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

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UK failed to protect the right to privacy of a lifelong activist whose personal data appeared in an extremism database

In today's **Chamber** judgment[1] in the case of **Catt v. the United Kingdom** (application no. 43514/15) 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 the applicant's complaint about the collection and retention of his personal data in a police database for "domestic extremists".

The Court found in particular that the data held on the applicant concerned his political views and that such information required particular protection. The Court also had regard to Mr Catt's age, (he is now 94), and the fact he had no history or prospect of committing acts of violence.

While collecting the information on him had been justified, retaining it had not, particularly owing to a lack of safeguards, such as time-limits. There had therefore been a violation of the Convention.

Principal facts

The applicant, John Oldroyd Catt, is a British national who was born in 1925 and lives in Brighton (the United Kingdom).

Mr Catt is a lifelong peace activist and a regular attender at demonstrations of various kinds. In 2005 he began to take part in protests by a group called Smash EDO against the Brighton factory of US arms company EDO MBM Technology Ltd. The protests involved disorder and a large police presence. Mr Catt himself has never been convicted of any offence.

In March 2010 he made a request to the police under the Data Protection Act 1998 for any information being held about him. The police disclosed 66 entries collected from March 2005 to October 2009, mostly related to Smash EDO, but also concerning 13 other demonstrations and events. These included attendance at a Trades Union Congress conference in Brighton in 2006, at a demonstration at a Labour Party conference in 2007 and a pro-Gaza meeting in 2009.

The information was held in a police database concerning "domestic extremism" and was contained in records on other individuals and in reports which mentioned him incidentally. The entries usually recorded his name, presence at an event, date of birth, address, and sometimes his appearance. In August 2010 Mr Catt asked the Association of Chief Police Officers ("ACPO") to delete the entries which mentioned him, but ACPO declined to do so.

Mr Catt sought judicial review, arguing that retaining the data was not "necessary" within the meaning of Article 8 § 2 of the European Convention. In May 2012 the High Court held that Article 8 was not engaged and, even if it were, the interference had been justified. Mr Catt won in the Court of Appeal which found the retention of his data had been disproportionate but in March 2015 the

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.

Supreme Court, by four votes to one, upheld an appeal by ACPO and the Commissioner of Police of the Metropolis.

The Supreme Court stated that retaining the data had been in accordance with the law and proportionate. In particular, the invasion of privacy had been minor, the court noting that the information obtained was already in the public domain and was not intimate or sensitive.

There were also good policing reasons why such data had to be collected and retained, even if it concerned protesters with no criminal record and with no likelihood of being violent. Furthermore, there was no prospect of the information being given to third parties, such as employers, or used for political purposes, and the data was periodically reviewed for retention or deletion.

In answering questions put by the Court in its communication of the case, the Government stated that they had found four more entries on Mr Catt than had originally been disclosed; the police could not provide an explanation for why the reports had not been revealed earlier.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life, the home, and the correspondence), Mr Catt complained about the police's retention of his personal data.

The application was lodged with the European Court of Human Rights on 2 September 2015.

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

Linos-Alexandre **Sicilianos** (Greece), *President*,
Aleš **Pejchal** (the Czech Republic),
Ksenija **Turković** (Croatia),
Armen **Harutyunyan** (Armenia),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),
Gilberto **Felici** (San Marino),

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

Decision of the Court

The Court expressed concern about aspects of the provisions for collecting personal data in the database, particularly the lack of a clear definition of "domestic extremism", but it focussed on whether there had been a justification for interfering with Mr Catt's rights by holding data on him.

Like the Supreme Court it found that there were good policing reasons why such data had to be collected. In Mr Catt's case, the collection of his data had been justified because Smash EDO's activities were known to be violent and potentially criminal. While Mr Catt had never been violent or shown any tendency towards such behaviour, he had identified himself repeatedly and publicly with that group. The Court found, however, that the continued retention of the data in Mr Catt's case had been disproportionate because it was personal data which revealed political opinions and so had enhanced protection; it had been accepted that Mr Catt did not pose a threat to anyone, also taking into account his age; and there had been a lack of effective procedural safeguards.

The lack of safeguards included the absence of a time-limit on how long data should be kept, the only definite rule being that information would be held for a minimum of six years before being reviewed. In Mr Catt's case it was not clear that such six-year or other reviews had taken place. This also contrasted with privacy resolutions passed by the Committee of Ministers of the Council of Europe, which indicated that there should be maximum time-limits for holding certain kinds of information. The Court was also concerned about the effectiveness of legal challenge as a safeguard

in this case because the police had actually held more data on Mr Catt at the time of the domestic proceedings than previously acknowledged.

In any event, the usefulness of the safeguard of a review was questionable as the decision to retain information on him had not had regard to the heightened protection for data revealing a person's political opinion.

Lastly, the Court rejected a Government argument that it would be too difficult to review and delete all the data on Mr Catt as the extremism database was not automated. In fact, domestic guidance showed that review and deletion had been intended and had actually occurred for some of the data in Mr Catt's case.

Overall, there had been a violation of Mr Catt's rights under Article 8.

Just satisfaction (Article 41)

Mr Catt made no claim for just satisfaction, stating that the finding of a violation would be sufficient, and the Court thus found no call to make an award. It held that the United Kingdom was to pay him 27,000 euros (EUR) in respect of costs and expenses for the proceedings in Strasbourg.

Separate opinion

Judge Koskelo expressed a concurring opinion which was joined by Judge Felici. That opinion is annexed to the judgment.

The judgment is available only in English.

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