

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (92) 1

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

ON THE USE OF ANALYSIS OF DEOXYRIBONUCLEIC ACID (DNA) WITHIN THE FRAMEWORK OF THE CRIMINAL JUSTICE SYSTEM¹

*(Adopted by the Committee of Ministers on 10 February 1992
at the 470th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members,

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 ("the Data Protection Convention");

Considering that the fight against crime calls for the use of the most modern and effective methods;

Convinced of the need to pursue a common criminal policy aimed at the protection of individuals and the society in which they live;

Bearing in mind that the techniques of DNA analysis can offer advantages to the criminal justice system, in particular in the determination of innocence or guilt;

Bearing in mind, however, that such techniques, which are continuously evolving, should be carried out in a reliable manner;

Mindful, however, that the introduction and use of these techniques should take full account of and not contravene such fundamental principles as the inherent dignity of the individual and the respect for the human body, the rights of the defence and the principle of proportionality in the carrying out of criminal justice,

Recommends that the governments of member states be guided in their legislation and policy by the principles and recommendations set out below;

Instructs the Secretary General to bring the contents of this recommendation to the attention of the non-member states and international organisations which have participated in its preparation.

1. When this recommendation was adopted and in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies;

— the Representative of Denmark reserved the right of her government to comply or not with the recommendation as a whole;
— the Representatives of Germany, the Netherlands and Norway reserved the right of their governments to comply or not with Principle 8 of the recommendation.

Principles and recommendations

1. Definitions

For the purposes of this recommendation :

“DNA analysis” refers to any procedure which may be employed in the analysis of deoxyribonucleic acid (DNA), the basic genetic material of human and other living beings.

“Samples” refers to any substance of living origin which may be utilised for the purpose of DNA analysis.

“DNA file” refers to any structured collection of the results of DNA analysis tests whether retained in material form, as manually held records, or on a computerised database.

2. Scope and Limitations

This recommendation applies to the collection of samples and use of DNA analysis for the purposes of the identification of a suspect or any other individual within the framework of the investigation and prosecution of criminal offences.

3. Use of samples and information derived therefrom

Samples collected for DNA analysis and the information derived from such analysis for the purpose of the investigation and prosecution of criminal offences must not be used for other purposes. However, where the individual from whom the samples have been taken so wishes, the information should be given to him.

Samples collected from living persons for DNA analysis for medical purposes, and the information derived from such samples, may not be used for the purposes of investigation and prosecution of criminal offences unless in circumstances laid down expressly by the domestic law.

Samples taken for DNA analysis and the information so derived may be needed for research and statistical purposes. Such uses are acceptable provided the identity of the individual cannot be ascertained. Names or other identifying references must therefore be removed prior to their use for these purposes.

4. Taking of samples for DNA analysis

The taking of samples for the purpose of DNA analysis should only be carried out in circumstances determined by the domestic law ; it being understood that in some states this may necessitate specific authorisation from a judicial authority.

Where the domestic law admits that samples may be taken without the consent of the suspect, such sampling should only be carried out if the circumstances of the case warrant such action.

5. Recourse to DNA analysis

Recourse to DNA analysis should be permissible in all appropriate cases, independent of the degree of seriousness of the offence.

6. Accreditation of laboratories and institutions and control of DNA analysis

DNA analysis is a sophisticated scientific procedure which should only be performed by laboratories possessing the appropriate facilities and experience.

The member states should ensure that a list be drawn up of accredited laboratories or institutions which satisfy the following criteria :

- high professional knowledge and skill, coupled with appropriate quality control procedures ;
- scientific integrity ;
- adequate security of the installations and of the substances under investigation ;
- adequate safeguards to ensure absolute confidentiality in respect of the identification of the person to whom the result of the DNA analysis relates ; and
- guarantees that the conditions laid down by this recommendation are followed.

The member states should institute a means of exercising regular supervision of their accredited laboratories.

7. Data protection

The collection of samples and the use of DNA analysis must be in conformity with the Council of Europe's standards of data protection as laid down in the Data Protection Convention and the recommendations on data protection, in particular Recommendation No. R (87) 15 regulating the use of personal data in the police sector.

8. *Storage of samples and data*

Samples or other body tissues taken from individuals for DNA analysis should not be kept after the rendering of the final decision in the case for which they were used, unless it is necessary for purposes directly linked to those for which they were collected.

Measures should be taken to ensure that the results of DNA analysis and the information so derived is deleted when it is no longer necessary to keep it for the purposes for which it was used. The results of DNA analysis and the information so derived may, however, be retained where the individual concerned has been convicted of serious offences against the life, integrity or security of persons. In such cases strict storage periods should be defined by domestic law.

Samples and other body tissues, or the information derived from them, may be stored for longer periods:

- when the person concerned so requests; or
- when the sample cannot be attributed to an individual, for example when it is found at the scene of an offence.

Where the security of the state is involved, the domestic law of the member state may permit retention of the samples, the results of DNA analysis and the information so derived even though the individual concerned has not been charged or convicted of an offence. In such cases strict storage periods should be defined by domestic law.

The establishment and operation of any DNA file for purposes of the investigation and prosecution of criminal offences should be regulated by law.

9. *Equality of arms*

States should ensure that DNA analysis as a specific means of proof is equally accessible to the defence, either by decision of a judicial authority or through the use of an independent expert.

Where the quantity of substances available for analysis is limited, care should be taken to ensure that the rights of the defence are not impaired.

10. *Technical standards*

The member states should promote standardisation of the methods of DNA analysis both at national and international levels. This may involve interlaboratory collaboration in validation of the analytical and control procedures.

11. *Intellectual property*

While acknowledging that the intellectual property rights associated with particular methods of DNA analysis may be vested in certain laboratories, member states should ensure that this does not impede access to the use of DNA analysis.

12. *Transborder exchange of information*

DNA analysis may be obtained from a laboratory or institution established in another country provided that the laboratory or institution satisfies all the requirements laid down in this recommendation.

Transborder communication of the conclusions of DNA analysis should only be carried out between states complying with the provisions of this recommendation and in particular in accordance with the relevant international treaties on exchange of information in criminal matters and with Article 12 of the Data Protection Convention.