



The retention of the fingerprints of a person who had not been convicted breached his right to respect for his private life

In today's Chamber judgment in the case of **M.K. v. France** (application no. 19522/09), which is not final¹, 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 case concerned a French national who complained of the fact that his fingerprints had been retained on a database by the French authorities. He had been the subject of two investigations concerning book theft, which ended in one case with his acquittal and in the other with a decision not to prosecute.

The Court considered, in view of the circumstances of the case, that the retention of the data in question amounted to disproportionate interference with the applicant's right to respect for his private life.

Principal facts

The applicant, M.K., is a French national who was born in 1972 and lives in Paris (France). In 2004 and 2005 his fingerprints were taken in the context of two investigations into alleged book theft. The first ended with his acquittal and the second with a decision not to prosecute. In 2006 the applicant wrote to the public prosecutor requesting the removal of his fingerprints from the database. As his request was granted only in relation to the fingerprints taken during the first set of proceedings, he applied to the liberties and detention judge, who rejected his application. The President of the Investigation Division of the Paris Court of Appeal upheld that decision in 2006. M.K. lodged an appeal on points of law which was dismissed by the Court of Cassation in 2008.

Complaints, procedure and composition of the Court

Relying mainly on Article 8, the applicant complained that the retention of data concerning him in the computerised database of fingerprints had infringed his right to respect for his private life. He also alleged a violation of Article 6.

The application was lodged with the European Court of Human Rights on 28 February 2009.

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

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

Mark **Villiger** (Liechtenstein), *President*,
Angelika **Nußberger** (Germany),
Ann **Power-Forde** (Ireland),
André **Potocki** (France),
Paul **Lemmens** (Belgium),
Helena **Jäderblom** (Sweden),
Aleš **Pejchal** (the Czech Republic),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 8

The Court considered that the retention of M.K.'s fingerprints by the domestic authorities had amounted to interference with his right to respect for his private life. The interference had been in accordance with the law, namely the Code of Criminal Procedure and a 1987 decree, and had pursued the legitimate aim of preventing crime.

Nevertheless, the Court reiterated that the protection of personal data was of fundamental importance to a person's enjoyment of his or her right to respect for private life. This applied with even greater force when such data underwent automatic processing and were used for police purposes. The domestic law therefore had to ensure that such data were relevant and not excessive in relation to the purposes for which they were stored. The same applied to the length of time for which they were retained.

In the present case the reason invoked by the public prosecutor for refusing to have the fingerprints taken during the second investigation removed from the database had been the need to protect the applicant against identity theft. In the Court's view, that argument, which moreover had no basis in legislation, could end up justifying a measure as extreme as storing the details of the entire population. Furthermore, the decree in question was purportedly aimed at making it easier to prosecute persons who were implicated in criminal proceedings and needed to be identified, but did not specify whether its scope was actually confined to criminal offences. In addition, it did not make any distinction based on the seriousness of the allegations, since it also concerned minor offences. Lastly, it applied indiscriminately to persons who had been convicted and those who, like the applicant, had never been found guilty of an offence and were therefore at risk of being stigmatised, in disregard of their right to be presumed innocent.

Finally, the provisions in question did not give sufficient protection to the persons concerned. A request for data to be removed was liable to run counter to the interest of the investigating services in maintaining a database containing as much information as possible; this was a contradiction in itself. Consequently, since the prospects of such a request being successful were uncertain, the retention period of 25 years equated in practice to retention for an indeterminate period.

The Court therefore concluded that the French courts had overstepped their margin of appreciation and had failed to strike a fair balance between the public and private interests at stake. The retention of M.K.'s fingerprints had amounted to disproportionate interference with his right to respect for his private life and could therefore not be regarded as necessary in a democratic society.

Just satisfaction (Article 41)

The applicant, who had received legal aid in the proceedings before the Court, did not submit a claim for just satisfaction. Accordingly, the Court held that it was unnecessary to make such an award.

The judgment is available only in French.

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Press contacts

echrpess@echr.coe.int | tel: +33 3 90 21 42 08

Jean Conte (tel: + 33 3 90 21 58 77)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

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.