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DNA retention policy breaches human rights, rules ECHR

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England's blanket retention of DNA profiles on criminal suspects was declared unlawful today. The European Court of Human Rights ruled that the human rights of two British men to enjoy respect for their private and family lives had been violated.

The landmark ruling is expected to force a policy change in England, Wales and Northern Ireland where police retain indefinitely the fingerprints, cellular samples and DNA profiles of people suspected but not convicted of crimes.

Approximately 4.5 million samples are currently stored on the UK's DNA database. More than 850,000 of these samples are from people with no criminal record, according to reports.

A more restricted policy applies in Scotland, an approach that may become a blueprint for UK policing after today's ruling.

The background

The case was brought by Michael Marper, 45, and a 19-year-old man identified only as S, both of whom live in Sheffield.

In 2001, Marper was arrested and charged with harassing his partner. His fingerprints and DNA samples were also taken. The charges were dropped following reconciliation with his partner and, within three months, the case against him was discontinued.

The same year, S was arrested and charged with attempted robbery. His fingerprints and DNA samples were taken. He was aged 11 at the time. S was acquitted five months later.

Marper and S requested that their fingerprints, DNA samples and profiles be destroyed. The police refused their requests and they went to court citing a breach of the Human Rights Act. The High Court, the Court of Appeal and the House of Lords found no such breach.

Today the Grand Chamber of 17 judges of the European Court of Human Rights (ECHR) ruled in favour of S and Marper.

The ruling

The ECHR found that the retention of cellular samples, fingerprints and DNA profiles constitutes an interference with the right to respect for private life enshrined in Article 8 of the European Convention on Human Rights.

It dismissed the UK Government's argument that the interference was necessary and proportionate for the prevention of crime or disorder and/or the protection of the rights and freedoms of others.

"England, Wales and Northern Ireland appear to be the only jurisdictions within the Council of Europe to allow the indefinite retention of fingerprint and DNA material of any person of any age suspected of any recordable offence," wrote the judges.

They rejected the Government's argument that comparison with other states is unimportant because the UK "is in the vanguard of the development of the use of DNA samples in the detection of crime".

The UK had said that other states have "not yet achieved the same maturity in terms of the size and resources of DNA databases." But the ECHR said that the Government had a special duty for that reason.

"The Court considers that any State claiming a pioneer role in the development of new technologies bears special responsibility for striking the right balance in this regard," it said.

The court accepted that the database has helped to detect crime. "The question, however, remains whether such retention is proportionate and strikes a fair balance between the competing public and private interests," it wrote. "In this respect, the Court is struck by the blanket and indiscriminate nature of the power of retention in England and Wales."

"The material may be retained irrespective of the nature or gravity of the offence with which the individual was originally suspected or of the age of the suspected offender; fingerprints and samples may be taken – and retained – from a person of any age, arrested in connection with a recordable offence, which includes minor or non-imprisonable offences," it wrote.

It noted that the material is also retained indefinitely. "Moreover, there exist only limited possibilities for an acquitted individual to have the data removed from the nationwide database or the materials destroyed," said the Court.

The Government had argued that its retention has no direct or significant effect on individuals unless matches in the database implicate them in a crime. The Court disagreed.

"Of particular concern in the present context is the risk of stigmatisation, stemming from the fact that persons in the position of the applicants, who have not been convicted of any offence and are entitled to the presumption of innocence, are treated in the same way as convicted persons," it wrote.

It said that the retention of children's data following acquittal could be especially harmful, "given their special situation and the importance of their development and integration in society."

"In conclusion, the Court finds that the blanket and indiscriminate nature of the powers of retention of the fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences, as applied in the case of the present applicants, fails to strike a fair balance between the competing public and private interests and that the respondent State has overstepped any acceptable margin of appreciation in this regard," it wrote.

"Accordingly, the retention at issue constitutes a disproportionate interference with the applicants' right to respect for private life and cannot be regarded as necessary in a democratic society."

"Accordingly, there has been a violation of Article 8 of the Convention in the present case," it wrote.

The court did not tell the Government how to achieve compliance with the Convention. One possibility is for the approach taken by police in Scotland to be applied across the UK.

Under Scotland's Criminal Procedure Act, DNA samples and resulting profiles must be destroyed if the individual is not convicted or is granted an absolute discharge. However, biological samples and profiles may be retained for three years where the arrestee is suspected of certain sexual or violent offences even if the person is not convicted. Thereafter, samples and information are required to be destroyed unless a Chief Constable applies to a Sheriff for a two-year extension.

That compromise appeared to win favour in the ECHR.

The ECHR said Scotland's position was "notably consistent" with a Council of Europe recommendation on the use of DNA analysis in member states' criminal justice systems. That recommendation

"stresses the need for an approach which discriminates between different kinds of cases and for the application of strictly defined storage periods for data, even in more serious cases," noted the Court.

S and Marper had sought compensation of £5,000 each. The Court rejected these claims, saying it "considers that the finding of a violation, with the consequences which will ensue for the future, may be regarded as constituting sufficient just satisfaction".

They were awarded legal costs of €42,000 plus interest.

See:

- [The judgment](#)
- [The ECHR's press summary](#)

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