

***S. and Marper v. the United Kingdom [GC] - 30562/04 and 30566/04***

Judgment 4.12.2008 [GC]

**Article 8**

**Article 8-1**

**Respect for private life**

Retention of fingerprints and DNA information in cases where defendant in criminal proceedings is acquitted or discharged: *violation*

*Facts:* Under section 64 of the Police and Criminal Evidence Act 1984 (PACE), fingerprints and DNA samples taken from a person suspected of a criminal offence may be retained without limit of time, even if the subsequent criminal proceedings end in that person's acquittal or discharge. In the case before the Court, both applicants had been charged with criminal offences but not convicted. The first applicant, an eleven-year-old minor, had been acquitted of attempted robbery while in a separate case proceedings against the second applicant for the alleged harassment of his partner had been formally discontinued after the couple reconciled. In view of the fact that they had not been convicted, the applicants asked for their fingerprints and cellular samples to be destroyed, but in both cases the police refused. Their applications for judicial review of that refusal were rejected in a decision that was upheld on appeal. Giving the lead judgment in the House of Lords, Lord Steyn noted that, even assuming there to have been an interference with the applicants' private life, it was very modest and was proportionate to the aim pursued, as the materials were only to be kept for limited purposes and were of no use without a comparator from the crime scene while an expanded database conferred enormous advantages in the fight against serious crime.

*Law:* (a) *Interference:* Given the nature and the amount of personal information contained in cellular samples, including a unique genetic code of great relevance to both the individual concerned and his or her relatives, and the capacity of DNA profiles to provide a means of identifying genetic relationships between individuals or of drawing inferences about their ethnic origin, the retention of both cellular samples and DNA profiles in itself amounted to an interference with the applicants' right to respect for their private lives. While the retention of fingerprints had less of an impact on private life than the retention of cellular samples and DNA profiles, the unique information fingerprints contained about the individual concerned and their retention without his or her consent could not be regarded as neutral or insignificant and also constituted an interference with the right to respect for private life.

(b) *In accordance with law:* Although, in view of its conclusions as to whether the interference was necessary in a democratic society, the Court did not find it necessary to decide whether the wording of section 64 of PACE met the "quality of law" requirements, it nevertheless noted that that provision was far from precise as to the conditions attached to and arrangements for the storing and use

of the information contained in the samples and profiles and that it was essential to have clear, detailed rules governing the scope and application of such measures, as well as minimum safeguards.

(c) *Legitimate aim*: It was accepted that the retention of the information pursued the legitimate purpose of the prevention of crime by assisting in the identification of future offenders.

(d) *Necessary in a democratic society*: As to the scope of the Court's examination, the question before it was not whether the retention of fingerprints, cellular samples and DNA profiles could in general be regarded as justified under the Convention but whether their retention in the cases of the applicants, as persons who had been suspected, but not convicted, of certain criminal offences, was so justified. The core principles of the relevant instruments of the Council of Europe and the law and practice of the other Contracting States required retention of data to be proportionate in relation to the purpose of collection and limited in time, particularly in the police sector. The protection afforded by Article 8 would be unacceptably weakened if the use of modern scientific techniques in the criminal-justice system were allowed at any cost and without carefully balancing their potential benefits against important private-life interests. Any State claiming a pioneer role in the development of new technologies bore special responsibility for striking the right balance. In that respect, the blanket and indiscriminate nature of the power of retention in England and Wales was particularly striking, since it allowed data to be retained irrespective of the nature or gravity of the offence or of the age of the suspect. Likewise, retention was not limited in time and there existed only limited possibilities for an acquitted individual to have the data removed from the nationwide database or to have the materials destroyed. Nor was there any provision for independent review of the justification for the retention according to defined criteria. The risk of stigmatisation was of particular concern, with persons who had not been convicted of any offence and were entitled to the presumption of innocence finding themselves treated in the same way as convicted persons. Retention could be especially harmful in the case of minors such as the first applicant, given their special situation and the importance of their development and integration in society. In conclusion, the blanket and indiscriminate nature of the powers of retention, as applied in the applicants' case, had failed to strike a fair balance between the competing public and private interests, and the respondent State had overstepped any acceptable margin of appreciation in that regard. Accordingly, the retention constituted a disproportionate interference with the applicants' 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. Respondent State to implement, under Committee of Ministers' supervision, appropriate general and/or individual measures.