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Judgment of the Court in Case C-57/23 | Policejní prezidium (Storage of biometric and genetic data)

The police of a Member State may decide, on the basis of internal rules, whether it is necessary to store the biometric and genetic data of a person accused or suspected of a criminal offence

Where national law sets appropriate time limits for a review of the need to store those data, it does not necessarily need to provide for a maximum period of storage

A Czech public official was interviewed by the police in the context of criminal proceedings involving him. Despite his objections, the police ordered the taking of his fingerprints, the taking of a buccal smear on the basis of which the police established a genetic profile, the taking of photographs and the drawing up of a description of him. That information was entered into various databases. In 2017, the public official was convicted by final judgment of, *inter alia*, misconduct in public office. In separate proceedings, he challenged the identification procedures carried out by the police under Czech law ¹ and the storage of the data resulting from those procedures, in that they constituted an unlawful interference with his fundamental right to respect for private life. The Czech court upheld that action and ordered the police to erase all the personal data resulting from those procedures from its databases. The Czech police lodged an appeal on a point of law against that judgment before the Czech Supreme Administrative Court.

It is in that context that that court asked whether the legal regime established by the Law on the Czech Police is compatible with Directive 2016/680. ² In the first place, that court asks whether the case-law of the Czech administrative courts may be classified as 'Member State law'. ³ In the second place, it asks whether the requirements laid down in that directive preclude the indiscriminate collection of biometric and genetic data for any person suspected of having committed an intentional criminal offence. In the third place, it asks whether that directive precludes the storage of biometric and genetic data where no maximum period of storage is expressly laid down.

In its judgment delivered today, the Court of Justice holds that, as regards the collection, storage and erasure of biometric and genetic data, **the concept of 'Member State law'** refers to a **provision of general application** laying down the minimum conditions for collection, storage and erasure of those data, as interpreted by the case-law of the national courts, in so far as that case-law is accessible and sufficiently foreseeable.

Furthermore, **EU law** ⁴ **does not preclude national legislation which allows for the indiscriminate collection of biometric and genetic data** of any **person accused** of having committed an intentional criminal offence or **suspected** of having committed such an offence. However, the Court attaches two conditions: first, **the purposes of that collection must not require a distinction to be made between those two categories** of persons. Second, **the controllers must be required**, in accordance with national law, including the case-law of the national courts, **to comply with all of the principles and the specific requirements** ⁵ **applicable to the processing of sensitive personal data.**

Lastly, the Court holds that **EU law⁶ permits, subject to certain conditions, the existence of national legislation under which the need for the continued storage of biometric and genetic data is assessed by the police on the basis of internal rules.**

In so far as the national legislation sets appropriate time limits for a periodic review of the need to store those data and, at the time of that review, the strict necessity of extending their storage is assessed, that national legislation need not lay down a maximum period of storage.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The full [text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ Article 65 of the Law on the Czech Police.

² [Directive \(EU\) 2016/680](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

³ Within the meaning of Article 8 of Directive 2016/680, which lays down conditions for the lawful processing of personal data.

⁴ Article 6 and Article 4(1)(c) of Directive 2016/680, read in conjunction with Article 10 of that directive.

⁵ Laid down in Articles 4 and 10 of Directive 2016/680.

⁶ Article 4(1)(e) of Directive 2016/680.