

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

FOURTH SECTION

DECISION

Application no. 47932/09
Martin FLUSKEY
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 10 July 2012 as a Chamber composed of:

Lech Garlicki, *President,*
Nicolas Bratza,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 28 August 2009,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Martin Fluskey, is an Irish national, who was born in 1963 and lives in Dublin. He was represented before the Court by Mr M. Finucane, a lawyer practising in Dublin.



A. The circumstances of the case

2. The applicant was convicted in 1989 of fraudulently using a licence. He received a fine.

3. On 22 August 2005 the applicant was arrested and detained at Stoke Newington Police Station on suspicion of harassment contrary to section 5 of the Public Order Act 1986 following an incident involving his former wife. Photographs, fingerprints and a DNA sample were taken. The applicant received a caution in respect of the incident and was released on the same day.

4. In February 2006 the applicant complained to the Independent Police Complaints Commission about the arrest. His complaint was investigated and on 13 July 2006 Detective Inspector Smith confirmed that the arrest was lawful.

5. In or around September 2006 the applicant's solicitors wrote back to Detective Inspector Smith questioning the legality of the caution and requesting that it be rescinded.

6. On 8 January 2007 the applicant was advised that the caution would be removed from his record.

7. On or around 14 February 2007 the applicant's solicitors requested that the police use their discretion to delete the applicant's DNA, fingerprints and photographs. On 23 March 2007, he was advised that his request to have the DNA data destroyed had been refused.

8. On 24 June 2008 a further request was received by the police from the applicant for deletion of his DNA, fingerprints and photographs. The request was treated as having been made under the procedure allowing deletion of such data in exceptional circumstances. Receipt of the request was acknowledged on 27 June 2008.

9. On 29 April 2009, following an examination of the facts and circumstances relating to the applicant's arrest, the police decided to delete the applicant's DNA, fingerprints and photographs.

10. On 5 May 2009, the applicant was informed that his case was considered to be exceptional and that his DNA sample and other records would be destroyed.

11. On 20 May 2009 the record of the applicant's DNA profile was deleted.

12. On 29 May 2009 the applicant's DNA sample and profile were deleted.

13. On 19 June 2009 the electronic record of the applicant's fingerprints was deleted.

14. On 22 June 2009 the offence recorded in the Police National Computer in respect of the applicant was deleted.

15. On 8 July 2009 the hard copy record of the applicant's fingerprints and his Police National Computer record were deleted.

16. On the same day the applicant was advised that all his records and samples had been deleted.

B. Relevant domestic law and practice

17. For details of the relevant domestic law see *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, ECHR 2008.

COMPLAINT

The applicant complained about the retention of his DNA, fingerprint and photograph data and the limited possibilities for deletion of such data.

THE LAW

18. The Court must first determine whether the application is admissible under Article 34 of the Convention. Article 34 provides:

> ""The Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention ...."

19. The Government argued that the data were taken lawfully and have subsequently been destroyed in full. In the circumstances, they considered that the applicant lacked victim status to complain of a violation of his rights.

20. The applicant maintained that he remained a victim of a violation. He argued that the policy for destruction of data in undefined "exceptional circumstances", which were not amenable to public scrutiny or assessment by a public body, did not comply with his Article 8 rights. He argued that he was a victim of a violation for almost four years.

21. The Court reiterates that in order to claim to be a victim of a violation, a person must be directly affected by the impugned measure. The Convention does not, therefore, envisage the bringing of an *actio popularis* for the interpretation of the rights set out therein or permit individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention (see, for example, *Burden v. the United Kingdom* [GC], no. 13378/05, § 33, ECHR 2008).

22. In the present case, the Court observes that the applicant's data were taken on 22 August 2005. Upon the deletion of his caution in January 2007, the applicant's request for deletion of his DNA and other data was refused. However, he repeated this request in June 2008, and it was treated as a request for deletion in exceptional circumstances pursuant to the policy followed at the time. The applicant was subsequently advised, on 5 May 2009, that his data would be deleted. In the course of May, June and July 2009 all DNA, fingerprint and photographic data relating to the applicant were deleted. He was advised of their complete deletion on 8 July 2009. However, the applicant made no complaint to this Court about his DNA data until 6 October 2009, the date of his application form.

23. In the light of the above, the Court finds that by the time the applicant made a complaint to this Court he could no longer claim to be a victim within the meaning of Article 34 of the Convention of a violation of those rights.

For these reasons, the Court unanimously

Declares the application inadmissible.

Lawrence Early
Registrar

Lech Garlicki
President