

# The opinion of the Spanish population with regard to the procedural situation of individuals that would justify the storage of their DNA profiles in a national database

Joaquín-Jose Gamero <sup>a,\*</sup>, Jose-Luis Romero <sup>a</sup>, Juan-Luis Peralta <sup>a</sup>,  
Monica Carvalho <sup>b</sup>, Maria-Conceição Vide <sup>b</sup>, Francisco Corte-Real <sup>c</sup>

<sup>a</sup> Faculty of Medicine, University of Cádiz, Fragela s/n, Cádiz 11003, Spain

<sup>b</sup> Institute of Legal Medicine of Coimbra, 3000 Coimbra, Portugal

<sup>c</sup> National Institute of Legal Medicine, Largo da Sé Nova, 3000-213 COI, Coimbra, Portugal

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**Abstract.** The intention of this paper is to add complementary information to previously studied aspects of national DNA databases, from an ethical and social perspective. The point of view or criteria held by Spanish society regarding the procedural situation which an individual must be in to justify the inclusion of his or her DNA profile in a national database will be analyzed. Likewise, opinion is also sought concerning the criteria that should be taken into account in future regulations affecting databases in Spain. © 2005 Elsevier B.V. All rights reserved.

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## 1. Introduction

With regard to the procedural situation of individuals that justifies the inclusion of their DNA profiles in a database recommendation No. R(92)1 of the European Council concerning the employment of DNA analyses as well as their storage in Databases must be mentioned. The recommendation points out in its fifth principle that resorting to DNA analyses must be authorized in all those cases deemed appropriate, no matter how grave the crime may be. However, the eighth principle of the same recommendation is much more restrictive when referring to the incorporation of data obtained from genetic analyses into computerized files—the following being expressed: “the

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\* Corresponding author. Dpt. Medicina Legal, Facultad de Medicina, Plz. Fragela s/n Cádiz, 11003, Spain. Tel.: +34 956 015 187; fax: +34 956 223 139.

*E-mail address:* joaquin.gamero@uca.es (J.-J. Gamero).

creation and management of all DNA files required by investigation and penal accusation must be regulated by law". Likewise, the eighth principle recognizes that the results of DNA analyses must be stored when the individual concerned has been found guilty of serious crimes, fundamentally crimes against the life, integrity or health of persons.

With regard to the question of when an individual's DNA should be stored in a database, within the norms that regulate the DNA databases controlled by Police Headquarters (Ministerial Order of the 26th of July 1994, Ministry of the Interior; Order 1751/2002 of the 20th of June 2002, Ministry of the Interior) no reference is made to the nature of the offenses, their gravity or procedural situations that justify the inclusion, in said databases, of DNA profiles of individuals subject to a penal process. Nor is reference made to the possibility of including the profiles of third parties who, in the course of their professional duties, may leave traces at the scene of a crime or contaminate samples to be studied. This latter question is not clarified in the second paragraph of article 22 of the Personal Data Protection Organic Law 15/1999 of the 13th of December, referred to in the Ministry of the Interior Order 1751/2002 of the 20th of June 2002.

The intention of this paper is to add complementary information to previously studied aspects of national DNA databases, from an ethical and social perspective. The point of view or criteria held by Spanish society regarding the procedural situation which an individual must be in to justify the inclusion of his or her DNA profile in a national database will be analyzed. Likewise, opinion is also sought concerning the criteria that should be taken into account in future regulations affecting databases in Spain.

## 2. Materials and methods

The following sequence has been adopted to carry out this work: (a) the drawing up of a questionnaire with a uniform standard of comprehension; (b) the selection of a uniform group of interviewers with a high standard of education; (c) the selection of a random sample employing stratified sampling in order to achieve appropriate representation for sex, age groups, educational standards and types of professions; (d) the treatment of non-random errors that are unconnected with sampling; (e) the statistical analysis of the data which implies: tabulation, graphical representation and synthesis with the aid of the computer software Statgraphics Plus 5.1 (Statistical Graphics Corp. 1994–2001). The chi-square test was done to analyze the responses by sex, age and professional group [1–3].

## 3. Results

The surveyed population was asked about the possibility of storage, in a DNA database, of the DNA profiles of individuals found guilty of committing serious offenses against the life, security or health of others. The purpose of storage would be to permit the use of DNA profiles in investigations being carried out in a penal process. 73.80% of the surveyed population replied affirmatively with regard to the inclusion of DNA profiles in databases of individuals found guilty of such offenses. However, the differences observed ( $p=0.0000$ ) between the different professional groups studied must be pointed out, in particular the differences between the replies given by those in State and Local Security related professions and those in Law related professions.

On the other hand, when the surveyed population was consulted about the inclusion, in a database, of DNA profiles belonging to individuals who are suspects but have not yet been found guilty of serious offenses against the lives, health or security of other citizens (the purpose of storage being the use of DNA profiles in investigations being carried out in a penal process) 54.26% of the population opposed the inclusion of DNA profiles in said databases. This contrasts with 34.98% that considered such a measure appropriate. When the question was studied taking different professional groups into account, significant differences were observed ( $p=0.0000$ ), in particular the low percentage of law-related interviewees (23.50%) who backed the inclusion of DNA profiles belonging to individuals who are suspects but have not yet been found guilty of serious offenses against the lives, security or health of other citizens. This latter group was followed by the following groups:

“other professions” (34.28%), health-related professions (37.63%) and state and local security-related professions (53.57%).

Likewise, when the surveyed population was asked about the possibility of storing, in DNA databases, those DNA profiles that belong to recidivists who have been found guilty of serious offenses against the lives, security or health of other citizens, 79.85% of the interviewees considered such a measure appropriate. Similarly, just as with the previous questions studied in this paper, clear differences emerged in the replies obtained ( $p=0.0000$ ) from the different professional groups analyzed. 24.12% of all law-related professionals were against the inclusion of DNA profiles of recidivists who have been found guilty of serious offenses against the lives, security or health of other citizens. This contrasts with the 0.72% of professionals involved with state and local security, 8.06% of professionals involved with health and 10.19% for “other professions” who opposed the measure.

The interviewees were consulted about the need to include in a DNA database the results of analyses carried out on DNA belonging to individuals found not guilty after a penal process following an act of terrorism. These analyses would be used for forensic purposes. 38.49% considered that such a measure is necessary.

Finally, when the interviewees were asked about the possibility of storing the DNA profiles of those individuals who are initially suspects but are not finally charged with any offense in a penal process that takes place after an act of terrorism, 37.86% of the interviewees showed opposition to the inclusion of such data in databases as compared to 49.34% who were in favour.

#### 4. Conclusion

With regard to DNA databases under the control of State Security Agencies, it would seem reasonable to apply the principle of proportionality during the collection, treatment, analysis and storage of biological traces and profiles carried out in order to clarify offenses of gravity (Sentence of the Constitutional Tribunal 207/1996 of the 16th of December f.j. 4°. E) [4,5]. The objective of this principle is to ensure that the measures taken during an investigation are pondered and balanced, so that the benefits and advantages thereby obtained for the general good are greater than the harm caused to specific BASIC RIGHTS or values. The sacrifice borne by the rights of the individual must not be disproportionate to the gravity of the circumstances and suspicions related to a crime (Sentence of the Constitutional Tribunal 207/1996, of the 16th of December).

The opinions expressed by the interviewees are in line with this principle. However, it will not always be easy to establish equilibrium between the general good and the harm caused to BASIC RIGHTS and values for each specific case. It is as a result of this that a coherent regulatory framework, in which the different criteria used for the elaboration of the regulations are clarified and justified, is necessary to avoid any distrust that may arise among the population it is aimed at [6].

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