



**NATIONAL COUNCIL OF ETHICS FOR LIFE SCIENCES**  
Presidency of the Council of Ministers

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**OPINION N° 52 OF THE NATIONAL COUNCIL OF ETHICS  
FOR LIFE SCIENCES**

**OPINION ON THE LEGAL SYSTEM FOR  
DNA PROFILE DATABASES**

(June, 2007)



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The reflection of the National Council of Ethics for Life Sciences (CNECV) on the draft bill regarding the creation and maintenance of a DNA profile database is in response to the request for an opinion from the Under Secretary of State for Justice.

The Opinion of the CNECV is issued under its authority as provided by paragraph b) of clause 1 of article 2, together with what is determined by paragraph c) of article 7, both in Law n.º 14/90 of 9<sup>th</sup> June.

Considering that,

- a. the construction and maintenance of a DNA profile database may constitute an important auxiliary aid for purposes of criminal investigation and civil identification;
- b. even though they share a common origin, these two purposes raise important ethical issues with potentially different magnitude;
- c. the construction and maintenance of DNA databases reinforces the power and efficacy of the State in matters of security, but may affect the vulnerability of the citizens, namely on safeguards of its rights, freedoms and guarantees;
- d. the principal ethical issues concern the criteria for the selection and inclusion of persons, and the collection, conservation, use and circulation of the data;
- e. given the sensitive nature of the information, the limitations arising from the methods employed and the permanent consequences of possible laboratory errors, the technical aspects themselves turn into ethical issues;
- f. the practical experience of other European countries, such as the United Kingdom or France, whose databases were initially established for precise, restricted criminal purposes, has shown that these purposes were rapidly broadened, through successive legal measures, vulgarising the reasons for their creation and causing concern in the respective societies;
- g. the myth of infallibility linked to DNA analysis induces a feeling of false security in the results, which may reduce other more reliable processes of criminal investigation to a secondary level;



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- h. it is possible to determine the identity of victims and of missing persons through the genetic study of biological family members;
- i. the costs of the construction and maintenance of a DNA profile database are very high, raising the question of the proportionate cost in relation to the benefits arising from its use for society in general;

The CNECV is of the opinion that,

1. the concern for public safety can justify the creation of a DNA profile database for criminal investigation, provided that its construction and the collection, maintenance and management of data are subject to strict principles of transparency and independence and to high standards of quality;
2. the respect for individual privacy recommends that the DNA profile database for criminal investigation should contain the DNA profiles of persons condemned for serious crimes or of dangerous unimputable persons;
3. due to the social value it represents, the creation of a DNA profile database can be justified specifically for the identification of victims and missing persons and their relatives, but only until that identification is established;
4. the creation of a database extending to the population in general, for purposes of civil identification, is very hard to justify, given its excessive nature, considering the disproportion between the risks and benefits, including the financial costs;
5. the panel of markers used to obtain genetic profiles should be based on strict scientific and ethical criteria and should be made known to the public;
6. if an association is found between a non-codifying marker and a disease or behavioural trait, that marker should be removed from the panel; all previously obtained data containing that marker should be eliminated;
7. in all situations, including those involving convicted persons, assent should be obtained whenever possible;



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8. if the use of the DNA profile database were extended to persons accused or merely suspected of criminal practice, contrary to the understanding of this Council, as referred to in point 2, the respective data must be destroyed immediately after the absolution from the crime or the dismissal of the lawsuit;
9. if a database were to be constructed for purposes of civil identification, contrary to the understanding of this Council, as referred to in point 4, the consent given by volunteers (either the relatives of missing persons or unidentified victims, when this is the case) should also be made expressly and in writing and be revocable at any time;
10. the informed consent process should also state what is to be done with the data and biological material, as well as the measures taken for the destruction of the profiles, data and biological material;
11. the consent given by the professionals involved in the obtaining and conservation of DNA profiles is necessarily conditioned by their specific employment bond; for this reason, their particular vulnerability during the process of the employment contract should be taken into account and revocation of their consent once the contract ceases;
12. the rights of minors and incapacitated persons should be duly safeguarded and deserve special protection; only in exceptional, duly justified cases, such as for the identification of victims, of mortal remains and missing persons, should genetic profiles be obtained, and they should be destroyed as soon as the identification is established or the investigation is concluded;
13. whatever the nature of the DNA profile database to be constructed, any biological material used for its construction should be destroyed, except in the case of “problem-samples” whilst the identification has not been determined or whilst the investigation has not been concluded;
14. it is totally unacceptable to resort to other bases of pre-existing biological material to obtain DNA profiles for criminal purposes, namely those created for medical purposes or for research, which should be made explicit in the Law;
15. data stored in the DNA profiles base may be used for forensic and epidemiological research provided that it is irreversibly anonymised; its use is not acceptable nor that of samples that may be connected to it, for biomedical research;



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16. the custody of biological material, and the guardianship of the forensic database should be in the charge of an independent, multidisciplinary body and which is not an interested party in the investigation;
17. a strict quality control system should be maintained, necessarily leading to the licensing, certification and accreditation of the laboratories authorised to create DNA profiles, in strict compliance with the recommendations of international organisations and the most up-to-date standards of quality;
18. in any of the cases, there must always be a complete separation between the personal database and DNA profile database and conditions for access and security should be duly defined and preserved;
19. international collaboration between the police should be limited to the exchange of forensic data and never of biological material; the terms and conditions of that collaboration should be clearly stated, and carried out in accordance with the legislation in effect in all the countries involved;
20. any alteration of the ambit of a DNA profile database initially constructed for criminal investigation purposes, for other purposes, new uses and inclusion criteria, should be subject to broad public debate.

Lisbon, 12th June, 2007

Paula Martinho da Silva

*President*

Conselho Nacional de Ética para as Ciências da Vida  
(National Council of Ethics for Life Sciences)

*This opinion was approved in a plenary session on the 12<sup>th</sup> June, 2007, where the following were present:  
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