

Organic Law 10/2007, of 8 October, regulating the police database on profiles obtained from DNA.

**Juan Carlos I,  
King of Spain**

To all who see and hear.: Know:  
That Parliament has approved and I hereby approve the following Act.

## **PREAMBLE**

### **I**

Deoxyribonucleic acid (DNA), a chemical component of the cell nucleus, has become an essential tool of modern techniques used in forensic crime investigations by law enforcement authorities.

Since 1988, the United Kingdom for the first time, information obtained DNA was used to identify and convict the guilty of a crime, both in Spain and other countries around us have become aware of the importance of genetic markers in criminal investigations, something that had to be more common in other areas such as the identification of bodies or the determination of kinship.

However, despite this importance, the use of DNA-related data in the field of prosecution of crimes, today we have many difficulties, especially with regard to obtaining and recording the face of his employment with the with further research. This is given both by the sensitivity that the data they have and the significant degree of protection, of course, must have, for the lack of an adequate legal framework governing their use.

In 2003 and through the provision in the [first final provision of Law 15/2003 of 25 November amending the Criminal Code](#), is amended the [Criminal Procedure Act](#) to provide legal cover, which lacked until then, certain research practices.

The new wording of the [Articles 326](#) and [363 of the Criminal Procedure Act](#) was essentially to regulate the possibility of obtaining DNA from samples from biological evidence found at the crime scene or taken from suspects, so that these DNA profiles can be incorporated into a database for use in that particular investigation.

However, the reform does not cover other important aspects such as the possibility of creating a database in which, at a central and comprehensive set of stores the DNA profiles obtained in order that they might be used later , in separate investigations or future, even without the express consent of the owner of the data.

These shortcomings, coupled with other factors of different nature, demonstrate the inadequacy of existing regulation to meet both the technical possibilities and the demands of citizens, and

international commitments progressively acquired by our country in terms of exchange of DNA profiles for investigations of certain crimes.

On the one hand, it is clear that technical advances now permit the identification data collection exclusively from a DNA sample can be made quickly, economically and sparsely limiting citizens' rights. For another, society has been demanding that the authorities, law enforcement, prosecuting crimes, have the research tools efficient as possible, especially in combating crimes that generate the greatest alarm. Finally, do not forget that the increasing globalization of crime and the parallel assumption of Spain in a series of reciprocal obligations with other countries to share information available in the respective files and databases require the adoption of measures and materials adequate legal.

On this last point, note that the taking of legal measures and the creation of databases that allow exchange of information between Member States, had been repeatedly exposed from the Community institutions through two resolutions of the Council on the exchange of DNA analysis results of 9 June 1997 and of 25 July 2001 respectively. In the same vein has been saying the Council of Europe from Recommendation (92) 1, 10 February 1992 of the Committee of Ministers on the use of DNA analysis results within the system criminal justice.

Finally, it should be emphasized that the wording of this law, how could it be otherwise taken into account the criteria on the protection of fundamental rights in obtaining evidence from DNA profiles, has already shaped the Constitutional Court in various judgments as 207/1996 of 16 December.

## II

The articles of this law begins by determining what constitutes its fundamental purpose, which is none other than the creation of a database in which, uniquely, to integrate the files of the Security Forces in State which are stored the identification data obtained from DNA analysis have been done in the context of a criminal investigation, or the procedures of identification of bodies or missing persons investigation.

In connection with its organic integration, the police database on profiles obtained from DNA under the Ministry of Interior through the Ministry of State Security.

Next, the Act introduces an important novelty, since it allows that for certain particularly serious crimes and social impact as well as for identifying patterns obtained in the procedures for identifying corpses or remains of missing persons, or when the data subject has given consent for enrollment, the results obtained from the analysis of biological samples from the suspect, arrested or charged, are registered and kept in the police database, so that could be used in that particular investigation or other proceedings instituted for the commission of any offense for which the law itself enables the recording of DNA profiles in the database.

This regulation contains a special safeguard, which is essential to eliminate any infringement of privacy, as may be entered only those DNA profiles that are revealed, exclusively, the identity of

the subject-the same that provides a fingerprint - and sex, but in any case, the coding to allow nature to reveal any other information or genetic trait.

Another important technical guarantee derives from the requirement that the Act provides in relation to the mandatory accreditation of laboratories that will have to be implemented by the relevant biological, retain jurisdiction to grant such accreditation, according to the [third additional provision of Criminal Procedure Act](#), the National Commission for the forensic use of DNA.

In relation to the period of conservation of the profiles identified in the database, the Act sets cancellation periods duration dependent on the type of crime and the judicial decision to end the criminal proceedings.

To achieve the objective that the database created is as complete and efficient as possible, provides not only the Interior Ministry to take appropriate measures so that the various files and databases of DNA that, in the field Forces and State Security Bodies exist at the time of its entry into force, come to join the database that this law creates, but also that they can eventually be integrated into a future, and by signing the relevant Convention, other files, records or identification databases obtained from DNA, which does not depend on the Security Forces of the State.

Finally, the text falls within the framework of [Law 15/1999 of 13 December on the Protection of Personal Data](#), which, by their nature general regulation on the matter, is directly applicable, being the provisions of this Law specialties permitted by [said Organic Law](#), which find their justification in the peculiarities of the database it regulates.

#### **Article 1.** Creation.

It creates the police database of profiles obtained from DNA, which will integrate the files of this type of ownership of the Security Forces of the State both for research and investigation of crimes, including procedures for identification of remains cadaveric or missing persons investigation.

#### **Article 2.** Organizational unit.

The police database of profiles obtained from DNA under the Ministry of Interior, through the Ministry of State Security.

#### **Article 3.** Types of profiles obtained from DNA contained in the police database.

1. Be entered in the police database of profiles obtained from DNA the following:

- a. Identification information extracted from DNA samples or fluids within the framework of a criminal investigation, had been found or obtained from the analysis of biological samples from the suspect, arrested or charged, in the case of serious crimes, in any case, affecting the life, liberty, indemnity or sexual freedom, personal integrity, wealth that

they were always made things with force or violence or intimidation in people and in cases of organized crime, including being understood in any case, the term organized crime contained in [Article 282 bis, paragraph 4 of the Criminal Procedure Act](#) in relation to the crimes listed.

- b. identifying patterns obtained in the procedures for identifying corpses or remains of missing persons inquiry.

The inscription on the police database of profiles obtained from DNA referred to this paragraph shall not require the consent of the affected, which will be informed in writing of all his rights to the inclusion in the database , being recorded in the proceedings.

2. They may also register the identification data obtained from DNA when the injured were given their express consent.

#### **Article 4.** Datatypes.

Only may register at the police database regulated by this Act profiles obtained from DNA as part of a criminal investigation, provide, exclusively, genetic information revealing the identity of the person and their sex.

#### **Article 5.** Laboratories accredited.

1. The samples taken on or traces of biological tests to be performed will be submitted by accredited laboratories. It shall be the judicial authority to decide on the further preservation of such samples or traces.
2. Only be performed DNA analysis for genetic identification in cases falling under this law accredited laboratories for the purpose by the National Commission for the forensic use of DNA in excess of regular quality checks to be submitted.

#### **Article 6.** Transmission of data.

The referral of the identification data obtained from DNA, for entry in the police database in the cases provided for in [Article 3 of this Act](#), shall be made by the Judicial Police, adopting in this all the legal guarantees to ensure their transfer, maintenance and custody.

#### **Article 7.** Use and transfer of data in the database.

1. The data contained in the database object of this Act shall be used by Judicial Police units of the Security Forces of the State, understood as the respective units of the Police and Civil Guard in the exercise of functions under [Article 547 of the Organic Law 6 / 1985 of 1 July, the judiciary](#), as well as the judicial and prosecutorial authorities in the investigation of the crimes listed in the letter to the first paragraph of [Article 3 of this Act](#).

2. Notwithstanding the foregoing paragraph, when treatment is performed for the identification of bodies or the investigation of missing persons, the data included in the database object of this Act may only be used in research for which they were obtained .

3. Be transferred the data contained in the database:

- a. In the judicial authorities, prosecutors or police of third countries in accordance with the provisions of international conventions ratified by Spain and in force.
- b. In the Autonomous Police with statutory jurisdiction for the protection of persons and property and maintaining public security, which can only use the data for the investigation of the crimes listed in subparagraph a of paragraph 1 of [Article 3 of this Act](#) or , where, for the identification of bodies or investigations of missing persons.
- c. National Intelligence Center, which may use the data to fulfill its responsibilities regarding the prevention of such crimes, as provided in [Law 11/2002 of 6 May regulating the National Intelligence Center](#).

**Article 8.** Level of Safety.

All files that make up the database object of this Act are subject to high security, in accordance with the provisions of [Law 15/1999 of 13 December](#).

**Article 9.** Cancellation, modification and access to data.

1. The conservation of the profiles obtained from DNA database in the object of this Act shall not exceed:

- The time fixed by law for the statute of limitations.
- The time fixed by law for the cancellation of a criminal record if he had given conviction, or acquittal by the concurrence of causes defenses on the lack of accountability or guilt, unless otherwise judicial decision.

In any case they shall be canceled when order has been made free order of discharge or acquittal by reason other than those mentioned in the previous section, once those decisions are firm. In the case of suspects not charged, the cancellation of registered profiles will occur after the time stated in the Act on the statute of limitations.

In cases where the database exists various inscriptions of the same person, for various crimes, data and identifying patterns will remain registered until the deadline for cancellation broader.

2. The data belonged to dead people will be canceled once in charge of the database is aware of the death. In the cases referred to in [Article 3.1.b](#), the data recorded will not be canceled as long as necessary for the completion of the procedures.

3. The exercise of rights of access, rectification and cancellation in relation to the police database of profiles obtained from DNA may be provided in the terms established in [Law 15/1999 of 13 December](#), and the regulations development.

4. Profiles obtained from DNA for which is unknown identity of the person you are, both remain enrolled in that anonymity is maintained. Once identified, shall apply in this article for the purpose of cancellation.

**First additional provision.** Integration of files and databases.

1. The Interior Ministry will take appropriate action so that the various files and databases of profiles obtained from DNA that, in the field of Security Forces of the State existing on the entry into force of this Act, pass integrated into the police database created by it.

2. Similarly, and by signing the appropriate agreement will be possible integration into the new database data from other files, records or databases of profiles obtained from DNA, other than those described in [Article 1 of this Law](#), provided that they have been created with the sole purpose of research and investigation of the offenses referred to in [Article 3.1.a of this Act](#), identification of dead or missing persons investigation.

**SECOND ADDITIONAL PROVISION.** The legal.

This Act falls under the provisions of [Law 15/1999 of 13 December on the Protection of Personal Data](#), which, by their very nature, is directly applicable, with the provisions of this enabled by specific law [cited Act](#) depending on the nature of the database to be regulated.

**THREE ADDITIONAL PROVISION.** Collection of biological samples.

For the investigation of the crimes listed in subparagraph a of paragraph 1 of [Article 3](#), the judicial police shall give the fluid sampling and the suspect, arrested or charged, as well as crime scene. Samples that require inspections, surveys or physical interventions, without the consent of the affected, in any case require judicial authorization by reasoned order in accordance with the provisions of the [Criminal Procedure Act](#).

**FOUR ADDITIONAL PROVISION.** Laboratories, National Institute of Toxicology and Forensic Sciences.

For the purposes of the provisions of [Article 5 of this Act](#), the laboratories of the National Institute of Toxicology and Forensic Sciences will perform the corresponding DNA analysis for genetic identification, according to the functions assigned to the [Organic Law 6 / 1985 1 July, the Judicial Branch](#).

**Sole Provision.** Unaccredited laboratories.

Laboratories Forces of State Security that the entry into force of this Act were not properly credited in the manner provided in [Article 5](#), provide a period of one year to do so, as from that date.

**REPEALING PROVISION ONLY.** Repeal regulations.

Any provisions of equal or lower rank that contradict or conflict with the provisions of this Law

**First final provision.** Title competence.

This law dictates the rules under 1st, 6th and 29th of [Article 149.1 of the Constitution](#).

**SECOND FINAL PROVISION.** Precepts as a matter of ordinary law.

They have the character of ordinary law the [articles 2](#), paragraph 2 of [Article 5](#), [Articles 7, 8](#) and [9](#), and the [first additional provision](#), [second additional provision](#), [fourth additional provision](#), [single transitional provision](#), [first final provision](#) and [Third final provision](#).

**Third final provision.** Enabling legislation.

1. The Government is authorized to promulgate rules as appropriate for the development of the provisions of this Law
2. Specifically, it authorizes the government to determine the owner of the file and its management, for the purposes specified in [Law 15/1999 of 13 December](#).

**FOURTH FINAL PROVISION.** Commencement.

This Law shall enter into force one month after its publication in the *Gazette*.

Therefore, I order all Spanish individuals and authorities to observe and enforce this Act.

Madrid, 8 October 2007.

Juan Carlos R. - - -

The Prime Minister,  
José Luis Rodríguez Zapatero.