Information Note on the Court's case-law No. 164

June 2013

Peruzzo and Martens v. Germany (dec.) - 7841/08 and 57900/12

Decision 4.6.2013 [Section V]

Article 8

Article 8-1

Respect for private life

Taking and retention of DNA profiles of convicted criminals for use in possible future criminal proceedings: *inadmissible*

Facts – The first applicant had been convicted of several drug-related offences when a district court ordered cellular material to be taken from him with a view to determining his DNA profile for identification purposes in any future criminal proceedings. This decision was reached in view of the seriousness of the offences he had committed and his negative criminal prognosis. In the second applicant's case a district court ordered the taking of DNA samples on account of his repeated commission of violent offences. Pursuant to domestic law any cellular material obtained was to be used only for the purpose of establishing a DNA profile. The identity of the individual from whom the sample was obtained could not be disclosed to the experts charged with drawing up the profile, and they were furthermore under an obligation to take adequate measures to prevent any unauthorised use of any material examined. The cellular material itself had to be destroyed without delay once it was no longer needed for the purpose of establishing the DNA profile. Only the DNA profiles extracted from the cellular material could be kept in the Federal Criminal Police Office's database and then only for a maximum of ten years, subject to regular review.

Law – Article 8: In recent years DNA records had doubtless made a substantial contribution to law enforcement and the fight against crime. Nevertheless, the protection of personal data was of fundamental importance for the enjoyment of the right to respect for private life. The domestic law therefore had to afford appropriate safeguards to prevent any use of personal data which might be inconsistent with the guarantees of Article 8. In the case of *S. and Marper v. the United Kingdom**, which concerned the retention of the DNA records of two applicants who had not been convicted of a criminal offence, the Court had been struck by the blanket and indiscriminate nature of the power of retention of DNA records in England and Wales that enabled the material to be retained without limit of time and irrespective of the nature or gravity of the offence or the personal circumstances of the individual concerned. However, the applicants' cases were to be distinguished from that case for several reasons. Firstly, under the domestic law DNA records could only be taken, stored and retained from persons who had been convicted of serious criminal offences and were likely to be the subject of criminal proceedings in the future. The domestic courts had based their findings that the offences committed by the applicants had reached the requisite threshold of gravity on the particular circumstances of each case and had provided relevant and sufficient reasons for their assumption that criminal investigations with respect to similar offences were likely to be conducted against

them in the future so that the taking of DNA samples and the retention of the extracted DNA profiles were justified and proportionate. Furthermore, the Court was satisfied that the domestic law afforded appropriate safeguards against the blanket and indiscriminate taking and retention of DNA samples and profiles and adequate guarantees of the effective protection of retained personal data from misuse and abuse. Consequently, the domestic rules on the taking and retention of DNA material from persons convicted of offences reaching a certain level of gravity as applied in the case of the applicants had struck a fair balance between the competing public and private interests and fell within the respondent State's acceptable margin of appreciation.

Conclusion: inadmissible (manifestly ill-founded).

* *S. and Marper v. the United Kingdom* [GC], 30562/04 and 30566/04, 4 December 2008, Information Note 114.
