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

FIFTH SECTION

DECISION

This version was rectified on 29 August 2022 under Rule 81 of the Rules of Court.

Application no. 36684/21
George WAKILEH
against Norway

The European Court of Human Rights (Fifth Section), sitting on 16 June 2022 as a Committee composed of:

Ganna Yudkivska, *President,*
Ivana Jelić,
Arnfinn Bårdsen, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 36684/21) against Norway lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 5 July 2021 by an American national, Mr George Wakileh, who was born in 1963 and lives in Sandnes ("the applicant");

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns complaints lodged under Articles 6, 8 and 13 of the Convention relating to the registration of the applicant's DNA profile.

2. The applicant was convicted of obstruction of justice, having retaliated judges, and was sentenced to twenty-one days' imprisonment in January 2018. After the conviction had become final, the police decided to take a DNA sample for registration in the identity registry. The applicant complained to the Director of Public Prosecutions, who upheld the decision on 7 December 2018. Since the applicant refused to comply, a sample was obtained by use of force on 3 October 2020. The applicant instituted proceedings against the Government, arguing, *inter alia*, that there had been

a violation of Article 8 of the Convention. On 1 February 2021 the Oslo City Court found in favour of the Government, concluding that the decision of the Director of Public Prosecutions was valid. On 31 May 2021 the Borgarting High Court gave judgment, in which it dismissed the applicant's appeal against the City Court's judgment. On 30 June 2021 the Supreme Court refused the applicant leave to appeal against the High Court's judgment.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

3. The Court notes that it has examined systems of DNA registration following criminal convictions in a number of judgments, including *Trajkovski and Chipovski v. North Macedonia* (nos. 53205/13 and 63320/13, 13 February 2020), *Gaughran v. the United Kingdom* (no. 45245/15, 13 February 2020) and *Aycaguer v. France* (no. 8806/12, 22 June 2017).

4. In the instant case, the Court observes that the applicant had access to a review procedure, and that the final examination on the merits of the compatibility of the retention of the applicant's DNA profile with Article 8 of the Convention was carried out by the Borgarting High Court. That court found that the retention had entailed an interference with the applicant's right to respect for his private life, that the interference had had an adequate legal basis in the Police Databases Act, and that it had pursued the legitimate aim of "prevention of disorder or crime" in accordance with Article 8 of the Convention. The Court does not consider that the applicant has made any submissions in his application to the Court which would require it to examine those conclusions more closely.

5. As to whether the interference was "necessary in a democratic society" within the meaning of the second paragraph of Article 8 of the Convention, the Court notes that the Borgarting High Court carried out a detailed examination of that issue, having regard to how Article 8 had been interpreted and applied by the Court and by the Norwegian Supreme Court.

6. In particular, in that context the Borgarting High Court took into account the fact that the Supreme Court, in a judgment of 9 December 2020, had taken note that on 17 January 2019 the Director of Public Prosecutions had, on the basis of a prior judgment of the Supreme Court, instructed the National Criminal Investigation Service to observe the case-law of the Supreme Court and the Court when applying the provision of the Police Register Regulations concerning the deletion of DNA profiles. Under the Regulations, the DNA profile was to be retained in the database for up to five years after the death of the data subject, unless "continued retention ... [was] clearly no longer expedient". This was followed up by the Director of Public Prosecutions in a decision of 28 September 2020 allowing a complaint against retention, on the basis of an overall assessment of the time that had elapsed

between the conviction and the retention, the nature and seriousness of the offence, and the fact that the convicted person had not subsequently committed any other offences.

7. The Borgarting High Court noted that the practice in respect of deleting DNA profiles would also apply to the applicant's case.

8. Furthermore, the Borgarting High Court attached importance to the need to combat crime. The applicant had been convicted of obstruction of justice, which was not a lesser offence than that at issue in the above-mentioned judgment of the Supreme Court of 9 December 2020, which had concerned attempted driving while under the influence of alcohol. Moreover, the Borgarting High Court stated that establishing identities by way of DNA information would be relevant to offences that concerned the obstruction of justice.

9. The Borgarting High Court distinguished the case before it from that of *Gaughran* (cited above), as the latter had concerned an offence which in the circumstances had been punishable only by a fine. Relying on statements by the Supreme Court in its judgment of 9 December 2020, the Borgarting High Court considered that in *Gaughran* the Court had found no violation on the sole ground that the domestic law that had been applied in that case had opened the way for DNA registration in all cases where the conviction had concerned an offence that could lead to imprisonment. Moreover, the Borgarting High Court distinguished the case before it from that of *Aycaguer* (cited above) by reference to how the Supreme Court in its judgment had considered that the Court had found a violation of Article 8 of the Convention in both that case and *Gaughran* on the basis of a combined assessment of the length of the retention period and the fact that the person registered could not demand deletion of the registration.

10. In the application lodged with the Court, the applicant maintained, *inter alia*, that DNA registration in Norway was "blanket and indiscriminate"; that registration of a person's DNA profile was not among the penalties provided for in the Penal Code or the coercive measures in the Penal Procedure Code; that guidelines were used by the police and prosecuting authorities to circumvent the law; and that the Director of Public Prosecutions was not entitled to deal with complaints relating to DNA registration as he had drafted the guidelines himself. The applicant also made a number of submissions concerning the proceedings in which his complaint about the DNA registration had been assessed, including that the Borgarting High Court had neither reviewed the Oslo City Court's judgment nor examined the requirements flowing from Article 8 of the Convention.

11. The Court observes that, according to the material made available to it, domestic law gives the authorities the right to retain DNA profiles in any case where a person has been convicted of an offence of a type to which punishment in the form of deprivation of liberty may in principle attach; that the period of retention lasts in principle for the rest of the registered person's

life; and that the registered person may request that the registration be deleted when it is clearly no longer expedient, which would require a broader assessment of whether continued retention would align with the proportionality requirement set out in Article 8 of the Convention.

12. The Court considers that the question whether the application of the domestic law, as presented in the Borgarting High Court's judgment, could lead to results contrary to Article 8 of the Convention – in that they would entail a disproportionate interference with the registered person's right to respect for his or her private life – must be assessed on the basis of a broader examination.

13. In the instant case, the Borgarting High Court carried out a broad and detailed examination and the Court considers that the applicant did not submit any arguments that are in principle capable of rebutting the findings in the assessment carried out by the Borgarting High Court in his specific case. In particular, the Court does not consider that the applicant has substantiated his complaints concerning the alleged lack of formal competence of the Director of Public Prosecutions or that guidelines were used to "circumvent the law", nor does it find that that the complaints in other respects adequately reflect the domestic law and the assessment of his case in the Borgarting High Court's judgment, for example his complaint that the Borgarting High Court did not examine Article 8 of the Convention.

14. For the above reasons, the Court considers that in the instant case, there are in any event no prospects of a further examination leading to the finding of a violation of Article 8 of the Convention, and it does not find that the application forms the basis for a more principled review of the legal framework concerning the retention of DNA profiles under domestic law.

15. It follows that the complaint under Article 8 of the Convention is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

II. REMAINING COMPLAINTS

16. The applicant also raised other complaints under various Convention provisions.

17. The Court 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, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

18. It follows that this part of the application must also 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 7 July 2022.

Martina Keller Deputy Registrar	Ganna Yudkivska President