



CIRCULAR N° 90-2011

Subject: Regulation of the DNA Profiling Data Register for Human Identification.-

THE NATIONAL JUDICIAL OFFICES

KNOWING THAT :

The Full Court in session No. 25-11, 1st August 2011, Article XXV, adopted the following rules:

REGULATION OF THE DNA PROFILE DATA REGISTER FOR HUMAN IDENTIFICATION

CHAPTER I
GENERAL PROVISIONS

ARTICLE 1: Definition of the DNA Database

Be understood as a Database of Deoxyribonucleic Acid (DNA), the structured set of files of Genetic Profiles and Personal Data stored independently for automated-processing, with the sole purpose of human identification.

ARTICLE 2: Objective of the DNA Database

The creation of the DNA database aims to record, maintain and compare the genetic profiles obtained from DNA analysis, an analysis that emerged as a result of a criminal investigation, as well as voluntary genetic profiles, and those from families that have been provided by stakeholders to identify corpses or missing persons.

ARTICLE 3: Scope of Genetic Profile

It is understood that genetic fingerprinting or a genetic profile for these purposes, the personal alphanumeric registration, will be made exclusively based on non-coding genetic information exclusively for purposes of identification of the individual.

ARTICLE 4: Enforcement of the constitutional principles in bodily intervention

The biological sample collection should not involve harm the health or safety of the donor, must be absolutely respectful of the principles of



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human dignity, proportionality and reasonableness. Under no circumstances can it be used as a source of discrimination or stigmatization.

ARTICLE 5: Definition of sample types

Biological sample is defined as any biological traces of human character for the analysis of DNA, which may or may not have a known source.

Samples, are all those of known biological samples obtained from suspects, victims and relatives of missing persons.

The hesitant, are all those biological samples of unknown origin pending identification.

ARTICLE 6: Authority for the DNA Database

The Department of Forensic Sciences Judicial Investigation, will have the custody of the samples, the analysis of genetic profiles, management and supervision of the Registry of DNA Database, which will be kept centralized and comprehensive set of profiles obtained may be used same as in the cases established by this rule in criminal trials and in identifying missing persons or remains of bodies.

ARTICLE 7: Limits on the DNA Database

Only those registered may be genetic profiles of persons eighteen years of age, whose information is only revealing the identity of subject and sex. However, for identification of missing persons and remains of bodies, may be included the genetic profile of a minor when, with the authorization of those exercising parental authority or legal representation, the child voluntarily provide the sample and part of the DNA Database.

ARTICLE 8: Confidentiality of Information DNA Database

The information contained in the database of DNA and biological samples is treated as confidential. The donor of the biological sample may be aware of their own information for the purposes to which the sample was taken. One also has access to the information database, the Criminal Court, the Attorney General and the Ombudsman for the purposes of the criminal investigation that it is responsible.

ARTICLE 9: Correction and deletion of data

The judge or the Attorney General, ex officio or at the request of the interested party, if it finds by a suitable means the existence of an error in the Register of Personal Information, it shall order the correction of data the maintainer of the database of DNA and cancellation of all the



information in the DNA database, when the deadline under these regulations for the validity of this information.

ARTICLE 10: Third Party Access to Information

The information in the DNA database may be shared with the tax authorities, judicial or police from third countries, where expressly so provided by international agreements signed by Costa Rica or by law.

CHAPTER II
ON THE COLLECTION, COLLECTION AND ANALYSIS OF
BIOLOGICAL SAMPLES

ARTICLE 11: Origin of biological sampling

The judge or the prosecutor in charge of criminal investigations or cases of identification of missing persons or remains of bodies, by order where necessary, carry out DNA testing and making it available to the biological sample for identification purposes.

This intervention was carried out under the rules of scientific knowledge and in the case of the accused, even without his consent, provided that such measures do not affect human dignity, physical integrity and health of the person.

ARTICLE 12: Consent of the donor of the biological sample

There will be no unlawful interference when the donor of the biological sample gives his consent, so that their genetic profile to be included in the DNA Database, provided it has been previously informed of the scope of its decision, or official server judicial, or by the health professional responsible for taking a biological sample.

ARTICLE 13: Duties of Judicial Officers and Servants

All judicial servers involved in the taking of biological samples, obtaining evidence and determining the genetic profile, must maintain complete confidentiality of information that is accessible and not disclose it to unauthorized third parties or used for purposes other than those for which they were collected and analyzed. One will also have an obligation to ensure chain of custody so as not to affect the investigation that led the takeover of the biological sample.

ARTICLE 14: Right of access to information

Before the biological sample collected, the person must be informed by the server maker's court of the biological sample or the lifting of the evidence,



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the scope in case your information is incorporated into the DNA Database. One will be informed of the following:

- a) personal data will be included in a record within the database.
- b) The biological sample is intended to identify only human and cannot be revealed to any other type of genetic information.
- c) The result of the genetic profile of the sample analysis will be incorporated into the DNA database, as appropriate for the purpose of the investigation that led to the capture of the biological sample.
- d) The possibility of linking their genetic profile with other profiles pending identification.
- e) That the data are confidential.
- f) The time you can stay your sample in the database of DNA.
- g) Where applicable cancellation of the information in the DNA database.

ARTICLE 15: Authorization of sampling biological health centers of the Costa Rican Social Security

In cases where the nature of the crime or the impossibility for territorial reasons, the biological sampling or removal of evidence cannot be executed by the server in judicial terms outlined in this policy may be appealed the services of the Health Centers of the Social Security Fund for the taking or removal of biological samples, either the accused or the victim.

In this case the server in charge of the judicial inquiry must impose responsible for sampling, the duty of confidentiality and its obligations to maintain the chain of custody on the same terms that apply to judicial employees. Also, inform the donor of the sample, the scope of the previous paragraph.

ARTICLE 16: Role of the Department of Forensic Sciences

The capture, analysis and preservation of the biological sample will be conducted by qualified professional and technical staff of the Department of Forensic Sciences, who must follow the guidelines established in the Operating Procedures Standards approved by this Department as well as those procedures updated internationally validated and applicable in this science.

The foregoing is, without the appropriate steps to prevent and useful by prosecutors and judicial police, provided by law, and regards the lifting of evidence in criminal investigations.

ARTICLE 17: Comparison of genetic profiles and preparation of expert report

The Department of Forensic Sciences will be responsible for making the comparison between the genetic profiles obtained. On completion of the



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comparison, must prepare the expert report that takes into account the analysis results of the test, sending it to the judicial authority that ordered it.

ARTICLE 18: Conservation of biological sample

The expert in the analysis phase of the biological sample must keep a sufficient sample for a possible counter-test, except in cases where the biological material collected is small, there is a manifest impossibility. From the above, the expert should record in writing and inform the Judicial Authority in the expert report issued.

ARTICLE 19: Destruction of the biological sample

The biological sample collected for the purposes of this regulation, will be retained for a maximum period of ten years from the date of collection or receipt by the Department of Forensic Sciences, after this period they will be destroyed, after notifying the Judge or Minister Public.

CHAPTER III
ORGANIZATION AND ADMINISTRATION OF THE DNA
DATABASE

ARTICLE 20: Organization of DNA Database

The database is composed of DNA, the Personal Information File of the donor of the biological sample and the Archive of the genetic profiles, which are independent.

The file containing the personal information includes the name and surname of the person who enters the database, date of birth, personal identification number, sex, nationality and domicile.

Each DNA profile will be recorded in the database through a unique alphanumeric identification code.

ARTICLE 21: Organization of the genetic information encoded Profiles

The coded information of genetic profiles is organized within the database of DNA, the Archive for the Identification of Remains Missing Persons and bodies and the Criminal File. These can only be compared to each other, the genetic profiles belonging to the same file.

ARTICLE 22: Appointment of judicial server for data entry



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The Department of Forensic Sciences shall appoint judicial servants needed to enter the information encoded and other different genetic profile to enter data in the Archive of Personal Information.

ARTICLE 23: File Identification of Missing Persons and remains of bodies

The Archive for the Identification of Missing Persons and remains of bodies, is composed of the genetic profiles obtained from:

1. The bodies or human remains unidentified.
2. Missing persons.
3. Presumed biological material comes from the missing person.
4. Persons who have a missing relative, under informed consent voluntarily agree to donate a biological sample may be useful for identification and in turn authorized to be included in this database.

ARTICLE 24: Criminal File

The **Criminal File**, which integrate four records:

1. Registration of samples or pending association, includes the genetic profiles obtained from biological samples collected in the criminal investigation and which correspond to unidentified persons.
2. Sample registration or undoubted individual genetic profile, includes the genetic profile of the accused under criminal investigation and the accused on which lies a conviction, both felonies punishable by imprisonment of five or more years imprisonment for crimes of murder organized, the latter described in Articles 1 and 16 of the Law on organized Crime. It will also be included in the database of DNA, the genetic profile of anyone accused in criminal proceedings impersonate another person.
Also part of the sample registration, the genetic profile of the victims of a crime, under voluntary informed consent, supports inclusion in the DNA Data Base
3. Registration of genetic profiles obtained from the remains of bodies and missing persons.
4. Registration of genetic profiles for civil servants and judicial, involved in the process of collection and analysis of biological material.

Article 25: Exclusion of information from the DNA Database

The judge or public prosecutor shall order the Department of Forensic Sciences, exclude from the DNA Data Base genetic profile and personal information in the following cases:

The relatives of missing persons or victims of crime, revoke expressly informed consent.



- When one gets an ID, in cases of relatives of missing persons or unidentified samples.
- When the accused has been definitively dismissed or acquitted in the criminal.
- Once within ten years from completion of the sentence imposed on convicted.
- The genetic profiles of samples pending identification, once the statute of limitations.-

ARTICLE 26: Conservation of information on Missing Persons File

Will be retained indefinitely the information in the database of DNA, the remains of bodies and biological material, presumed to belong to the missing person, until it is obtained identification.

CHAPTER IV **FINAL PROVISIONS**

ARTICLE 27: Maintaining the DNA Database

The Judiciary shall provide the Department of Forensic Sciences, mechanisms and equipment, to ensure maximum reliability and accuracy of the information contained in the DNA database, so that it remains complete, current and ensure the confidentiality of stored information.

ARTICLE 28: Prohibitions for those involved in the process

A civil servants and judicial and health personnel authorized herein, engaged in the production of biological material, responsible for obtaining and recording the genetic profile, and is responsible for storing the personal information of donors of biological material, are prohibited from the following:

1. Using the donor biological material for purposes other than human identification.
2. Breach confidentiality and disclose to any unauthorized parties, the information in the DNA Data Base.
3. Participate in any stage of the proceedings of the DNA Database, where there is any ground for disqualification of those regulated by the Code of Criminal Procedure.

ARTICLE 29: Obligation of the judge, prosecutor and charged with the Database

It will be the judge or prosecutor, notify the Department of Forensic Sciences, where the cancellation has been provided information that was introduced in the DNA Database in the cases provided for in Article 24 of this Regulation. For its part, the



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court charged with the server database of DNA, must comply with the order issued by the Judicial Authority. Failure to herein shall be grounds for disciplinary case, without prejudice to criminal proceedings that may be brought against the officer failed to comply. "

San José, August 8, 2011

Licda. Silvia Navarro Romanini
Secretary General
The Supreme Court of Justice

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Ashley