



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

Information Note on the Court's case-law No. 157

November 2012

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***M.M. v. the United Kingdom - 24029/07***

Judgment 13.11.2012 [Section IV]

**Article 8**

**Article 8-1**

**Respect for private life**

Retention of caution on criminal record for life: *violation*

*Facts* – In 2000 the applicant, who lived in Northern Ireland, was arrested by the police after disappearing with her baby grandson for a day in an attempt to prevent his departure to Australia following the break up of her son's marriage. In view of the circumstances in which the incident had occurred, the authorities decided not to prosecute and the applicant was instead cautioned for child abduction. The caution was initially intended to remain on her record for five years, but owing to a change of policy in cases where the injured party was a child, that period was later extended to life. In 2006 the applicant was offered employment as a health worker subject to vetting, but the offer was withdrawn following a criminal-record check by the prospective employer after she disclosed the caution. In her application to the European Court, the applicant complained that the change in policy regarding retention of caution data had adversely affected her employment prospects, in breach of her right to respect for her private life.

*Law* – Article 8: The Court reiterated that both the storing of information relating to an individual's private life and the release of such information come within the scope of Article 8 § 1. Although data contained in the criminal record were, in one sense, public information, their systematic storing in central records meant that they were available for disclosure long after the event when everyone other than the person concerned was likely to have forgotten about it, especially where, as in the applicant's case, the caution had occurred in private. Thus, as the conviction or caution itself receded into the past, it became a part of the person's private life which had to be respected. In the present case, the administration of the caution had occurred almost twelve years earlier. The fact that disclosure had followed upon a request by the applicant or with her consent did not deprive her of the protection afforded Article 8, as individuals had no real choice if the prospective employer insisted, and was entitled to insist, on disclosure. Article 8 was thus applicable to the retention and disclosure of the caution which retention and disclosure amounted to interference with the applicant's right to respect for her private life.

The scope and application of the system for retention and disclosure in Northern Ireland was extensive: the recording system included non-conviction disposals such as cautions, warnings and reprimands and there was a general presumption in favour of the retention of data in central records until the data subject's hundredth birthday. While there might be a need for a comprehensive record, the indiscriminate and open-ended collection of criminal record data was unlikely to comply with the requirements of Article 8 in the absence of clear and detailed statutory regulations clarifying the safeguards applicable

and setting out the rules governing, *inter alia*, the circumstances in which data can be collected, the duration of their storage, the use to which they can be put and the circumstances in which they may be destroyed.

In the instant case, however, there was, no statutory law in respect of Northern Ireland governing the collection and storage of data on cautions. Under the applicable guidelines the recording and initial retention of such data were intended in practice to be automatic. The criteria for review appeared to be very restrictive and to focus on whether the data were adequate and up to date. Deletion requests would be granted only in exceptional circumstances and not where the data subject had admitted the offence and the data were accurate. It was also a matter of concern that policy had changed regarding the length of time the caution was to remain on the applicant's record with significant effects on her employment prospects. As to the legislation requiring disclosure in the context of a standard or enhanced criminal-record check it made no distinction based on the seriousness or circumstances of the offence, the time which had elapsed since its commission and whether the caution was spent. The legislation did not allow for any assessment at any stage in the disclosure process of the relevance of conviction or caution data to the employment sought, or of the extent to which the data subject could be perceived as continuing to pose a risk.

As a result of the cumulative effect of these shortcomings, the Court was not satisfied that there were sufficient safeguards in the system for retention and disclosure of criminal record data to ensure that data relating to the applicant's private life would not be disclosed in violation of her right to respect for her private life. The retention and disclosure of the applicant's caution data accordingly could not be regarded as having been in accordance with the law.

*Conclusion:* violation (unanimously).

Article 41: No claim made in respect of damage.