14 and 17 of the Convention. However, the Court considers that the matter falls to be examined under Article 8 alone.

A. Admissibility

54. In light of the Court’s judgment in *S. and Marper*, it is clear that the applicants’ complaints under Article 8 of the Convention concerning the retention of their DNA and fingerprint data and PNC records raise complex issues of law and fact. It follows that this part of the applications is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

55. However, it appears from the judgment of the Supreme Court that the question of retention of photographs has not been properly argued before the domestic courts and would be a matter to be resolved by them in some future case where the point was correctly pleaded (see paragraph 49 above). The Court considers that in assessing any such complaint, the domestic courts would have regard to the relevant principles arising under Article 8 as set out in the Court’s case-law and it is therefore persuaded that the possibility of judicial review offers reasonable prospects of success to address complaints in this regard. It follows that the applicants who complained about retention of their photographs have failed to exhaust domestic remedies in respect of their complaints. The complaints are therefore rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

B. Merits

1. *The parties' submissions*

56. By letter dated 25 October 2010 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the applications. They requested the Court to strike out the applications in accordance with Article 37 of the Convention.

57. On 6 January 2011 the Government submitted a revised declaration. The declaration provided as follows:

“In the eight cases of Mr Goggins, Mr Jackson, Mr Scott, Mr Michael, Mr Coates, Mr Bennetts, Ms Castley-Turner and Mr Day, fingerprints, cellular samples and DNA profiles were taken from them by the police pursuant to powers under the Police and Criminal Evidence Act 1984 (“the 1984 Act”) following their arrest for certain offences. That data was retained by the police authorities pursuant to their powers under section 64 of the 1984 Act, although the individuals in question were not subsequently convicted of the offences for which they had been charged and the individuals in question have not previously been convicted of any offences of which the Government is aware.

The Government accept the conclusion of the Court in *S & Marper v United Kingdom* [GC], nos 30562/04 and 30566/04 (4th December 2008) at § 125. The Court concluded that the blanket and indiscriminate nature of those powers of retention of fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences as had been applied to the retention of the data of the applicants in that case failed to strike a fair balance between the competing public and private interests, and that an acceptable margin of appreciation had been overstepped, such that the retention that had occurred in accordance with those powers constituted a disproportionate interference with those applicants’ right to respect for private life and could not be regarded as necessary in a democratic society.”

58. As to the alleged violation of Article 8, the declaration noted:

“The data sample of Mr Day was found to consist of insufficient DNA material, so there is no data on the National DNA Database in Mr Day’s case. This has been confirmed to Mr Day in writing by Essex Police. The Government acknowledge that the previous retention of the data in the case of Mr Day, in accordance with the same blanket and indiscriminate application of those powers of retention referred to in the Court’s judgment in *S & Marper*, constituted a violation of Article 8.

The data of the seven other applicants referred to above continue to be held. The Government acknowledge that the continuing retention of this data, in accordance with the same blanket and indiscriminate application of those powers of retention identified in *S & Marper*, must also constitute a violation of Article 8.”

59. The declaration continued:

“The United Kingdom Government is in the process of implementing the decision of the Court in *S and Marper*, which will be done by introducing new legislation to ensure that the provisions governing the retention of such data are proportionate in light of the rights of the individuals under Article 8. The recently elected Coalition Government has committed to introducing new primary legislation for this purpose.

The new Government, in its Programme for Government published on 20 May 2010, states that it ‘will adopt the protections of the Scottish model for the DNA database’. Significantly, the Court in *S and Marper*, observed that the Scottish model was ‘notably consistent with the Committee of Ministers’ Recommendation R(91)1, which stresses the need for an approach which discriminates between different kinds of cases and for the application of strictly defined storage periods of data, even in more serious cases’ unlike arrangements in force in the rest of the UK.

As set out in the Queen’s Speech on 25 May 2010, the Government will introduce a Freedom Bill to parliament within the next few months and, subject to Parliamentary approval, it is hoped that the new legislation will receive Royal Assent in the autumn of 2011 and will come into force shortly after that. The Prime Minister has stated that the Freedom Bill will ‘restrict the scope of the DNA database and ... give added protection to innocent people whose samples have been stored’. Any continued retention of the data of the seven individuals in question will be subject to the requirements of the new legislation and the measures it will contain to ensure that the data is only retained for such period as is considered by the UK Parliament to be proportionate in all the circumstances.”

60. The declaration concluded:

“The Government therefore acknowledge and regret the violation of Article 8 that has occurred in respect of the eight individuals identified above. By application of the principles expressed by the Court in *S and Marper*, the Government consider that the acknowledgement and declaration of this violation, coupled with measures that the Government is taking to ensure that subsequent retention will be subject to the requirements of the new legislation once enacted, constitute just satisfaction for the applicants listed above.

In the circumstances, the Government declare that they hereby offer to pay *ex gratia* in respect of legal expenses and VAT:

(i) the sum of £2,000 (two thousand pounds sterling) in connection with Mr Jackson’s case;

(ii) the sum of £800 (eight hundred pounds sterling) in connection with Mr Scott’s case; and

(iii) the sum of £75 (seventy five pounds sterling) in connection with each of the cases of Mr Goggins, Mr Michael, Mr Coates, Mr Bennetts, Ms Castley-Turner and Mr Day.”

61. In letters of 12 November 2010 and 4 February 2011 Mr Goggins indicated that he was opposed to the striking out of his case. He referred to the illegal retention of his DNA data for over six years and insisted that they should now be deleted. He requested the quashing of his conviction, an undertaking from the Government that he would no longer face attempts at intimidation, full disclosure of data relating to him which were held on the Police National Computer and deletion of the DNA samples of innocent people in a transparent and independent process. He also requested compensation and considered the GBP 75 offered in his case to be unacceptably low.

62. Mr Day submitted no comments on the Government's unilateral declaration.

63. In letters of 19 November 2010, 3 February 2011 and 9 May 2011, solicitors for Mr Jackson advised the Court that he did not accept the terms of the Government's unilateral declaration. They requested that his fingerprints, DNA samples, photographs and associated PNC records be destroyed immediately given that more than six years had passed since they were collected. They pointed out that the introduction of legislation was an uncertain procedure and, in the present case, it was not clear whether Mr Jackson's data would be destroyed once new legislation was in force. In particular, the new legislation would not apply to photographs and PNC data. They further considered that the GBP 2,000 offered in respect of costs was unacceptable given the fees incurred by solicitors and barristers in seeking to have the matter resolved and in drafting the application to this Court. They emphasised in particular that Mr Jackson's application was submitted to the Court prior to its decision in *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, 4 December 2008. They requested that the full costs in the sum of GBP 10,585.63 be awarded and provided documentation in support of this claim.

64. In letters of 5 November 2010 and 26 January 2011 Mr Scott expressed the view that the admission by the Government of a violation of Article 8 should lead to the immediate destruction of his data. The passage of new legislation was uncertain and could be delayed. He pointed out that even if the new legislation was enacted in autumn 2011 as planned, by then his data would have been held for over five years.

65. In a letter of 3 November 2010 Mr Michael objected to the striking out of his case on the basis of the unilateral declaration. He considered the declaration to be a mere recitation of the Court's judgment in *S. and Marper*, cited above, and further pointed out that it did not address his complaint regarding the unlawfulness of his arrest. He requested deletion of the entire police record.

66. In a letter of 20 January 2011 Ms Castley-Turner objected to the low level of costs awarded and complained generally about the conduct of the police and the inadequate protection by the Government of human rights.

67. In a letter of 10 November 2010 Mr Coates expressed concern about the unilateral declaration. He wanted a guarantee that his DNA samples and related material would be removed from the database.

68. In a letter received by the Court on 23 November 2010 and a letter of 24 January 2011 Mr Bennetts expressed the view that he was entitled to significant compensation for the unlawful retention of his DNA data. He also reiterated his other complaints under the Convention. He considered the costs offered to be inadequate.

2. *The Court's assessment*

69. The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

“for any other reason established by the Court, it is no longer justified to continue the examination of the application”.

70. It also recalls that in certain circumstances, it may strike out an application or part thereof under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

71. To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law (see *Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

72. The Court recalls that it has already examined in detail the current legislation in England and Wales which governs collection and retention of DNA and fingerprint data, as well as the application of data retention powers in practice, in the case of *S. and Marper*, cited above. In that case, it found that the blanket and indiscriminate nature of the powers of retention of the fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences, as applied in *S. and Marper*, failed to strike a fair balance between the competing public and private interests and that the respondent State had overstepped any acceptable margin of appreciation. The retention therefore constituted a disproportionate interference with the applicants' right to respect for private life and could not be regarded as necessary in a democratic society, resulting in a violation of Article 8 (see *S. and Marper*, cited above, § 125).

73. The Court observes that the Government have recently introduced a bill to Parliament which would amend the existing provisions on DNA and fingerprint data retention along the lines of the Scottish model (see paragraph 45 above). While the Grand Chamber in *S. and Marper* did not set out the precise legislative changes required to secure effective respect for private life, it did refer to the approach adopted in Scotland, which it considered particularly significant, and commented on the consistency of that approach with the Committee of Ministers' Recommendation R(92)1, which stresses the need for an approach which discriminates between different kinds of cases and for the application of strictly defined storage periods for data, even in more serious cases (see *S. and Marper*, cited above, §§ 109-110). Thus, while it will be for the Court to decide on the compatibility of the legislation proposed in the

Protection of Freedoms Bill with Article 8 in any future case brought before it concerning retention of data, the Court is of the view that the recent steps taken by the Government are clearly intended to achieve compliance with the requirements of the Convention. In this regard, the Court recalls that in its recent judgment in *Greens and M.T. v. the United Kingdom*, nos. 60041/08 and 60054/08, § 115 and 121 and point 6(a) of the operative provisions, ECHR 2010-... (extracts), regarding prisoners' voting rights, it indicated its intention to strike out *de plano* similar follow-up cases provided that the Government introduced legislative proposals intended to achieve compliance with the Court's previous judgment in *Hirst v. the United Kingdom (no. 2)* ([GC], no. 74025/01, ECHR 2005-IX) within the stipulated deadline.

74. The Court further notes that the Supreme Court has recently made a declaration that the ACPO guidelines prohibiting deletion of DNA and fingerprint data in the absence of exceptional circumstances are unlawful (see paragraph 48 above). Of particular significance in the present cases are Lord Dyson's comments to the effect that a failure by Parliament to introduce a revised scheme within a reasonable time would enable the claimants to seek judicial review of the continued retention of their data under the unlawful ACPO guidelines. It is noteworthy that Lord Dyson considered that their claims would be likely to succeed. It appears from Lord Dyson's comments that if the Protection of Freedoms Bill is not enacted within a reasonable time, the applicants in the present cases will similarly have a further opportunity to seek redress at domestic level to secure the deletion of their data.

75. The Court accepts that the new legislation does not appear to cover PNC data. However, it observes that in the case before the Supreme Court it was common ground that no separate issues arose from those raised by the retention of DNA material and fingerprints (see paragraph 49 above). In the present cases, none of the applicants who complained about the refusal to delete their PNC records have submitted detailed pleadings regarding the retention of the records. Their submissions focused on the retention of DNA and fingerprint data following the domestic judgment of the House of Lords in *S. and Marper* and, subsequently, the judgment of this Court in that case. It has accordingly not been demonstrated that any separate issues arise in respect of the failure to delete the applicants' PNC records such as to justify the continued examination of their cases.

76. Finally, the Court is satisfied that the total amounts offered to the applicants by the Government in respect of costs and expenses are adequate, in each case, to cover costs and expenses actually and necessarily incurred and reasonable as to quantum.

77. Having regard to its judgment in *S. and Marper*, to the nature of the admissions contained in the Government's declaration, to the recent judgment of the Supreme Court and to the introduction to Parliament of

amending legislation aimed at securing compliance with Article 8 of the Convention, the Court considers that it is no longer justified to continue the examination of the applications (Article 37 § 1(c)). Moreover, in light of the above considerations, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the applications (Article 37 § 1 *in fine*).

78. In view of the above, it is appropriate to strike the cases out of the list in so far as they concern complaints related to the collection and retention of DNA samples, fingerprints and associated data and the retention of PNC records, without prejudice to the Court's power to decide, pursuant to Article 37 § 2, to restore the applications to the list should the respondent State fail to enact the draft legislation currently before Parliament.

79. In accordance with Rule 43 § 3 of the Rules of Court, the present judgment will be forwarded to the Committee of Ministers. In the event that the Government fail to pay the sums set out in the unilateral declaration in respect of the applicants' costs and expenses within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, simple interest will be payable at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

III. ALLEGED VIOLATIONS OF OTHER ARTICLES OF THE CONVENTION

80. Mr Scott complained under Article 6 that his arrest was unlawful. Mr Michael complained under Article 5 §§ 1, 2 and 4, Article 6 and Article 13 that his arrest was unlawful and that no effective remedy was available. Mr Bennetts complained under Articles 3, 6, 8 and 14 and Article 1 of Protocol No. 1 about his eviction and the failure of the police to bring charges in relation to an alleged incident of arson and to take further action in respect of false allegations made against him.

81. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols arising from these complaints.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;
2. *Declares* the complaints regarding the collection or retention of DNA samples, fingerprints or associated data and the retention of PNC records admissible and the remainder of the applications inadmissible;

3. *Takes note* of the terms of the Government's declaration and of the modalities for ensuring compliance with the undertakings referred to therein (Rule 43 § 3 of the Rules of Court and paragraph 79 of the judgment);
4. *Decides* to strike the applications out of its list of cases in so far as they relate to the complaints declared admissible under point 2, in accordance with Article 37 § 1 (c) of the Convention.

Done in English, and notified in writing on 19 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President