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DATA PROTECTION | CRIMINAL LAW

THE RIGHT TO ERASURE BIOMETRIC AND GENETIC DATA FROM THE CRIMINAL RECORDS OF PERSONS CONVICTED OF A CRIMINAL OFFENCE

*Judgment of the Court of Justice of the European Union of 30 January 2024
Case C-118/22*

The Court of Justice of the European Union (CJEU) has been asked to rule on the retention of biometric and genetic data contained in the criminal records of persons convicted of a criminal offence, under 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, prosecution or punishment 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.

At issue in the main proceedings was a request by the data subject to have his biometric and genetic data erased from criminal records, after having served a one-year prison sentence, suspended in its execution, for committing an offence of false testimony.

In a judgement handed down on 30 January, the CJEU ruled that it is contrary to EU law for the legislation of a Member State to provide for the retention of personal data, in particular biometric and genetic data, relating to persons who have been the subject of a final criminal conviction for an intentional criminal offence covered by public prosecutions, until the death of the data subject, without imposing an obligation on the controller to periodically assess whether such storage is still necessary, or recognizing the right of the data subject to have such data erased when their storage is no longer necessary for the purposes for which they are processed, or, where appropriate, to restrict the processing of such data.

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