



Indefinite retention of DNA, fingerprints and photograph of man convicted of drink driving breached his privacy rights

The case [Gaughran v. the United Kingdom](#) (application no. 45245/15) concerned a complaint about the indefinite retention of personal data (DNA profile, fingerprints and photograph) of a man who had a spent conviction for driving with excess alcohol in Northern Ireland.

In today's **Chamber** judgment¹ in the case the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The Court underlined that it was not the duration of the retention of data that had been decisive, but the absence of certain safeguards. In the applicant's case his personal data had been retained indefinitely without consideration of the seriousness of his offence, the need for indefinite retention and without any real possibility of review.

Noting that the technology being used had been shown to be more sophisticated than that considered by the domestic courts in this case, particularly regarding storage and analysis of photographs, the Court considered that the retention of the applicant's data had failed to strike a fair balance between the competing public and private interests.

Principal facts

The applicant, Fergus Gaughran, is a British national who was born in 1972 and lives in Newry (Northern Ireland, United Kingdom).

Mr Gaughran was arrested in October 2008 for driving with excess alcohol (an offence punishable by imprisonment, known as a "recordable offence"). He was taken to the police station where he provided a breath sample, which came up positive. The police also took his photograph, fingerprints and a DNA sample. He later pleaded guilty, was given a fine and banned from driving for 12 months. His conviction was spent in 2013.

His DNA sample was destroyed in 2015 at his request. The Police Service of Northern Ireland ("the PSNI") continues to retain on an indefinite basis the DNA profile (digital data) extracted from his DNA sample, his fingerprints and photograph.

He unsuccessfully challenged the PSNI's continued retention of his data in the domestic courts.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Mr Gaughran complained about the police retaining his DNA profile, fingerprints and photograph indefinitely and without any possibility of meaningful review.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The application was lodged with the European Court of Human Rights on 20 October 2015.

Judgment was given by a Chamber of seven judges, composed as follows:

Ksenija **Turković** (Croatia), *President*,
Aleš **Pejchal** (the Czech Republic),
Armen **Harutyunyan** (Armenia),
Pere **Pastor Vilanova** (Andorra),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** (North Macedonia),
Raffaele **Sabato** (Italy),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

The Court found that the retention of the applicant's DNA profile, fingerprints and photograph amounted to an interference with his private life which had pursued the legitimate purpose of the detection, and therefore, prevention of crime.

It emphasised the importance of examining privacy rights where the powers vested in the State were obscure and where the technology available was continually becoming more sophisticated. For example, the technology regarding photographs and facial mapping had already moved on since the case had been examined by the domestic courts.

It went on to examine whether the interference in the applicant's privacy rights had been justified, reiterating that the national authorities had to be given leeway ("margin of appreciation") when making that assessment. A strong consensus in the member States' approach to retaining data of those convicted of an offence would narrow that margin of appreciation.

The Court considered that the majority of member States had regimes which put a time-limit on retaining the biometric data, that is, fingerprints and DNA profiles, of convicted persons. The UK was one of the few Council of Europe jurisdictions to permit indefinite retention of DNA profiles². The margin of appreciation, in particular in respect of DNA profiles, had therefore been narrowed.

The Court underlined though that the duration of the retention was not conclusive in assessing whether a State had overstepped the acceptable margin of appreciation in establishing its retention regime. There was not the same risk of stigmatisation in retaining the data as in [S. and Marper v. the UK](#), which had concerned individuals suspected of offences but not convicted.

What was decisive was the existence and functioning of safeguards. Having chosen to allocate itself the most extensive power of indefinite retention, the State had put itself at the limit of the margin of appreciation. So, it had to ensure that certain safeguards were present and effective for the applicant.

However, the applicant's biometric data and photographs had been retained without reference to the seriousness of his offence and without regard to any continuing need to retain that data indefinitely. Moreover, the police in Northern Ireland were only empowered to delete biometric data and photographs in exceptional circumstances. Therefore the applicant could not request a review of the retention of his data, as there was no provision permitting deletion if conserving the data no longer appeared necessary in view of the nature of his offence, his age, or the time that had elapsed and his current personality.

² Four out of 31 Council of Europe member States surveyed (Cyprus, Ireland, North Macedonia and Montenegro) have indefinite retention periods of DNA profiles following a conviction for a minor criminal offence. See paragraph 53 of the judgment.

The Court found that the nature of those powers failed to strike a fair balance between the competing public and private interests.

The respondent State had therefore overstepped the acceptable margin of appreciation and the retention at issue constituted a disproportionate interference with the applicant's right to respect for private life, which could not be regarded as necessary in a democratic society.

There had accordingly been a violation of Article 8 of the Convention.

Just satisfaction (Article 41)

The Court held that the finding of a violation was in itself sufficient just satisfaction for any non-pecuniary damage sustained.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.