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

SECOND SECTION

DECISION

Application no. 15103/20
J.T.
against Slovenia

The European Court of Human Rights (Second Section), sitting on 12 October 2021 as a Committee composed of:

Aleš Pejchal, *President,*
Branko Lubarda,
Pauliine Koskelo, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 2 March 2020,

Having regard to the decision to grant anonymity,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, J. T., is a Slovenian national. The President granted the applicant's request for his identity not to be disclosed to the public (Rule 47 § 4). He was represented before the Court by Mr S. Vesenjak, a lawyer practising in Maribor.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. On 9 June 2010 the applicant committed a certain traffic offence. As a consequence, his driving licence was terminated. It is unclear from the applicant's submissions whether the termination of the driving licence was a result of this sole offence or its accumulation with other traffic offences committed beforehand.

4. On 12 August 2015 he made an oral request to the Maribor Administrative Unit to obtain information from the official files relating to his driving licence. The officer gave him a printout, presumably from the

Driving Licences Register (*evidenca o vozniških dovoljenjih,* "the Register"), containing the following information:

- the date of committing a minor offence (see paragraph 3 above);
- the name of the court which decided to terminate the driving licence and case number of that decision;
- the legal basis of the decision (section 22 of the Minor Offences Act, see paragraph 10 below);
- the date when the decision on the termination of the driving license became final (14 September 2010);
- information that the termination of his driving licence concerned all categories of vehicles, and that the aforementioned minor offence was committed by using a vehicle of category B;
- date of the beginning, end and the duration of the suspension period (14 October 2010, 14 April 2011, six months), during which the person concerned is prevented from applying for a new driving licence;
- the status of driving license (invalid).

5. On 18 August 2015 the applicant requested the Ministry of infrastructure, competent for the Register, to erase all the data related to him except for his driving licence being invalid. He argued that any person had a right to have their criminal records and minor offence records erased and that all minor offence data should be deleted after three years or should at least not cause any legal consequences. On 16 September 2015 the Ministry dismissed the request. It noted that the legal basis for the Register was the Drivers Act, which stipulated in section 64 (1) (see paragraph 13 below) that the Register included, *inter alia*, entries on sanctions and termination of driving licence. The latter was limited to the information necessary to determine whether the conditions for (re)obtaining the driving licence were met: the procedure for obtaining a new driving licence was, pursuant to section 58 of the Drivers Act (see paragraph 12 below), linked to the reason for which the driving licence had been terminated. Anyone whose driving licence was terminated pursuant to the Minor Offences Act, could obtain a new driving licence after six months and after undergoing an additional health control test and participating in the additional training for safe driving.

6. On 29 October 2015 the applicant lodged an action before the Administrative Court alleging, *inter alia*, that by retaining the data in question and preventing him to replace his foreign driving licence with a domestic one, the national authorities had violated his rights under Article 8 of the Convention. He maintained that all data on criminal and minor offence convictions should be erased after certain time and thus should have no legal effects. On 12 April 2017 the Administrative Court dismissed the action noting that the Drivers Act pursued the aim of increasing traffic safety and lowering the number of traffic accidents with most serious consequences, which was to be achieved via, among other things, a

compulsory participation in additional training for safe driving or rehabilitation programme (in case of driving under the influence of alcohol or drugs) of those whose driving licence had been terminated. The data retained in the Register was important to establish the validity of a driving licence and conditions for re-obtaining it. The duration of retention was clearly determined by the purpose of retention. The applicant could obtain a new driving licence by complying with those conditions.

7. On 25 May 2017 the applicant appealed on points of law to the Supreme Court. Relying on Article 8 of the Convention, he alleged that the indefinite or permanent data retention violated his privacy rights and that after certain time the data should not have any effect. He also argued that the Administrative Court had not taken into consideration the relevant case law of the Constitutional Court and the Court. On 8 November 2017, the Supreme Court dismissed his appeal reiterating that the existence of legal basis for the collecting of data and its retention in the Register (section 64 (1) of the Drivers Act, cited in paragraph 13 below) was not questionable. The access to the Register and its use were limited to specific competent public authorities and municipal wardens in connection with their work only. The Register was therefore not public and could not be accessed by unauthorised persons. The Supreme Court emphasised that the fact that the applicant had been driving under the influence of alcohol was not retrievable from the Register as it contained no information on the kind of minor offence the applicant had committed. In this respect, it only contained the information on sanction and the legal basis for it (that is section 22 of the Minor Offences Act, see paragraph 10 below). It indicated the fact that the prescribed point threshold had been reached. This is precisely what, in view of the Supreme Court, differentiated the Register from the minor offences' registers, which contained legal qualifications of committed minor offences. Information on the case number of the decision concerning the termination of the driving licence, its date of issue and finality referred to in the Register did not reveal whether the minor offence related to driving under the influence of alcohol had been committed. The Supreme Court emphasized that the decision indicated in the Register was not the decision concerning the minor offence itself. The Register contained no reference to final judgments and minor offence decisions, which were the basis for the application of penalty points. The Supreme Court further held that the collection and retention of data in connection with the termination of one's driving licence pursued a legitimate aim of increasing road safety. It was necessary as it allowed officials to examine the conditions for obtaining a new driving licence and proportionate to the seriousness of consequences for the applicant's privacy. The permanent retention was not envisaged by the Drivers Act. The duration was limited with the purpose of retention, in accordance with section 21 of the Personal Data Protection Act (see paragraph 14 below)– that is until the person subject to the measure

obtained a new driving licence. The Supreme Court found that the Constitution and the Convention did not require that the data from the Register would be erased after a certain time as it was the case with respect to the minor offences registers pursuant to sections 203, 204 and 205 of the Minor Offences Act (see paragraph 10 below).

8. On 22 January 2018 the applicant lodged a constitutional complaint before the Constitutional Court complaining that his privacy rights had been violated because of the retention of his data in the Register. He also lodged a petition for the review of constitutionality of the legislation allowing for the retention of the data in question. On 9 September 2019 the Constitutional Court decided not to accept the complaint and petition for consideration.

9. It transpires from the applicant's submissions that because of the termination of his Slovenian driving licence he could also not drive in Slovenia with foreign driving licences. However, the applicant nevertheless used a foreign driving licence and was sanctioned by the police for doing so. He also submits that his currently valid foreign driving licence was soon to expire and that because he was unable to travel to the United States to renew it, he would soon be without any valid driving licence.

B. Relevant domestic law

10. The Minor Offences Act (Official Gazette no. 7/2003 with further amendments) entered into force on 7 February 2003 and began to be implemented in January 2005. At the time the offense in question took place and the court's decision on the termination of the applicant's driving license became final, the relevant provisions of section 22 (1) and (3) of the Minor offences Act stipulated that penalty points were to be prescribed in the amount of one to eighteen points for certain minor offences. If a driver achieved or exceeded eighteen penalty points within three years, the court should terminate the driving licence for all categories of motor vehicles for which he or she held a licence. Sections 203, 204 and 205 of the Minor Offences Act provided that the registers of final decisions and judgments on committed minor offences should be kept and the data in principle erased after three years from when the respective decisions and judgments became final.

11. The Road Traffic Safety Act (Official Gazette no. 83/2004) at the relevant time provided that several minor offences, including offences of driving over a speed-limit or driving under the influence of alcohol, were punishable by way of applying penalty points. For instance, the drivers of motor vehicles who exceeded the speed-limit for more than 30 km/h in certain areas were to be applied the maximum (eighteen) penalty points as well as the fine (section 32 (8)).

12. The Drivers Act (Official Gazette no. 109/2010 with further amendments) entered into force on 1 April 2011 and began to be implemented in July 2011. Section 26 regulated access and purpose of collecting personal data under this law. The relevant provisions of section 58 (1), (2) and (3) stipulated that a person whose driving license was terminated could obtain a new driving licence after six months provided that he or she underwent a control medical examination, attended a program of additional training for safe driving and passed the driving test. If the person had been sentenced to penalty points or a security measure of withdrawal of a driving license due to driving under the influence of alcohol, illicit drugs, psychoactive medicines or other psychoactive substances, he or she must attend the rehabilitation program instead of a program of additional training for safe driving.

13. Section 64 (1) of the Drivers Act stipulated that the Register included, *inter alia*, the following data: personal name, date and place of birth, serial number of the driving license, validity of the driving license, notes on penalties or sanctions and the indication whether the driving license had been withdrawn due to medical incapacity.

14. Personal Data Protection Act (Official Gazette no. 86/04 with further amendments) entered into force on 1 January 2005. Section 21 (1) stipulated that personal data could only be stored for as long as it was necessary to achieve the purpose for which they were collected.

COMPLAINT

15. The applicant complains under Article 8 of the Convention that the allegedly indefinite retention of his data in the Register of Driving Licences and the lack of effective safeguards, such as possibility to challenge such retention, amounted to a violation of that provision.

16. In his opinion, the data in the register implied that he had been driving under the influence of alcohol. It should thus be erased and should not lead to any legal consequence, especially not indefinitely. He submits that the data in question should be erased after three or four years because even severe crimes are erased from the records after a certain time. The applicant also complains that the retention of his data was not in accordance with the law.

THE LAW

I. COMPLAINT UNDER ARTICLE 8 CONCERNING DATA RETENTION

17. The applicant complains of a violation of Article 8 which reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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."

18. The Court notes as a preliminary point that the applicant does not clearly explain whether the offence which led to the termination of his driving licence (see paragraph 3 above) related to him driving under the influence of alcohol. He does, however, argue that the data contained in the Register allowed for such conclusion (see paragraph 16 above). In this connection, the Court finds on the basis of the material submitted by the applicant that, contrary to his suggestion, the nature of the traffic offence he committed is not identifiable from the Register. The latter contains a reference to the decision by which the driving licence was terminated because the prescribed point threshold had been reached and not the decision concerning his conviction for one or more minor offences. Furthermore, section 22 of the Minor Offences Act, which is referred to in the Register, provided the basis for the application of penalty points (see paragraph 10 above) and also made no reference to driving under the influence of alcohol or drugs. Section 22 (3) stipulated that the driving licence was to be terminated if the driver collected eighteen or more penalty points in the period of three years. The prescribed point threshold could be reached at once by committing one minor offence of a more serious nature or by committing many less serious minor offences in the period of three years (see paragraph 10 above). The Court observes that the penalty points could be prescribed for various kinds of traffic offences (see paragraph 11 above). Consequently, as explained in the Supreme Court's judgment (see paragraph 7 above), the termination of a driving licence did not in itself imply that the person affected had been sanctioned for driving under the influence of alcohol.

19. In view of the above, it cannot be said that the Register contains information to the effect that the applicant was convicted for driving under the influence of alcohol. It, however, contains information that his driving licence was terminated as a result of an unspecified minor offence or possibly several minor offences.

20. Having established that, the Court will proceed on the assumption that the retention of the data concerning the termination of a driving licence because the prescribed point threshold had been reached amounted to the interference with the right to respect for private life under Article 8 of the Convention (see, *mutatis mutandis*, *Benedik v. Slovenia*, no. 62357/14, § 102, 24 April 2018). The question that remains to be examined is whether

the retention of this data complied with the requirements of Article 8 in the present case.

21. The Court find no reasons to doubt that the Drivers Act contained a legal basis for the retention of the data in question (see paragraphs 7 and 13 above). As regards the procedural aspects of the protection under Article 8 (see *Ciubotaru v. Moldova*, no. 27138/04, § 51, 27 April 2010), the Court notes that the applicant argued in the domestic proceedings that, as a matter of principle, the data should have not been stored after a certain period of time. The legal avenues which he pursued resulted in the thoroughly reasoned decisions on the merits, including the detailed reasoning by the Supreme Court. It could not therefore be said that the applicant has been unable to effectively challenge the interference in question.

22. The Court further observes that the retention of the data in question had a legitimate aim, namely increasing road safety and lowering the number of traffic accidents, which was to be achieved via a compulsory participation in additional trainings or programmes (see paragraphs 6 and 7 above). This, in the view of the Court, serves the legitimate aims of protection of health, rights and freedoms of others in accordance with Article 8 § 2 of the Convention.

23. As regards the proportionality of the interference with the applicant's right under Article 8, it should be noted that where the independent and impartial domestic courts have carefully examined the facts, applying the relevant human rights standards consistently with the Convention and its case-law, and adequately balanced the applicant's personal interests against the more general public interest in the case, it is not for the Court to substitute its own assessment of the merits for that of the competent national authorities, unless there are shown to be compelling reasons for doing so (see *McDonald v. the United Kingdom*, no. 4241/12, § 57, 20 May 2014).

24. In the present case, the proportionality of the measure was carefully scrutinised by the domestic courts, including the Supreme Court. They found that the Register is neither public nor can it be considered to contain information regarding the committed minor offences. Only authorized persons have access to it for the purposes of their legally prescribed tasks, such as determining the conditions for obtaining a driving licence (see paragraphs 6 and 7 above; also see *Peruzzo and Martens v. Germany* (dec.), no. 7841/08 and 57900/12, § 47, 4 June 2013; *Gardel v. France* (dec.), no. 16428/05, § 70, 17 December 2009; and, by contrast, *M.M. v. the United Kingdom*, no. 24029/07, 13 November 2012, which concerns the disclosure of data to the employer). The domestic courts further found that the duration of retention of data was limited in accordance with its purpose pursuant to section 21 of the Personal Data Protection Act, that is until the person reobtained a driving licence.

25. The Court observes that the applicant has not alleged in the domestic proceeding, or before the Court, that the data retained in the Register was incorrect or that for some specific reasons relating to his particular circumstances it no longer served the purpose it was supposed to serve (see paragraph 22 above). In fact, as it transpires from his submissions he would want to maintain his driving licence and continue to drive (see paragraph 9 above). His suggestion that the data in the Register should be deleted after three or four years (see paragraph 16 above) would essentially imply that after that period he (like other drivers who committed serious or repeated driving offences) would no longer need to comply with the additional conditions for (re)obtaining a driving licence. However, such limited duration of applicability of the additional conditions in question was - for the sake of traffic safety - not envisaged by the legislator and found to be compatible with the applicant's rights by the domestic courts, who were best placed to assess this question.

26. Having due regard to the reasons adduced by the domestic courts, to the nature of the data contained in the Register (see paragraph 18 above) and the restricted access to such data as well as the purpose for which it was retained (see paragraphs 22 and 24 above), the Court finds the applicant's arguments (see paragraphs 15 and 16 above) unpersuasive. It finds that the retention of the data in question has not failed to strike a fair balance between the conflicting interests.

27. These considerations are sufficient for the Court to conclude that the above complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. THE REMAINING COMPLAINT

28. The applicant also complains about being unable to obtain a new driving licence in Slovenia or convert his foreign driving licence into a Slovenian one without additional restrictions. In his view, he should be able to do that after a certain period of time and after his minor offence is no longer recorded in the minor offences register. The Court examined this complaint and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, it either does not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or does not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

29. It follows that this part of application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 18 November 2021.

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Hasan Bakırcı
Deputy Registrar

Aleš Pejchal
President