



GOBIERNO
DE ESPAÑA

MINISTERIO
DE JUSTICIA

NATIONAL COMMISSION FOR THE FORENSIC USE OF DNA



Activities 2020-2021

**National Commission for the forensic
use of DNA**

Activities 2020-2021

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National Institute of Toxicology and Forensic Sciences

National Commission for the foren- sic use of DNA

Activities 2020-2021



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Director of the National Institute of Toxicology and Forensic Sciences

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PRESENTATION

Genetic analysis for the purpose of human identification has long been established as a tool of unquestionable usefulness in the daily work of the courts in their different areas of activity.

The methodological and technological progress taking place at a dizzying speed in the field of human genetics offer new possibilities in the investigation and prosecution of crimes, identification of corpses or tracing of missing persons. All this progress in the field of science requires major efforts in relation to standardisation and, naturally, its correct framing within the Spanish legal framework.

In particular, 2020 was marked by the global impact of the SARS-CoV-2 pandemic, which had a major impact on social and professional activities; despite this, the taskforces of the National Commission for the Forensic Use of DNA (CNUFADN) - the Legal-Bioethics Group and the Permanent Technical Commission - remained operational and, as a result, important agreements and work were achieved and are reflected in this report.

During 2020 and 2021, the CNUFADN has fulfilled one of its main functions related to the accreditation and quality control of Spanish forensic genetics laboratories. Also, during this period, a consultative report was drafted in relation to the bill of the Criminal Procedure Law (ALECRIM) and specifically on Chapter VI of Title I of Book III, referring to investigations using DNA markers. In addition, Chapter IV, on bodily interventions, which was also the subject of study and proposals, is related to this regulation.

In this preamble, the important work carried out by the CNUFADN must be highlighted to adapt and reach a consensus on some of the necessary changes to informed consent forms for the collection of biological samples (investigated/defendants/victims), following the approval of [Organic Law 7/2021 of 26 May on the protection of personal data processed for the purposes of the prevention, detection, investigation and prosecution of criminal offences and the execution of criminal sanctions](#) and of [Law 8/2021, of 2 June, reforming civil and procedural legislation to support persons with disabilities in the exercise of their legal capacity](#).

The activity and work described in this report are an example of the coordination, involvement and joint efforts of the different institutions and organisations represented at the CNUFADN, to who I would like to express my deepest gratitude, and to acknowledge the selfless and professional work of each of the members who have participated in the different working groups and meetings held.

Madrid, 20 December 2022

CHAIRWOMAN OF THE NATIONAL COMMISSION FOR THE FORENSIC USE OF DNA

1. PLENARY MEETING OF THE NATIONAL COMMISSION FOR THE FORENSIC USE OF DNA

1.1. MEMBERS (2020-2021)

CNUFADN members attending the 2020 (25/11/2020, online) and 2021 (4/3/2021, online; 15/12/2021) plenary meetings were as follows:

CNUFADN Ordinary Plenary Meeting in 2020

CHAIR

- **Ms Concepción López-Yuste Padial.** Director General for the Public Justice Service.

DEPUTY CHAIRS

- **Antonio Alonso Alonso.** Director of the National Institute of Toxicology and Forensic Sciences.
- **David Teatino Gómez.** Head of the Regulations and Reports Area of the Coordination and Studies Office. Secretary of State for Security (replacing José Antonio Rodríguez González).

MEMBERS

- **Pedro Mélida Lledó.** Spanish Forensic Police Service. National Police Force.
- **José Luis Herráez Martín.** Commander of the Civil Guard Criminology Service.
- **Miguel Ángel García Alvira.** Inspector. Head of the Forensic Police Division. Central Unit of the Biological Laboratory of the Forensic Police Division. Mossos d'Esquadra.
- **Juan Vicente Bilbao Ontoria.** Head of the Forensic Police. Ertzaintza.
- **Torcuato Muñoz Serrano.** Head of the Forensic Police Division of the Foral Police Force of Navarre.
- **Ignacio José Fernández Soto.** Senior Judge. Adviser. Relations Department with the Justice Administration.
- **Ms Yolanda Gutiérrez García.** Public prosecutor. Adviser. Relations Department with the Justice Administration.
- **Rafael Carlos de Vega Irañeta.** Public prosecutor. Technical Secretariat. Chief Public Prosecutor's Office.
- **Ms Lydia Feito Grande.** Professor of Bioethics and Medical Humanities. Faculty of Medicine. Complutense University of Madrid.
- **Ángel Carracedo Álvarez.** Chair of Medicine at the University of Santiago de Compostela. Director of the Galician Public Foundation of Xenomic Medicine.
- **José Antonio Lorente Acosta.** Professor at the University of Granada. Director of Genetic Identification Laboratory, University of Granada

- **Ms Marta Grijalba Mazo.** Forensic doctor. Advisor to the Directorate General for the Public Justice Service.
- **Ms Carmen Conejero Guillén** Forensic doctor with the Toxicology Information Service of the National Institute of Toxicology and Forensic Sciences.

SECRETARY

- **Manuel Crespillo Márquez.** Director of the Barcelona Department of the National Institute of Toxicology and Forensic Science Doctors

TECHNICAL SUPPORT STAFF FOR MEMBERS

- **Ms Carmen Solís Ortega** Commissioner in charge of the Central Forensic Analysis Unit. National Police Force.
- **José Juan Fernández Serrano.** Head of the Biology Department of the Criminology Service of the Guardia Civil.
- **Ms Carlota Gómez Latre.** Central Unit of the Biological Laboratory of the Forensic Police Division. Mossos d'Esquadra.
- **Jokin Alfageme García.** Head of Operational and Technical Management of the Forensic Police. Ertzaintza.

CNUFADN Extraordinary Plenary Meeting (4 March 2021)

CHAIR

- **Ms Concepción López-Yuste Padial.** Director General for the Public Justice Service.

DEPUTY CHAIRS

- **Antonio Alonso Alonso.** Director of the National Institute of Toxicology and Forensic Sciences.
- **David Teatino Gómez.** Head of the Regulations and Reports Area of the Coordination and Studies Office. Secretary of State for Security (replacing José Antonio Rodríguez González, Director General for Coordination and Studies).

MEMBERS

- **Pedro Mélida Lledó.** Spanish Forensic Police Service. National Police Force.
- **José Luis Herráez Martín.** Commander of the Civil Guard Criminology Service.
- **Miguel Ángel García Alvira.** Inspector. Head of the Forensic Police Division at the Central Unit of the Biological Laboratory of the Forensic Police Division. Mossos d'Esquadra.
- **Juan Vicente Bilbao Ontoria.** Head of the Forensic Police. Ertzaintza.

- **Torcuato Muñoz Serrano.** Head of the Forensic Police Division of the Foral Police Force of Navarre.
- **Ignacio José Fernández Soto.** Senior Judge. Adviser. Relations Department with the Justice Administration.
- **Rafael Carlos de Vega Irañeta.** Public prosecutor. Technical Secretariat. Chief Public Prosecutor's Office.
- **Ms Lydia Feito Grande.** Professor of Bioethics and Medical Humanities at the Complutense University of Madrid.
- **Ángel Carracedo Álvarez.** Chair of Medicine at the University of Santiago de Compostela. Director of the Galician Public Foundation of Xenomic Medicine.
- **José Antonio Lorente Acosta.** Professor at the University of Granada. Director of Genetic Identification Laboratory, University of Granada
- **Ms Carmen Conejero Guillén** Forensic doctor with the Toxicology Information Service of the National Institute of Toxicology and Forensic Sciences.

SECRETARY

- **Manuel Crespillo Márquez.** Director of the Barcelona Department of the National Institute of Toxicology and Forensic Science Doctors

TECHNICAL SUPPORT STAFF FOR MEMBERS

- **Ms Carmen Solís Ortega** Commissioner in charge of the Central Forensic Analysis Unit. National Police Force.
- **Ms Marta Grijalba Mazo.** Forensic doctor. Advisor to the Directorate General for the Public Justice Service.
- **José Juan Fernández Serrano.** Head of the Biology Department of the Criminology Service of the Guardia Civil.
- **Eusebio López Reyes.** Secretariat of State for Security. National Administrator of the DNA database.

CNUFADN Ordinary Plenary Meeting (15 December 2021)

CHAIR

- **Ms Maria dels Àngels García Vidal.** Director General for the Public Justice Service.

DEPUTY CHAIRS

- **Antonio Alonso Alonso.** Director of the National Institute of Toxicology and Forensic Sciences.
- **David Teatino Gómez.** Head of the Regulations and Reports Area of the Coordination and Studies Office. Secretary of State for Security (replacing José Antonio Rodríguez González, Director General for Coordination and Studies).

MEMBERS

- **Ms Carmen Solís Ortega** Commissioner in charge of the Central Forensic Analysis Unit. National Police Force (replacing Pedro Mélida Lledó, Commissioner General of the Forensic Police. National Police Force).
- **Víctor José Esteban Ramos.** Lieutenant Colonel, 2nd Head of the Criminology Service (replacing José Luis Herráez Martín, Commander of the Criminology Service of the Guardia Civil).
- **Francesc Tomàs Facerias,** replacing Miguel Ángel García Alvira (Intendant, Head of the Forensic Police Division at the Central Unit of the Biological Laboratory of the Forensic Police Division. Mossos d'Esquadra).
- **Juan Vicente Bilbao Ontoria.** Head of the Forensic Police. Ertzaintza.
- **Julián Huarte Rodríguez.** Head of the Forensic Police Division of the Foral Police Force of Navarre.
- **Ignacio José Fernández Soto.** Senior Judge. Adviser. Secretariat of State for Justice.
- **Ms Yolanda Gutiérrez García.** Public prosecutor. Adviser. Directorate General for the Public Service of Justice.
- **Rafael Carlos de Vega Irañeta.** Public prosecutor. General Secretariat. Prosecutor.
- **Ms Lydia Feito Grande.** Professor of Bioethics and Medical Humanities at the Complutense University of Madrid.
- **José Manuel Franco Zorrilla.** Senior Scientist at Public Research Organisations, attached to the National Biotechnology Centre of the Spanish National Research Council (CSIC).

SECRETARY

- **Manuel Crespillo Márquez.** Director of the Barcelona Department of the National Institute of Toxicology and Forensic Science Doctors

TECHNICAL SUPPORT STAFF FOR MEMBERS

- **Pedro Sogo Sánchez.** Head of the Laboratory Analytic Co-ordination Service. National Police Force.
- **José Juan Fernández Serrano.** Commander. Head of the Biology Department of the Criminology Service of the Guardia Civil.
- **Alex Barros Manuel.** Sergeant. Head of the Central Forensic Genetics Unit, Forensic Police Division. Mossos d'Esquadra.
- **Ms Marta Grijalba Mazo.** Forensic doctor. Advisor to the Directorate General for the Public Justice Service.

1.2. ACTIVITIES AND AGREEMENTS

Over these two years of activity, the CNUFADN has continued with one of its fundamental functions, enshrined in Article 5 of Organic Law 10/2007, of 8 October, regulating the police database on identifiers obtained from DNA, i.e., the specific function of the accreditation of laboratories that carry out DNA analysis and contribute genetic profiles to the police database on identifiers obtained from DNA. Pursuant to this provision, DNA analysis for genetic identification in the cases contemplated in this law may only be carried out by laboratories accredited for this purpose by the CNUFADN that comply with the agreement on laboratory accreditation and quality control approved by the Plenary Meeting of the CNUFADN on 21 July 2009 (https://www.mjusticia.gob.es/es/ElMinisterio/OrganismosMinisterio/Documents/1292428321545-Acuerdo_sobre_acreditacion_y_control_de_calidad_de_laboratorios.PDF) and which includes passing the periodic quality controls that forensic genetics laboratories must undergo.

In both 2020 (Annex I) and 2021 (Annex II) the CNUFADN approved the lists of accredited laboratories proposed by the Permanent Technical Commission (PTC), following the review of the annual documentation submitted by the forensic genetics laboratories in Spain in terms of quality assurance and accreditation. These lists were published on the CNUFADN website (<https://www.mjusticia.gob.es/es/ministerio/organismos-entidades/instituto-nacional/comision-nacional-para-forense/comision-tecnica-permanente>) and reported to the Attorney General's Office and the General Council of the Judiciary.

During 2020 and 2021, the SARS-CoV-2 pandemic marked the course of the CNUFADN's activity; in this sense, preference was given to holding meetings in a virtual format and the activity was conditioned and limited compared to previous years.

On 24 November 2020, the Council of Ministers approved the Bill of the Criminal Procedure Act (ALECRIM). In January 2021, a public hearing and information period began. This draft bill represents a qualitative step forward in the updating of our criminal legal system, incorporating new tools for the fight against criminality, regulating the use of the most advanced scientific techniques for investigating crime (scientific evidence, automated data processing, etc.); the draft bill significantly promotes the use of genetic analysis for identification purposes and especially to clarify and extend the legal system applicable to both the taking of samples and their analysis and the processing of genetic profiles in the framework of criminal proceedings.

The CNUFADN is a collegiate body attached to the Ministry of Justice and empowered to issue proposals on the collection, preservation and analysis of samples for the purpose of criminal prosecution and identification of corpses; in this sense, the Office of the Minister of Justice requested the preparation of a **consultative report on the draft bill**, and specifically on Chapter VI of Title I of Book III, referring to investigations using DNA markers, and Chapter IV, referring to bodily interventions.

As a result of the joint working meeting held on 16 February 2021 by the members of the PTC and the Legal-Bioethics Group (GJB), the coordinator of the GJB, Ignacio Fernández

Soto, prepared a first draft with the proposed contributions to the ALECRIM, which was subsequently submitted for examination and approval at the extraordinary session of the Plenary of the CNUFADN held on 4 March 2021. As a result, the CNUFADN produced an analysis document and proposals for change ([Annex III](#)) to ALECRIM to be sent to the Ministry of Justice.

The paper focused mainly on the following points:

- proposals for regulating research using DNA markers;
- Proposals for research with new markers, serial DNA analysis and genealogical databases;
- technical improvements to the wording and content.

On the first of the above points, the document points out that the use of the police database on DNA identifiers is a well-established tool in our country, having been implemented more than ten years ago, corroborating its usefulness; in this sense, the Commission proposed that the Bill be taken a step further and include in it all the procedural aspects of the investigation through the use of the police DNA database, given the interrelation between criminal proceedings and the registration and search of profiles in the database.

In relation to the proposal for research with **new genetic markers, serial DNA analysis and genealogical databases**, the Commission considers that ALECRIM offers an excellent opportunity to advance our legislation and to incorporate the use of new DNA research techniques that make it compatible with the necessary legal certainty requirements. The use of new genetic markers (e.g. revealing phenotypic traits or biogeographical origin) is now a reality in the field of human identification for the purposes of criminal investigation; their use has important bioethical and legal implications that may send the wrong message to so-called legal operators and other researchers about the existence or legal authorisation or lack thereof in this respect.

The case is similar with serial DNA analysis as a tool for assisting in the resolution of certain cases; in these situations, databases are created consisting of persons who have voluntarily provided biological samples to detect the involvement of third parties in the event subject to investigation and, if necessary, their incrimination. To this end, the use of this research tool requires a legal framework; in fact, the CNUFADN, at its plenary session of 11 December 2012, recommended its regulation and the general orientation that legislation should adopt in this regard.

Finally, the use of **genealogical** databases, whether public or private, for criminal investigation purposes is now a reality in some countries. There are important legal and bioethical decisions regarding the privacy of genetic data not included in a criminal file resulting from their use. Therefore, in the opinion of the CNUFADN, the regulation of their use, limiting the legal assumptions for the use of these databases, should be contemplated in an update of our legal framework.

Furthermore, the report issued by the CNUFADN includes a series of proposals aimed at making a number of technical improvements to the wording of the text.

On the other hand, two important legislative changes took place during 2021: specifically, Organic Law 7/2021, of 26 May; and Law 8/2021, of 2 June. These laws incorporated a number of new developments and, as a result of their adoption, informed consent forms for the collection of biological samples (investigated/defendants/victims) for DNA profiling approved by the CNUFADN in 2019 had to be adapted. A number of sections of the new forms were adapted (for example, signatures section) to the needs of the institutions belonging to the State Security Forces and Corps (FCSE) and regional police forces or to the Institutes of Forensic Medicine and Forensic Sciences. Four new forms were therefore approved:

- Form for taking biological samples from the person under investigation investigated, prosecuted or accused persons with informed consent in criminal investigation ([Annex IV](#)).
- Form for taking biological samples from victims with informed consent in criminal investigation ([Annex V](#)).
- Form for taking biological samples from the person under investigation investigated, prosecuted or accused persons with informed consent in criminal investigation (Institutes of Forensic Medicine and Forensic Sciences) ([Annex VI](#)).
- Form for taking biological samples from victims with informed consent in criminal investigation (Institutes of Forensic Medicine and Forensic Sciences) ([Annex VII](#)).

The relevant changes of these new forms include:

- the legal references (deletion of the [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC \(General Data Protection Regulation\)](#) and [Organic Law 3/2018, of 5 December, on the Protection of Personal Data and the guarantee of digital rights](#));
- the updating of the rights clause, including both the current correct terminology and mentions required by law (e.g. identification of the data controller and the data protection officer);
- those deriving from [Law 8/2021, of 2 June, reforming civil and procedural legislation to support persons with disabilities in the exercise of their legal capacity](#) as the change of the disability system requires the reformulation of all the terminology referring to "modified capacity", "guardian", "legal representative", etc., affecting different sections of the current forms;
- adaptations to improve the comprehensibility of the forms with a view to making them easier to read (e.g. deletion of redundant or uninformative clauses, inclusion of paragraphs separating the clauses, etc.).

2. THE PERMANENT TECHNICAL COMMISSION

2.1. MEMBERS ATTENDING MEETINGS (2020-2021)

The delegates of the official laboratories represented at the PTC held an online work meeting during 2020, which resulted in the approval of the minutes dated October 2020. Two online meetings were held in 2021, one of them jointly with the GJB.

FORENSIC POLICE SERVICE NATIONAL POLICE FORCE

DNA Laboratory of the Forensic Police Service.

- Ms Carmen Solís Ortega
- Pedro Sogo Sánchez
- Ms Isabel Martínez de Yuso Córdova
- Emilio García Poveda

CIVIL GUARD

Central Criminology Laboratory of the Civil Guard

- José Juan Fernández Serrano
- Carlos Cubría
- Jesús Martínez Gómez

MOSSOS D'ESQUADRA

Central Unit of the Biological Laboratory of the Forensic Police Division. Mossos d'Esquadra.

- Alex Barros Manuel
- Josep Lluís Monasterio
- Ms Lydia Camps Bell

ERTZAINZA

Ertzaintza Forensic Police Unit

- Óscar García Fernández

NATIONAL INSTITUTE OF TOXICOLOGY AND FORENSIC SCIENCES

- Antonio Alonso Alonso
- Manuel Crespillo Márquez

FORAL POLICE OF NAVARRE

Foral Police. Nasertic

- Javier de Miguel Zambrano
- Ms Susana Pedrosa Moro

2.2. ACTIVITIES (2020-2021)

2.2.1. LABORATORY ACCREDITATION

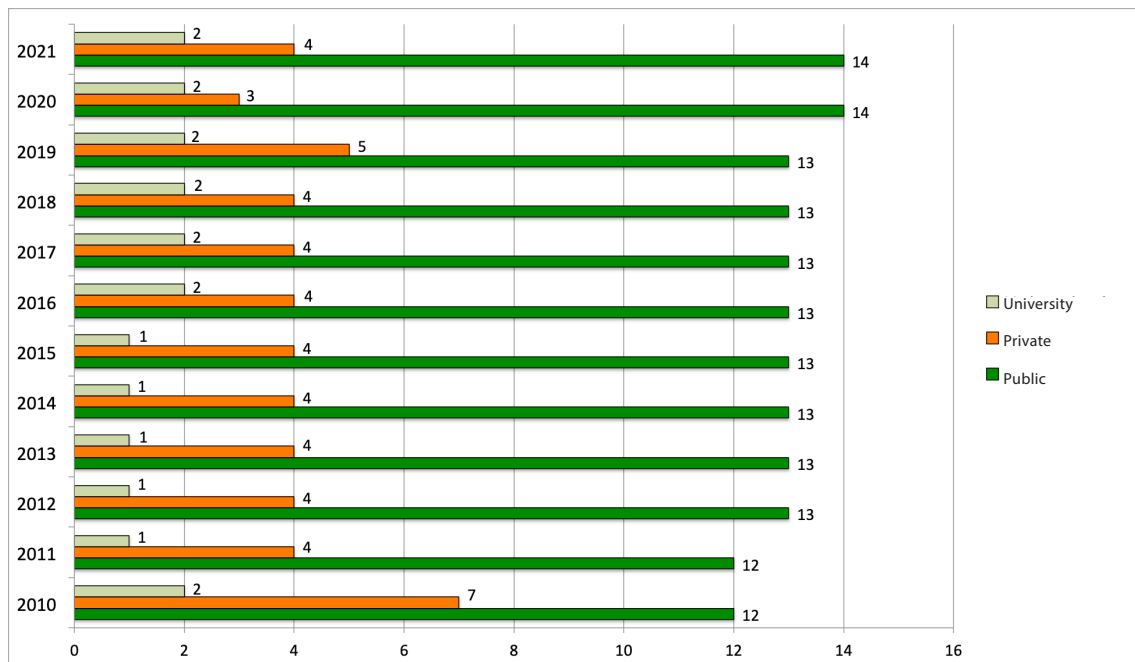
In 2020, the quality and accreditation documentation provided by 21 laboratories was evaluated and the results obtained by the different laboratories as part of the external quality controls of the Spanish and Portuguese Speaking Group of the International Society of Forensic Genetics (GHEP-ISFG) and German DNA Profiling (GEDNAP) in 2019, as well as the accreditation status of the laboratories pursuant to ISO 17025 standard. The assessment of the 21 laboratories was finalised with the results regarding the accreditation status of the 21 laboratories as shown in [Annex I](#). From the 21 laboratories assessed, 19 complied with the CNUFADN agreement on quality and accreditation.

In 2021, the documentation received from 20 laboratories was evaluated, analysing the results obtained by the different laboratories in the external quality controls of the GHEP-ISFG and GEDNAP in 2020, as well as the accreditation status of the laboratories pursuant to ISO 17025. The assessment of the 20 laboratories is set out in [Annex II](#). All the laboratories assessed that year complied with the CNUFADN agreement on quality and accreditation.

The accredited laboratories fall into three main types: public and official laboratories belonging to Security Forces and institutions dependent on the Ministry of Justice, private laboratories and university laboratories. The expert activity of these laboratories is varied, ranging from laboratories that exclusively carry out biological paternity research tests to others that contemplate a broader scope including criminal investigation, biological paternity research, missing persons and inclusion of profiles in the national DNA database.

The historical assessment of accredited laboratories in Spain has remained fairly stable since 2012, although with slight annual variations, as shown in the attached graph.

Figure 1. Historical evolution (2010-2021) of accredited laboratories in Spain



2.2.2. PREPARATION OF RECOMMENDATIONS

In 2020, important recommendations were published in *Forensic Science International: Genetic* in relation to the interpretation of results obtained by Y-chromosome STR analysis. "[DNA Commission of the International Society of Forensic Genetics \(ISFG\): Recommendations on the interpretation of Y-STR results in forensic analysis](#)", volume 48, September 2020.

The statistical interpretation of results obtained using this type of Y-chromosome markers remains a challenge for forensic genetics laboratories; different criteria are often used in the statistical approach and are not always standardised between laboratories. To establish uniform criteria in the treatment of this type of matches, a proposal was made at the TPC regarding the possibility of drafting recommendations in this area aimed at Spanish forensic genetics laboratories; to this end, work began in 2021 and at the time of writing this report, it is still under discussion within the TPC.

3. THE LEGAL-BIOETHICAL GROUP

3.1. MEMBERS ATTENDING MEETINGS (2020-2021)

No GJB meetings were held in 2020. Two meetings were held in 2021 on 16 February and 26 October 2021. The members of the GJB who attended the working meetings held were as follows:

Permanent members:

- **Ignacio José Fernández Soto**. Senior Judge. Secretariat of State for Justice. Coordinator.
- **Ms Yolanda Gutiérrez García**. Public prosecutor. Directorate General for the Public Service of Justice.

CNUFADN representatives:

- **Antonio Alonso Alonso**. Director of the National Institute of Toxicology and Forensic Sciences.
- **David Teatino Gómez**. Regulations and Reports Area of the Coordination and Studies Office. Secretariat of State for Security.
- **Ms Carmen Solís Ortega**. DNA Laboratory of the Forensic Police Service.
- **Pedro Sogo Sánchez**. DNA Laboratory of the Forensic Police Service. National Police Force.
- **José Juan Fernández Serrano**. Civil Guard Criminology Service.
- **José Aquilino Serrano Fernández**. Civil Guard Criminology Service.
- **Francesc Tomàs**. Forensic Police Division. Central Unit of the Biological Laboratory of the Forensic Police Division. Mossos d'Esquadra.
- **Alex Barros Manuel**. Forensic Police Division. Central Unit of the Biological Laboratory of the Forensic Police Division. Mossos d'Esquadra.
- **Josep Lluís Monasterio**. Forensic Police Division. Central Unit of the Biological Laboratory of the Forensic Police Division. Mossos d'Esquadra.
- **Oscar García Fernández**. Forensic Police Force. Ertzaintza.
- **Ms Eva Romón Martínez**. Forensic Police Force. Ertzaintza.
- **Torcuato Muñoz Serrano**. Foral Police of Navarre-Nasertic.
- **Javier de Miguel Zambrano**. Foral Police of Navarre-Nasertic.
- **Ms Susana Pedrosa Moro**. Foral Police of Navarre-Nasertic.
- **Julián Huarte Rodríguez**. Foral Police of Navarre-Nasertic.
- **Alfredo Obanos Blanco**. Foral Police of Navarre-Nasertic.
- **Rafael Carlos de Vega Irañeta**. Public prosecutor. General Technical Secretariat. Chief Public Prosecutor's Office.
- **Juan Manuel Fernández Martínez**. General Council of the Judiciary.
- **Ms Lydia Feito Grande**. Professor of Bioethics and Medical Humanities. Faculty of Medicine. Complutense University of Madrid.

- **José Antonio Lorente Acosta.** Genetic Identification Laboratory. University of Granada.

Secretary

- **Manuel Crespillo Márquez.** National Institute of Toxicology and Forensic Sciences.

Advisors

- **Eusebio López Reyes.** Administrator of national DNA databases. Secretariat of State for Security.
- **Rafael Bañón González.** Forensic doctor. IML of Murcia.
- **Juan Carlos Álvarez Merino.** Genetic Identification Laboratory. University of Granada.

3.2. ACTIVITIES (2020-2021)

The activities of the GJB during this period focused mainly on two activities: firstly, the preparation and discussion of an informational document as a result of the consultation carried out by the Ministry of Justice with a view to gathering scientific and technical opinion; and possible proposals for changes to ALECRIM.

The coordinator of the GJB (Ignacio Fernández Soto) considered that the participation of the members of the PTC was appropriate, in view of the important scientific progress made in recent years and its impact on the field of forensic genetics for identification purposes in criminal and humanitarian fields. As a result, an initial document was drafted and submitted to the CNUFADN Plenary for assessment, discussion and final approval. The document was the result of an important effort of coordination and debate on the part of all the participants in the different meetings who, making different contributions, reached a consensus on a document whose main content focussed on two aspects: achieving a clearer regulation and highlighting the relationship between the criminal process and the databases, aspiring to clarify a number of aspects of the law for legal operators; incorporating a number of aspects into the Bill that have not been regulated to date (mass collection, genealogical searches, study of phenotypic characteristics, etc.) and that are undoubtedly of interest, foreseeably, with growing usefulness.

Furthermore, also in 2021, the GJB met with a view to assessing the necessary changes and adaptations to be included in the informed consent forms (approved by the Plenary of the CNUFADN in 2019) for taking biological samples from victims, investigated, prosecuted or accused persons, as a result of the approval of Organic Law 7/2021, of 26 May, and the changes derived from Law 8/2021, of 2 June. Intensive work was carried out on this update, affecting the amendment of the forms in the following aspects: a) introduction of the correct references in terminology and legislation; b) adaptation of the form to the requirements of the new law in terms of information provided to the interested party; c) systematisation of the information in separate sections for better understanding; d) improvements in the wording to facilitate the understanding of the form.

ANNEX I. List of laboratories complying with the Agreement of the National Commission for the Forensic Use of DNA on Laboratory Accreditation and Quality Control (2020)

Approved at the plenary session of the CNUFADN on 25 November 2020

The PTC issued the ninth annual request for documentation to ensure quality and accreditation, pursuant to:

- Article 8 of Royal Decree 1977/2008 regulating the procedure for assessing laboratories that analyse DNA.
- the CNUFADN agreement on laboratory quality accreditation and control approved by the CNUFADN Plenary Session on 21/07/2009;
- Council Framework Decision 2009/905/JHA on accrediting forensic service providers that carry out laboratory activities.

This annual survey requested laboratory identification data, areas of application, certificates of participation in official quality controls for 2019 and the accreditation status by ENAC of forensic genetics laboratories providing services in Spain, with a view to determining the degree of compliance of laboratories with the CNUFADN agreement on accreditation and quality control.

Documentation from 21 laboratories was received and evaluated by the CTP as part of a monographic meeting at which all the results obtained by the different laboratories in the external quality controls during 2019 were analysed, as well as the ENAC accreditation status of the laboratories pursuant to ISO 17025.

After studying the documentation submitted by the different laboratories, it was concluded that there are currently 19 laboratories that comply this year with the CNUFADN agreement, since, in addition to participating in the official controls of the GHEP or GEDNAP, they have the ENAC accreditation certificate in force.

This Permanent Technical Committee has therefore decided to submit the annual list of laboratories complying with the CNUFADN Accord on Accreditation and Quality Control for approval to the Plenary Meeting of the National Commission for the Forensic Use of DNA and to issue a certificate of compliance to each of the 19 laboratories listed below.

List of laboratories complying with the CNUFADN agreement on accreditation and quality control:

- Laboratorio de ADN de la Comisaría General de Policía Científica (Madrid)
- Laboratorio Territorial de Biología/ADN de la Jefatura Superior de Policía de Andalucía Occidental (Sevilla)
- Laboratorio Territorial de Biología/ADN de la Jefatura Superior de Policía de Andalucía Oriental (Granada)
- Laboratorio Territorial de Biología/ADN de la Jefatura Superior de Policía de Cataluña (Barcelona)

- Laboratorio Territorial de ADN de la Jefatura Superior de Policía de la Comunidad Valenciana (Valencia)
- Laboratorio Territorial de ADN de la Jefatura Superior de Policía de Galicia (A Coruña)
- Servicio de Criminalística de la Guardia Civil. Departamento de Biología (Madrid)
- Laboratorio de Genética Forense de la Jefatura de Policía Científica de la Ertzaintza (Erandio, Vizcaya)
- Laboratorio de Genética Forense de la División de Policía Científica. Mossos d'Esquadra (Sabadell, Barcelona)
- Instituto Nacional de Toxicología y Ciencias Forenses. Servicio de Biología. Departamento de Madrid
- Instituto Nacional de Toxicología y Ciencias Forenses. Servicio de Biología. Departamento de Barcelona
- Instituto Nacional de Toxicología y Ciencias Forenses. Servicio de Biología. Departamento de Sevilla.
- Instituto Nacional de Toxicología y Ciencias Forenses. Sección de Biología. Delegación de La Laguna.
- Instituto Universitario de Medicina Legal. Servicio de Genética Forense. Universidad de Santiago de Compostela (A Coruña)
- Policía Foral-Navarra de Servicios y Tecnologías, S.A. (NASERTIC) (Villaba, Navarra)
- Genómica S.A.U. (Madrid)
- Neodiagnóstica S.L. (Lleida)
- Unidad de Secuenciación y Genotipado de la UPV/EHU
- Fundación Tecnalia Research & Innovation, (Vitoria)

An appeal may be filed against this decision within a period of one month before the Secretary of State for Justice pursuant to Article 8.4 of Royal Decree 1977/2008, of 28 November, which regulates the composition and functions of the National Commission for the forensic use of DNA, and with Article 114 and following of Law 30/1002, of 26 November, on the Legal System of the Public Administrations and Common Administrative Procedure.

Approved in Madrid by the National Commission for the Forensic Use of DNA on 25 November 2020.

Manuel Crespillo Márquez
Secretary of the CTP
Secretary of the CNUFADN

Ms Concepción López-Yuste
Padial
Chairwoman of the CNUFADN

Antonio Alonso Alonso
Chairman of the CTP
Deputy Chairman of the
CNUFADN

ANNEX II: List of laboratories complying with the National Commission for the Forensic Use of DNA Agreement on Laboratory Accreditation and Quality Control (2021)

Approved at the plenary session of the CNUFADN on 15 December 2021

The PTC issued the fifth annual request for documentation to ensure quality and accreditation, pursuant to:

- Article 8 of Royal Decree 1977/2008 regulating the procedure for assessing laboratories that analyse DNA.
- The CNUFADN agreement on laboratory quality accreditation and control approved by the CNUFADN Plenary Session on 21/07/2009.
- Council Framework Decision 2009/905/JHA on accrediting forensic service providers that carry out laboratory activities.

This annual survey requested laboratory identification data, areas of application, certificates of participation in official quality controls for 2020 and the accreditation status by ENAC of forensic genetics laboratories providing services in Spain, with a view to determining the degree of compliance of laboratories with the CNUFADN agreement on accreditation and quality control.

Documentation from 20 laboratories was received and evaluated by the PTC as part of a monographic meeting at which all the results obtained by the different laboratories in the external quality controls during 2020 were analysed, as well as the ENAC accreditation status of the laboratories pursuant to ISO 17025.

After studying the documentation submitted by the different laboratories, it was concluded that there are currently 20 laboratories that comply this year with the CNUFADN agreement, since, in addition to participating in the official controls of the GHEP or GEDNAP, they have the ENAC accreditation certificate in force.

This Permanent Technical Committee has therefore decided to submit the annual list of laboratories complying with the UNCFADN Accord on Accreditation and Quality Control for approval to the Plenary Meeting of the National Commission for the Forensic Use of DNA and to issue a certificate of compliance to each of the 20 laboratories listed below.

List of laboratories complying with the CNUFADN agreement on accreditation and quality control:

- Laboratorio de ADN de la Comisaría General de Policía Científica (Madrid)
- Laboratorio Territorial de Biología/ADN de la Jefatura Superior de Policía de Andalucía Occidental (Sevilla)
- Laboratorio Territorial de Biología/ADN de la Jefatura Superior de Policía de Andalucía Oriental (Granada)

- Laboratorio Territorial de Biología/ADN de la Jefatura Superior de Policía de Cataluña (Barcelona)
- Laboratorio Territorial de ADN de la Jefatura Superior de Policía de la Comunidad Valenciana (Valencia)
- Laboratorio Territorial de ADN de la Jefatura Superior de Policía de Galicia (A Coruña)
- Servicio de Criminalística de la Guardia Civil. Departamento de Biología (Madrid)
- Laboratorio de Genética Forense de la Jefatura de Policía Científica de la Ertzaintza (Erandio, Vizcaya)
- Laboratorio de Genética Forense de la División de Policía Científica. Mossos d'Esquadra (Sabadell, Barcelona)
- Instituto Nacional de Toxicología y Ciencias Forenses. Servicio de Biología. Departamento de Madrid
- Instituto Nacional de Toxicología y Ciencias Forenses. Servicio de Biología. Departamento de Barcelona
- Instituto Nacional de Toxicología y Ciencias Forenses. Servicio de Biología. Departamento de Sevilla.
- Instituto Nacional de Toxicología y Ciencias Forenses. Sección de Biología. Delegación de La Laguna.
- Instituto Universitario de Medicina Legal. Servicio de Genética Forense. Universidad de Santiago de Compostela (A Coruña)
- Policía Foral-Navarra de Servicios y Tecnologías, S.A. (NASERTIC) (Villaba, Navarra)
- Citogen, S. L. (Zaragoza)
- Neodiagnostica, S. L. (Lleida)
- Genómica SAU (Madrid)
- Unidad de Secuenciación y Genotipado de la UPV/EHU
- Fundación Tecnalia Research & Innovation (Vitoria)

An appeal may be filed against this decision within a period of one month before the Secretary of State for Justice pursuant to Article 8.4 of Royal Decree 1977/2008, of 28 November, which regulates the composition and functions of the National Commission for the forensic use of DNA, and with Article 114 and following of Law 30/1002, of 26 November, on the Legal System of the Public Administrations and Common Administrative Procedure.

Approved in Madrid by the National Commission for the Forensic Use of DNA on 15 December 2021.

Manuel Crespillo Márquez
Secretary of the PTC
Secretary of the CNUFADN

Ms M.^a Àngels García Vidal
Chairwoman of the CNUFADN

Antonio Alonso Alonso
Chairman of the PTC
Deputy Chairman of the
CNUFADN

ANNEX III: Report on the Bill of the Criminal Procedure Law on Research using DNA Markers issued by the National Commission for the Forensic Use of DNA.

Adopted online by the members of the CNUFADN Plenary Session (4-9 March 2021)

REPORT ON THE BILL ON CRIMINAL PROSECUTION IN THE FIELD OF RESEARCH USING DNA MARKERS. Contributions to the original text are shown in red.

I. General considerations

Chapter VI, Title I of Book III of the bill of the Organic Law on Criminal Procedure regulates research using DNA markers, which will be the main object of analysis and proposals by this Commission. However, Chapter IV, bodily interventions, is related to this regulation and will also be the subject of study and proposals.

As a first consideration, the inclusion of a specific chapter dedicated to research using DNA markers is innovative and consistent with the purpose of the Bill to fully regulate criminal investigations based on new technologies.

Efforts to provide a systematic, modern and comprehensive regulation of research using DNA analysis techniques, from the collection of samples to their analysis and the probative value of the expert reports, is also commendable.

In this respect, the Bill addresses and clears up interpretative doubts that the current procedural legislation had generated with respect to crucial issues, such as the regime for collecting and obtaining biological traces, clearly differentiated from the taking of reference samples from the person under investigation or from other persons, establishing the rule that authorises the Judicial Police, but also the forensic doctor or medical personnel, to collect them.

Regarding the taking of reference samples, the Bill includes as a general rule, consistent with the impact of the fundamental rights to physical integrity and privacy, the need for judicial authorisation (judge responsible for setting bail), with reference to the rules of bodily intervention, and also the rule that allows the taking of the sample if there is consent.

In the case of consent, the Bill also regulates the content of the information, which is necessary for consent to be informed under the terms established by case law and the specific rule that affects the person under investigation.

With regard to the person under investigation, there is a specific provision for the taking of surreptitious samples that does not dispense with judicial authorisation, which is coherent with the system, since the impact of the right to informational self-determination is more intense when the sample is taken without the knowledge of the person under investigation. Consequently, an additional guarantee is established to allow for a counter test to be carried out by means of the delivery of an actual reference sample.

The regulation also addresses a problematic case, due to the lack of express legal provision: the forced taking of samples from persons not under investigation, opting, in line with the criteria expressed by this commission in its *Guide on the forensic use of DNA*, not to exclude the imposition of the taking of samples by means of a judicial weighing of the need for this.

Finally, two neglected aspects of our current legislation are included:

- Analysis for obtaining DNA profiles, the reference to the cancellation of these profiles in the police database law, pursuant to the regulatory law, the destination of the samples and their conservation and destruction.
- The content of the expert's report and the evidentiary value of the proceedings.

All of this merits a positive assessment by the Commission, which considers that the Bill represents important regulatory progress in this area.

II. Proposals for regulating research using DNA markers

In the light of the proposed text, and based on the experience gained in the more than ten years since its implementation, the Commission proposes to take the Bill a step further and to include in it all procedural aspects of the investigation through the use of the Police DNA Database.

Organic Law 10/2007, of 8 October, regulating the police database on DNA-based identifiers, sets out the functioning, the types of identifiers and the cases of inclusion of profiles, as well as their use and transfer. Furthermore, Article 520 of the current Criminal Procedure Act regulates the need to seek the authorisation of the examining magistrate in case of refusal of the detainee to give a sample of his or her buccal mucosa to obtain their DNA profile and the Criminal Code establishes the registration of profiles of those convicted of serious crimes against life, integrity of persons, sexual freedom or indemnity, terrorism or any other serious crime that entails a serious risk to the life, health or physical integrity of persons if certain circumstances are met.

Once the use of the police database has been consolidated by the different forensic laboratories, we believe that it is time to reflect this investigation tool in our procedural law, given the interrelation between criminal proceedings and the registration and search of profiles in the database.

Our legal tradition has been to include, in the same body of law, the most relevant means of investigation or those in which the judge intervenes as part of the investigation phase. Thus, in the Criminal Procedure Act we find the rules on the corpus delicti, search warrants, interception of communications, technological investigation, etc.

It is possible to offer a more clarifying vision of the relationship between the criminal process and the database, as well as the role of the Judicial Police, the Public Prosecutor's Office and the judge responsible for setting bail when, in cases of lack of consent, the taking of an reference sample is requested and agreed, by means of a regulation that

covers the basic aspects of this means of investigation and establishes coherent criteria for obtaining profiles in the different phases of the process.

There is an important interdependence between the criminal process and the National DNA database. The prerequisite for the registration of an reference DNA profile is the commission by the owner of the action constituting certain criminal offences. Therefore, the acquittal, absolution or extinction of criminal liability have effects on the registration, and this is rightly reflected in the Bill. Furthermore, the current registration will have an effect on future prosecutions when it is used to determine a profile match or to link prosecutions without a known perpetrator which, by virtue of the data in the database, are proven to have been committed by the same person.

The plenary session of the National Commission, on 11 December 2012, on the occasion of the Bill of the Criminal Procedure Law, agreed the following:

The current Criminal Proceedings Act (LECrim) lacks adequate provisions on DNA usage in criminal investigation. The revised law should therefore introduce detailed regulations of issues related to such investigations involving scientific genetic recognition and identification techniques. These, in turn, must comply with the provisions of Organic Law 10/2007, of 8 October, regulating the police database on DNA-based identifiers and the requirements and safeguards required by jurisprudence.

In conclusion, the Commission considers that, in line with the extensive and detailed regulation of other investigation instruments, such as the use of technological means, the most appropriate thing to do is to clearly and coherently include in the Procedural Law the investigation through the use of genetic profiles registered in the police database, including the reference to international data transfers, respecting the regulation contained in Organic Law 10/2007 and developing those aspects currently included in the current Criminal Procedure Law and the Bill of the Organic Law on Criminal Procedure.

III. Proposals for research with new markers, serial DNA analysis and genealogical bases

The Commission also sees the Bill as a great opportunity to take another step forward in our legislation and to incorporate new DNA research techniques in an open manner, but compatible with the requirements of legal certainty inherent to our legal system. At this point, it is necessary to establish a coherent framework for the entire design of DNA-based marker research to avoid legal uncertainties and divergent responses to similar situations.

The fact that a new regulation does not expressly mention and regulate techniques that are already in regular use in criminal research and that have important bioethical and

legal implications may give the wrong message to so-called legal operators and other researchers about the existence of legal authorisation or lack thereof in this respect.

Suffice to say, for example, in relation to research using DNA markers that reveal phenotypic traits and biogeographical origin with a certain probability, that not only has this research already been used in Spain, subjecting it, in the absence of regulations, to judicial authorisation, but there is legislation that expressly contemplates it (Netherlands), and other States are considering including it expressly in their codes or laws regulating criminal investigation. In the case of Eva Blanco (1997), the suicide of the person under investigation made it impossible to establish what impact the combined use of phenotypic and biogeographical origin marker research with mass DNA testing of persons from the biogeographical area of the alleged perpetrator would have had on the lawfulness of the evidence without any legal provision.

The same applies to serial DNA testing. The world's first research using DNA markers and the first conviction resulting from a match of genetic profiles occurred in the context of mass DNA profiling of a particular section of the local population (Pitchfork case, UK, 1983-1987). In Spain, it was used in the cases of the murder of Inmaculada Arteaga in Campo de Criptana (2001), which was solved in 2006, and in the case of Eva Blanco (1997), which was solved in 2015. In Germany (paragraph 81, section 81h), this aspect is regulated with various restrictions, since this is a case in which the assumptions for the application of DNA marker research are strained by the creation of a small database of non-suspects who voluntarily cooperate in the investigation and whose contribution can end up incriminating third persons who declined to submit to the test or by revealing the existence of a kinship with the perpetrator of the criminal offences.

The relevance of these issues prompted the Commission to recommend their regulation and the general direction that legislation should take in this regard, in its plenary session of 11 December 2012.

Finally, there is another reality that has no legal provision whatsoever, namely research in genealogical databases, whether public or private. These are non-criminal databases that people entered voluntarily for other purposes. The reality of the existence of these databases and the possibility of their use as a last resort in the case of very serious crimes has already given rise to a famous case: the identification of Joseph James De Angelo as the *Golden State Killer*, a serial killer who operated in California in the 1980s and 1990s raping and murdering numerous women. Internationally, some 200 criminal investigations have been conducted using this analysis strategy. It is only a matter of time before a very serious case pushes the investigation to search for the perpetrator in other databases, public or private, and it is also a fact that the number of these databases and the number of people who voluntarily donate a sample to obtain their genetic profile is increasing exponentially.

Regulating the use of these instruments, either to prohibit them or to restrict them to cases of particular seriousness, and also conditioning the access requirements, and also to do so in coherence with the system of consultation of databases of criminal interest, seems inevitable under a new type of legislation. It is not appropriate that research

methods that are of unquestionable importance in criminal proceedings and that involve important legal and bioethical decisions regarding the privacy of genetic data not included in a criminal file should be left without any legal provision and at the mercy of discretionary decisions by the courts.

IV. Technical improvements

Finally, the Commission intends on contributing with technical improvements to the proposed DNA text. Many comments from laboratories, law enforcement representatives and the Prosecutor's Office are reflected in this proposal.

V. Specific proposals and their justification

A) Proposals in relation to Chapter IV (bodily interventions)

(1) Article 326(3)

Current wording

3. Biological substances or samples obtained from a bodily intervention may only be used for the purposes of the investigation for which they were obtained and shall be destroyed as soon as they are no longer needed.

This precept may pose problems if applied to investigations using the database to search for genetic profiles of the perpetrator. A decontextualised, but plausible, interpretation could disable the possibility of using databases in criminal proceedings, as their dynamics imply that an analysed sample and the information obtained have an impact on other existing or future criminal proceedings, this being the main tool of DNA research.

We propose, in order to clarify the issue, the inclusion of a subparagraph to exclude research using DNA techniques involving the consultation of databases.

Moreover, the destruction of samples "as soon as they are no longer needed" is also problematic in the area of DNA and databases. If the need relates to ongoing criminal proceedings, it would no longer be possible to re-analyse the sample once the DNA profile has been obtained, but would require a new reference sample to be taken. This seems to be the logic of the precept. On the other hand, there is a clear uncertainty as to who decides on the need and under what parameters.

We understand that, once the decision has been made to take the sample and notwithstanding the regulation of the preservation of the police DNA database in the law, it is in the interest of the operation of the database to keep it for a longer period of time than is necessary for the ongoing investigation. The reason for this is that new markers may need to be added in line with advances in the technique and therefore the profile may need to be updated. The destruction of the sample would require, in the case of the profiles to be maintained, a new sample to be taken and analysed, a complex operation which, due to

its length, would make this infeasible and would prevent the old profiles from meeting the standards that could be set in the future. Furthermore, the donor of the sample may not be available for a new collection, should it be needed for a new case.

Finally, in the context of investigations into new or past events, the need to carry out a new analysis on a sample, obtained with all the guarantees, which led to the obtaining of a genetic profile, cannot be ruled out. Such a case would arise if, having taken the reference sample from an individual and having obtained the STR markers, Y-STR analysis must be performed later in the context of another investigation where the trace only allows this type of comparison. This sample could be reanalysed as part of another investigation to expand the identification markers, in guarantee of the investigated person, without the need to take a new sample and obtain a reference profile, which is a complex operation involving a new bodily intervention.

With the exception of Article 326 (bodily interventions), the specifications on the preservation of the sample according to the database legislation and the possibility to re-use the sample for other criminal proceedings that may follow are contained in the new paragraph 9 of Article 338, in Chapter VI on DNA marker research.

Alternative proposal

Article 326. Body interventions

1. *For the purposes of acquiring or securing sources of evidence, interventions on the body of a person consisting of the removal of substances or elements or the taking of biological samples for appropriate analysis may be carried out in the investigation of a criminal offence.*
2. *Bodily interventions, whether serious or minor, shall always be carried out in the manner that is least damaging to the person who has to undergo them, respecting his or her dignity and privacy.*
3. *Biological substances or samples obtained from a bodily intervention may only be used for the purposes of the investigation for which they were obtained, ~~and shall be destroyed as soon as they are no longer needed.~~ **notwithstanding the provisions of Chapter VI concerning samples obtained for the purpose of DNA profiling and the recording and searching of genetic profiles in the law enforcement DNA identifier database.***

(2a) Article 327(1)

Current wording

Article 327. Minor bodily interventions

1. *Bodily interventions aimed at obtaining hair, nails, oral mucosa or other biological samples that do not require access to intimate areas of the person under investigation or cause greater pain or suffering than the superficial discomfort inherent to the procedure of taking*

the sample, shall be considered minor and may be carried out by the forensic doctor or by qualified medical personnel of the Judicial Police, provided that the person concerned consents to their performance. If the person is in detention, consent may only be given with the assistance and advice of a lawyer.

The reference to a forensic doctor or qualified technical staff of the Judicial Police shall be supplemented with the reference simply to qualified staff of the Judicial Police, as currently the technical staff is that of the National Institute of Toxicology and Forensic Sciences. This expression is remodelled in the same sense as it will be in Article 334.

Alternative proposal

Article 327. Minor bodily interventions

*1. Bodily interventions aimed at obtaining hair, nails, oral mucosa or other biological samples that do not require access to intimate areas of the person under investigation or cause greater pain or suffering than the superficial discomfort inherent to the procedure of taking the sample, shall be considered minor and may be carried out by the forensic doctor ~~or~~ by medical personnel **or qualified personnel** of the Judicial Police, provided that the person concerned consents to their performance. If the person is in detention, consent may only be given with the assistance and advice of a lawyer.*

(3a) Article 330(2) and Article 337(3)

Current wording

330. 2. In the case of minors or persons whose capacity to act has been changed by the courts, their consent shall be required when, due to their personal conditions and maturity, they are able to understand the meaning and purpose of the procedure. In such cases, the consent of their legal representative must also be obtained.

337. 3. Minors over fourteen years of age and whose capacity to act has been changed by the courts may give consent when, due to their personal conditions and maturity, they are able to understand the meaning and purpose of the procedure. In any case, they shall be assisted by their legal representative when giving consent.

In the case of minors under fourteen years of age and persons who do not understand the scope and meaning of the procedure, the consent of their legal representative is required.

There is a possible contradiction in the treatment of minors in terms of the procedural guarantees required for the validity of those investigative proceedings in which they may be affected, which could generate problems in daily prosecutorial and judicial practice.

Specifically, the difference in regulation can be seen in the second paragraph of Article 330 and the third paragraph of Article 337 of the Bill, relating to the capacity to act of minors and the necessary requirements for the consent given either by themselves or by their legal representative to be valid; which shows that for reasons of legislative

coherence and legal security, given that both precepts are closely related, they should be drafted using the same terms, with a view to establishing identical procedural guarantees that can avoid different interpretations or contradictory practices.

The Bill, in the second section of Article 330, entitled *Inspections or bodily interventions on persons not under investigation*, refers generally to minors without establishing different treatment depending on whether they are minors or over 14 years of age, while the fourth section of Article 337, entitled *Guarantees and information*, distinguishes between two age brackets and introduces the criteria for deciding whether minors over 14 years of age can give consent themselves.

This second wording, a priori, may be more in line with current legislation on minors (Organic Law 1/1996, of 15 January, on the Legal Protection of Minors; Organic Law 5/2000, of 12 January, regulating the Criminal Responsibility of Minors; Article 7 of Organic Law 3/2018, of 5 December, on the Protection of Personal Data and Guarantee of Digital Rights; and Article 9 of Law 41/2002, of 14 November, regulating patient autonomy and rights and obligations regarding clinical information and documentation, etc.), as it distinguishes between two bands within those considered underage. Furthermore, the requirements of Article 330, which specifies double consent, is not understood: "In such cases, the consent of his or her legal representative must also be obtained", i.e. in addition to that of the person concerned.

However, we believe that even the third paragraph of Article 337 does not provide a suitable response to the principle of the best interests of the minor, since it is a premise of the legislation invoked that all minors are subjects of rights, and from the aforementioned legislation as a whole it can be inferred that all minors over fourteen years of age have a sufficient degree of maturity to understand the meaning and scope of their own acts, since they are also subjects of obligations, which is obvious, since those over fourteen years of age are criminally liable for their own illegal acts, and it would therefore be right to establish in general that minors over fourteen years of age have the capacity to give their consent themselves, without any need to assess their degree of perceptiveness, the foregoing *notwithstanding the assistance of their legal representative, which is a different requirement*.

To look further into the need to safeguard the capacity of all minors aged over fourteen to act, as the subjects of rights and obligations, Article 469 of the APLECRIM must be mentioned on the *Declaration of minors*, in which paragraph 2 establishes that "a witness under fourteen years of age shall not be sworn in or warned of incurring any liability", which a *contrario sensu* implies that a witness over fourteen years of age shall be sworn in and warned of incurring criminal liability if they fail to tell the truth; therefore, it is presumed that they have sufficient capacity to act to understand the meaning and scope of their acts and decisions.

This observation is intended to comply with the following principles: 1) to respect and not undermine the rights of minors, 2) to reinforce and unify the procedural guarantees for the

validity of the investigative procedures carried out and 3) to avoid problems of unlawfulness of the evidence, due to defects in the will and/or knowledge.

It should also be noted that we believe it would be more appropriate not to include in the same section the requirements for minors and persons whose capacity to act has been changed by the courts.

Alternative proposal

Article 330. *Body searches or bodily interventions on persons not under investigation*

[...]

2. In the case of minors over fourteen years of age, they may themselves give consent. In any case, they shall be assisted by their legal representative.

In the case of persons under fourteen years of age, the consent of their legal representative shall be required, after having heard their opinion, unless their personal circumstances and maturity are such that they have sufficient judgement to understand the scope and meaning of the procedure, which shall be justified in a reasoned manner by the public prosecutor's office. In this case, the presence of their legal representative shall be sufficient.

3. Persons whose capacity to act has been changed by the courts shall require the consent of their legal representative, if this is necessary from the scope and content of the corresponding court ruling.

4. Examination or intervention may be refused on the same grounds on which a witness may be excused from testifying under this Act.

Article 337. *Guarantees and information.*

[...]

3. Minors over fourteen years of age may themselves give their consent. In any case, at the time of receiving the information and giving consent, they shall be assisted by their legal representative.

In the case of persons under fourteen years of age and persons whose capacity to act has been changed by the courts, the provisions of the second and third paragraphs, respectively, of Article 330 of this law shall apply.

B) Proposals under Chapter VI (research using DNA markers)

(1) Article 334

Original wording

Article 334. *Collection of biological traces*

1. When, in the course of the investigation, biological traces are found whose genetic analysis may contribute to the clarification of the facts under investigation, the judicial police, the forensic doctor or qualified medical personnel shall collect them, taking the necessary measures to guarantee the authenticity and unalterability of the source of evidence.

2. In any case, the collection of biological remains for genetic analysis shall be subject to the following rules:

- a) It shall be carried out by medical personnel with specialised training and appropriate technical equipment, including qualified personnel from the judicial police.
- b) All persons taking part in the procedure shall be identified in the report.
- c) A record shall be drawn up identifying the object and the place where the traces are found, the type of biological material to which they belong and the date and time of collection.
- d) The storage conditions, seals and security measures taken to ensure the authenticity of the biological material shall be indicated.
- e) The traceability of the sample and the identity of all persons who have been in contact with the sample shall be recorded.
- f) The protocol followed to avoid contamination of the sample shall be recorded.

Two amendments are proposed to paragraph 1 and paragraph 2(a) and (c) for technical reasons.

- Paragraph 1 and subparagraph 2(a): the reference to "medical personnel... and appropriate technical equipment..." creates interpretative confusion. The Commission understands that "appropriate technical equipment" does not refer to a technical team of people, but to the equipment they use. For this reason, we propose making the provision clearer. Furthermore, paragraph 1 refers to forensic doctors, who are omitted in paragraph 2(a). We therefore propose removing the reference to staff in the first paragraph and completing paragraph (b) with the reference to the forensic doctor.
- Paragraph 2(b): the reference to the type of "biological material" may lead to problems with subsequent testing. Determining biological material with the naked eye is complex and sometimes impossible. An erroneous specification at first glance can - as has happened on occasion - lead to the chain of custody being called into question because what is recorded in the case file does not correspond to what has been definitively determined by analysis. For this reason, and in the spirit of the standard, we propose replacing this mention by a description of the material, without the researcher necessarily specifying what type of biological material it is.

Alternative proposal

Article 334. *Collection of biological traces*

1. When, in the course of the investigation, biological traces are found whose genetic analysis may contribute to the clarification of the facts under investigation, ~~the judicial police, the forensic doctor or qualified medical personnel~~ **they shall be collected**, taking the necessary measures to guarantee the authenticity and unalterability of the source of evidence.

2. In any case, the collection of biological remains for genetic analysis shall be subject to the following rules:

- a) It shall be carried out by **the forensic doctor**, medical **practitioner** or **qualified staff of the judicial police** with specialised training and appropriate technical equipment; ~~including qualified personnel from the judicial police.~~
- b) All persons taking part in the procedure shall be identified in the report.
- c) A record shall be drawn up identifying the object and the place where the traces are found, **their description**, ~~the type of biological material to which they belong~~ and the date and time of collection.
- d) The storage conditions, seals and security measures taken to ensure the authenticity of the biological material shall be indicated.
- e) The traceability of the sample and the identity of all persons who have been in contact with the sample shall be recorded.
- f) The protocol followed to avoid contamination of the sample shall be recorded.

(2) Article 335

Original wording

Article 335. *Taking samples from the person under investigation*

1. When the DNA profiles obtained in the course of the investigation must be compared against the genetic profile of the person under investigation to establish the facts under investigation or to determine the perpetrator, the judge responsible for setting bail, at the request of the Public Prosecutor's Office, may agree to do so, authorising the biological samples of the person under investigation to be obtained and analysed for this purpose.

2. When the sample is taken directly from the body of the person under investigation, it shall be considered a bodily intervention, and the provisions of the previous chapter shall apply.

However, the authorisation of the judge responsible for setting bail shall not be necessary if the person concerned gives their consent pursuant to the provisions of Chapter IV of this Title.

3. If the person under investigation does not provide their consent, the Public Prosecutor's Office may seek the authorisation of the judge responsible for setting bail to use, for the purposes expressed in this article, samples deposited that can be reasonably attributed to them. In this case, the person under investigation shall be informed of the circumstances

under which the sample was obtained and shall be allowed to provide another authentic sample for a counter test.

Exceptionally, if a serious crime has been committed and the investigations have been declared secret, the judge responsible for setting bail, at the request of the Public Prosecutor's Office, may authorise the sample and the genetic profile to be obtained without the knowledge of the person concerned.

4. Without the express consent of the person under investigation or judicial authorisation, samples or information of the person under investigation obtained for other purposes shall, under no circumstances, be brought into the proceedings.

However, in case of the commission of a serious offence, the judge responsible for setting bail may authorise the use of samples obtained for diagnostic, therapeutic or biomedical research purposes if there are proven reasons that justify this.

This important article has raised a number of questions and generated various proposals, as summarised below:

2.1 Paragraph 1. The wording emphasises the purpose of obtaining a genetic profile without specifying the search in the database, as regulated in Article 338. Given that the purpose of the provision is for taking samples, alternative wording is proposed in which, as in Article 336, the normal mechanics of the taking of samples would be emphasised: request for informed consent and, failing this, request for judicial authorisation.

2.2. Paragraph 2. There is a consistency error in the reference to the previous chapter, which should refer to Chapter IV. To avoid the unnecessary repetition of paragraph 1, the second subparagraph is deleted.

2.3. Paragraph 3, first subparagraph. This subparagraph and paragraph refers to the possibility, if the person under investigation does not consent to a bodily intervention, of using deposited samples that can be reasonably attributed to them, at the discretion of the prosecutor and with the authorisation of the judge responsible for setting bail.

This provision has caused a great deal of controversy, given that it (apparently) interferes with the collection of traces from the scene of the crime, which does not require judicial authorisation, as has been determined by case law and is included in the Bill, Article 334.1.

If it can be interpreted that the taking of a deposited sample is an alternative to the forcible taking of a sample provided for in the rules on bodily interventions, the proposal, even if it is intended to avoid physical compulsion in relation to the investigated person, is not considered adequate. Taking a deposited sample circumvents all the safeguards and protocols that are observed to guarantee its authenticity and avoid the risk of contamination. The use of deposited samples to obtain the suspect's undoubted genetic profile was used as a resource when there was no legal authorisation for forced collection, but has now lost its meaning. In addition, advances in techniques mean that there are various alternatives for obtaining the reference sample without the need to seriously

affect the physical integrity of the individual. If the person under investigation not only does not provide their consent, but does not collaborate in obtaining the sample (which is not usual), we understand that physical compulsion should be used if the case is serious enough, avoiding short cuts that may generate false negatives: if the result is not a match, the investigator shall always have the doubt of whether it is due to the fact that they are not the perpetrator or the sample has been contaminated.

Furthermore, the assumption in the first paragraph has nothing to do with the assumption in the second paragraph.

Based on the foregoing, we propose deleting the first paragraph in its entirety, thus leaving the general system for bodily interventions unchanged: court authorisation or consent; in case of refusal to cooperate, authorisation for physical compulsion under the terms established by the court decision.

- **2.4. Paragraph 3, second subparagraph.** The regulation of this circumstance and its submission to restrictive court authorisation is appraised positively. However, it is considered appropriate to add:
 - In the case of unknown whereabouts, as the suspect is not available, and it is feasible, before contacting relatives, to try to obtain samples attributed to the suspect, for example from his personal belongings.
 - We propose, as considered appropriate, establishing the collection of samples attributed without court authorisation for reasons of urgency. The assumption is conceivable in certain secret investigations, as the opportunity is not always foreseeable and the opportunity to obtain the sample would be lost. The sample collection and analysis would be immediately reported to the court authority.
 - We have added the guarantee in relation to the contrast sample, which was deleted in the first paragraph and should be added in the second paragraph, as it affects both cases.

2.5. Paragraph 4. This is simply an improvement in the wording. The text states categorically that "under no circumstances", which seems grammatically contradictory to the beginning of the subparagraph that says "except with court authorisation or consent", which is the normal case, meaning that the term "under no circumstances" fulfils no purpose. We propose simply replacing this with "no". Furthermore, given that in reality this "under no circumstances" seems to relate to the system of court authorisation in the second paragraph (serious crime, proven reasons) in relation to the sample obtained for other purposes, and that for this reason the assumption starts with "notwithstanding", we propose deleting the term "authorisation" and leaving the second paragraph as it is, to avoid a non-systematic interpretation of the first paragraph that would reduce the guarantees of the second paragraph.

This also reinforces the exceptional nature of the authorisation and the general rule that only the consent of the person concerned would allow the use of a sample obtained for medical or therapeutic purposes (as opposed to the twofold court authorisation/consent of the general system).

Alternative proposal

Article 335. Taking samples from the person under investigation

1. ~~Where, in order to establish the facts under investigation or to determine the perpetrator, it is necessary to compare the DNA profiles obtained in the course of the investigation with the genetic profile of the person under investigation;~~ **For the purposes set out in this Chapter, the taking of samples from the person under investigation shall require his or her consent under the terms of Article 337. If consent is not given,** the judge responsible for setting bail, at the request of the Public Prosecutor, may agree to this, authorising the biological samples of the person under investigation to be obtained and analysed for this purpose.

2. When the sample is taken directly from the body of the person under investigation, it shall be considered a bodily intervention, and the provisions of the ~~previous chapter IV of this Title shall apply.~~

~~However, the authorisation of the judge responsible for setting bail shall not be necessary if the person concerned gives their consent pursuant to the provisions of Article 337 Chapter IV of this Title.~~

3. ~~If the person under investigation does not provide their consent, the Public Prosecutor's Office may seek the authorisation of the judge responsible for setting bail to use, for the purposes expressed in this article, samples deposited that can be reasonably attributed to them. In this case, the person under investigation shall be informed of the circumstances under which the sample was obtained and shall be allowed to provide another authentic sample for a counter test.~~

Exceptionally, if a serious crime has been committed and the investigations have been declared secret **or the whereabouts of the person under investigation are unknown** the judge responsible for setting bail, at the request of the Public Prosecutor's Office, may authorise ~~the sample and the genetic profile to be obtained~~ **from deposited samples attributed to the person under investigation without his or her knowledge.**

In urgent circumstances, the Judicial Police may collect and analyse the sample attributed without court authorisation, communicating and transferring the results obtained from these analyses to the Judicial Police as quickly as possible.

In both cases, once the circumstances that led to the sample being taken without knowledge no longer exist, the person under investigation shall be informed of the manner in which the sample was obtained and shall be allowed to provide another authentic sample for the purpose of carrying out a confirmatory test.

4. ~~Without the express consent of the person under investigation, or judicial authorisation, under no circumstances~~ **no** samples or information of the person under investigation obtained for other purposes shall be brought into the proceedings.

~~However, in case of the commission of a serious offence, the judge responsible for setting bail may authorise the use of samples obtained for diagnostic, therapeutic or biomedical research purposes if there are proven reasons that justify this.~~

(3) Article 336

Original wording

Article 336. *Taking samples from the person not under investigation*

1. *For the purposes set out in this Chapter, for the collection of biological samples from persons not under investigation, their consent shall be sufficient, subject to prior information on the purpose for which they are to be used.*

2. *If the person under investigation by the measure does not consent, the judge responsible for setting bail, at the request of the Public Prosecutor's Office, taking into account the seriousness of the offence under investigation and the need for the intervention, may authorise the person to be required to facilitate the taking of the sample, even demanding that the sample be taken against their will.*

To this end, the decision shall justify the need for the compulsory taking of the sample and indicate the means of enforcing the decision.

3. *Information generated by the samples of persons not under investigation may only be used for the purposes of the investigation in which they were obtained.*

This precept has elicited a number of comments. It involves the regulation, in an open manner, of the taking of samples from non-suspects, an assumption that is not foreseen in the current regulation, which has generated two contradictory interpretations:

- That it is not possible to compel non-suspect third parties to obtain biological samples for DNA analysis; only voluntary collection would be possible.
- That this does not exclude the possibility of incorporating the obligation to cooperate in relatively serious cases, if this is necessary for the criminal investigation.

This lack of regulation did not prevent, in the past (Alcácer case), requiring relatives of persons unaccounted for to consent to the collection of samples. The controversial nature of the issue even led to a complaint (which was dismissed) against the investigating judge who authorised this measure.

Starting from the pre-legislator's option to permit compulsion, even physical compulsion, we believe that greater guarantees are required to reduce judicial discretion.

Firstly, as the Commission proposes regulating serial DNA analysis at a later stage, the precept is limited to the victim or persons related to the offence or to the victim or perpetrator (ruling out, DNA searches involving relatives in certain cases, etc.).

With regard to the expression "their consent will suffice", perhaps intended for the usual case of the defendants who offer a sample, this does not reflect the complexity of the cases in which the sample may be required by the Judicial Police. It therefore seems more appropriate for the article to clearly state (paragraph 1) the need for consent as a basic prerequisite. In addition, a reference to Article 337 has been added so that consent has

the due guarantees and the lawfulness of the evidence is not called into question. Current CNUFADN-approved informed consent templates already ensure that information is provided correctly.

Paragraph 2 regulates the case of non-consent, with a view to more strictly regulating the exceptionality of judicial authorisation, referring to the most serious crimes and the essential nature of the measure (this term is considered more appropriate than the more ambiguous "need for intervention").

Finally, a caveat has been made in relation to the possibility of obtaining a genetic profile of the perpetrator (e.g. on the body of the rape victim) to allow its use in other proceedings and the extension of the analysis in these, if necessary, as already discussed in relation to Article 326.

Alternative proposal

Article 336. *Taking samples from the person not under investigation*

1. *For the purposes set out in this Chapter, for the collection of biological samples or traces of the victim or of other persons not under investigation who are involved in the offence, the consent of the victim or the person under investigation shall be required pursuant to Article 337. ~~persons not under investigation their consent shall be sufficient, subject to their being informed of the purpose for which they are to be used.~~*

2. *If this involves an offence against the life or sexual freedom or indemnity or terrorism, and the person concerned by the measure does not consent, the judge responsible for setting bail, at the request of the public prosecutor's office, taking into account the seriousness of the offence under investigation and the indispensability of the measure for the proceedings ~~the need for intervention~~ may authorise that they be required to facilitate the taking of the sample, even imposing that the sample be taken against their will.*

To this end, the decision ordering the involuntary taking of the sample shall justify the need for the compulsory taking of the sample and the absence of other means of obtaining the information which is essential for the proceedings. ~~y~~ In addition, ~~the~~ the means of enforcing the decision shall be indicated, which shall be the most appropriate means for respecting their privacy and dignity.

3. *Information generated by the samples of persons not under investigation may only be used for the purposes of the investigation in which they were obtained notwithstanding, with regard to traces and genetic profiles obtained from the possible perpetrator, the provisions of Article 338.*

(4) Article 337. Guarantees and information

4.1. Paragraph 1

Original wording

Article 337. Guarantees and information

1. Any person who is required to provide biological samples for the purpose of genetic analysis to obtain DNA markers shall, before giving consent, be informed in a comprehensible manner about:

- a) the form in which the sample is to be obtained,
- b) the purpose for which it was obtained,
- c) the analyses to be carried out on it,
- d) the data and information to be obtained through the analysis and
- e) their rights in relation to the processing and deletion of this data and information.

For technical reasons, it is considered more appropriate in terms of scientific terminology to refer to obtaining a genetic profile (first paragraph).

As for the content of the information, given that the most important task in terms of the right to *habeas data* is the registration of the genetic profile in the police database, it is considered appropriate to expressly introduce this provision in the rule of informed consent. Although subparagraph (b) could cover this need, if in practice the information is generic, there could be problems in relation to the invalidity of the evidence in case of a *match* in subsequent proceedings if a model of informed consent including this provision was not used. The CNUFADN-approved informed consent forms include this specific information.

4.2. Paragraph 2. The current wording includes the guarantee of documented written consent only for the detainee. We consider it more appropriate that documentation should be provided for all cases, as this is standard practice and provides legal certainty as to the validity of the taking of the sample.

4.3. Paragraph 3. The justification has already been provided in the comment in relation to Article 330.

Alternative proposal

Article 337. Guarantees and information

1. Any person who is required to provide biological samples for the purpose of ~~genetic analysis~~ analysis to obtain **a genetic profile** ~~DNA markers~~ shall, before giving consent, be informed in a comprehensible manner about:

- a) the form in which the sample is to be obtained,
- b) the purpose for which it was obtained,
- c) the analyses to be carried out on it,
- d) the data and information to be obtained through the analysis,
- e) **in the case of the suspect, if the legal conditions are met, that the genetic profile obtained will be entered in the police DNA identifier database, and**
- f) their rights in relation to the processing and deletion of this data and information.

~~2. If the person concerned is in detention~~ *The information referred to in the previous paragraph shall be provided verbally and in writing. Where the person concerned is in detention, consent shall only be valid if the person giving consent is at that time legally assisted.*

3. Minors over fourteen years of age may themselves give their consent. In any case, at the time of receiving the information and giving consent, they shall be assisted by their legal representative.

In the case of persons under fourteen years of age and persons whose capacity to act has been changed by the courts, the provisions of the second and third paragraphs, respectively, of Article 330 of this law shall apply.

~~Minors over fourteen years of age and whose capacity to act has been changed by the courts may give consent when, due to their personal conditions and maturity, they are able to understand the meaning and purpose of the procedure. In any case, they shall be assisted by their legal representative when giving consent.~~

~~In the case of minors under fourteen years of age and persons who do not understand the scope and meaning of the procedure, the consent of their legal representative is required.~~

(5) Article 338. Analysis of DNA profiles

Original wording

Article 338. Analysis of DNA profiles

1. Samples or traces to be analysed for the extraction of DNA markers for identification purposes shall be submitted to duly accredited laboratories.

2. The data extracted from the analysis shall be limited to the extraction of DNA profiles for the purpose of identification, without providing any information concerning the health of the individuals.

3. The cancellation of identifiers obtained from DNA in the police database shall take place in the cases and under the terms established in its regulatory law.

For these purposes, the legal counsel for the Justice Administration shall notify the person responsible for the conservation of the profiles in the police database of the decisions that put an end to the proceedings in which they were obtained and, in any case, the acquittal, the dismissal and the decision to close the proceedings on account of the statute of limitations of the offence, as well as the expiry of the period for the cancellation of the criminal record if a conviction or acquittal has been handed down due to the concurrence of exonerating causes for lack of imputability or culpability.

4. Samples found at the scene of the crime, on the body or on the victim's clothing shall be preserved with due guarantees of security until their destruction is ordered, ex officio or at the request of the person responsible for their custody, by the court authority.

If the proceedings are against a specific person, the destruction of the samples shall not be ordered until the proceedings have been concluded as part of a final ruling and, if the ruling results in a conviction being handed down, until the ruling has been enforced or the penalty or offence is time-barred.

The Commission's proposal is to extend the scope of this Article to cover the system of inclusion in the database and the use of profiles in other processes. The reasons for the proposal being considered appropriate have already been set out at the beginning of this report. As regards the content of the proposal, the following comments have been made:

5.1. The description of the content of the precept is expanded in the **heading**, in line with what is to be included in the precept. In addition, the original wording has been technically improved, as it is the samples that are being analysed, as the profiles are the result of the analysis.

5.2. Paragraph 1. Similar to the suggestion in Article 337, reference is made to genetic profiling. The need for accreditation of the quality of genetic laboratories is established, which shall be verified by the National Commission for the forensic use of DNA (third additional provision).

5.3. Paragraph 2. Proposal for simple wording, which is considered to be more technically correct.

5.4. Paragraphs 3 and 4. The new sections regulate the registration of the inconclusive and conclusive genetic profiles obtained as part of research in the database and the possibility of consulting them, with reference to the law on databases regarding the cases in which the registration of the genetic profile is admissible (Article 3 LO 10/2007).

5.5. Paragraph 5. This includes the case in which the collection of samples is specifically aimed at the database, even if it is not necessary for the investigation, as, for example, is provided for in Paragraph 81 of the German Code of Criminal Procedure mentioned above. In this case, as the sample is not taken in the context of the investigation and therefore the impact on the fundamental right is more significant, it is subject to a weighing in such a way that, within the assumptions foreseen in the law on police databases, the judge responsible for setting bail can assess the coercive taking of the sample.

However, automatism is established in the cases that have been considered the most serious: sexual offences, crimes against life, terrorism. This and the inclusion of Article 895 would allow full compliance with the Lanzarote Convention and make Article 129a of the Criminal Code, which has proved to be highly ineffective, superfluous.

And according to the system of the law, it is established that authorisation is not necessary if the investigated person has provided informed consent.

5.6. Paragraph 6. The international consultation and transmission of data is expressly regulated.

5.7. Paragraph 7. A specific case of cancellation not expressly contemplated in the law on police databases has been added: the provisional dismissal or the continuation of the procedure, while ruling out the involvement of the person who provided their samples to obtain a genetic profile.

5.8. Paragraph 9. The provision already announced in Article 326 regarding the retention of DNA samples of conclusive profiles is introduced here. It also expressly provides for the possibility that samples used and preserved to obtain a DNA profile can be re-analysed for the purposes of a new process, as is the usual practice in laboratories, given the reliability and guarantees offered by such samples.

Alternative proposal

Article 338. Analysis of *the samples to obtain the DNA profiles and their inclusion and search in the police DNA database. Transfer of data.*

1. Samples or traces to be analysed for the purpose of *obtaining* DNA profile ~~markers~~ for identification purposes shall be submitted to duly accredited laboratories *according to the required scientific and quality standards.*

2. ~~The data extracted~~ *The information obtained* from the analysis shall be limited to ~~extrac-~~
~~tion~~ *obtain* DNA profiles for the purpose of identification, without providing any information concerning the health of individuals.

3. *Unidentified genetic profiles obtained from traces shall be registered and searched with the existing DNA profiles in the police database or in those foreign databases which, according to international legislation and treaties, are accessible to the operators of the police DNA database, in the cases provided for in the law regulating the police DNA database.*

4. *The DNA profile of the person under investigation obtained for the purpose of comparison with the traces collected as part of the investigation of the crime shall be entered in the police DNA database for the purpose of prevention and investigation of other criminal offences, in the cases provided for in its regulatory law.*

5. *If the DNA profile of the person under investigation was not obtained as part of the investigation, but they are suspected of having committed a crime as provided for in the law regulating the police DNA database, and from the corresponding circumstances, background, assessment of their personality or other available information there is a relevant danger of criminal repetition, the judge responsible for setting bail, at the request of the Public Prosecutor's Office, will authorise the taking of samples from them to obtain their DNA profile and register it in the police DNA database for the purpose of prevention and investigation of other criminal acts.*

In any case, the judge will authorise the obtaining of the genetic profile of the person under investigation if it concerns the commission of an intentional crime against life, against sexual indemnity or freedom or terrorism.

However, the authorisation of the judge responsible for setting bail shall not be necessary if the person concerned gives their consent pursuant to Article 337 of this law.

6. DNA profiles entered into the police DNA database under the previous paragraphs shall be shared with foreign authorities under the terms set out in international legislation or treaties.

7. The cancellation of identifiers obtained from DNA in the police database shall take place in the cases and under the terms established in its regulatory law. In any case, the profile of the person under investigation registered under the provisions of the previous paragraphs shall be deleted as soon as the investigation rules out their involvement in the criminal act, even if the investigation continues against other persons or is abandoned due to the lack of a known perpetrator, provided that they are not to remain in the database in relation to the commission by the person under investigation of other criminal acts.

For these purposes, the legal counsel for the Justice Administration shall notify the person responsible for the conservation of the profiles in the police database of the decisions that put an end to the proceedings in which they were obtained and, in any case, the acquittal, the dismissal and the decision to close the proceedings on account of the statute of limitations of the offence, as well as the expiry of the period for the cancellation of the criminal record if a conviction or acquittal has been handed down due to the concurrence of exonerating causes for lack of imputability or culpability.

8. Samples found at the scene of the crime, on the body or on the victim's clothing shall be preserved with due guarantees of security until their destruction is ordered, ex officio or at the request of the person responsible for their custody, by the court authority.

If the proceedings are against a specific person, the destruction of the samples shall not be ordered until the proceedings have been concluded as part of a final ruling and, if the ruling results in a conviction being handed down, until the ruling has been enforced or the penalty or offence is time-barred.

9. Samples obtained for the purpose of obtaining and registering the DNA profile of the person under investigation in the police database shall be stored and destroyed pursuant to the provisions of the corresponding regulatory law.

In the case of the investigation of a new serious crime, these samples may be subject to further analysis for use in other proceedings.

(6) Proposal for the inclusion of a new article (338a) on research with new markers

The need for specific regulation to discipline an increasingly common practice has already been explained.

The proposal is based on the Commission's recent recommendation (plenary agreement of 24 October 2020), which is based on the following:

- the subsidiary use of these techniques when there is no other avenue of investigation;
- the need to justify the usefulness and proportionality of the diligence;
- Its subordination to research purposes only: the determination of the identity will require a genetic profile of the person identified;

- the inability to include the data obtained in the police database.

These criteria are in line with international practice. The Commission's agreement is included in Annex I to facilitate a better understanding.

Proposal for a new article

Article 338 a. *DNA analysis for phenotypic traits of external appearance and biogeographical origin*

- 1. When a genetic profile has been generated using traces obtained in the investigation of the crime and no match has been obtained with suspects or with the profiles in the DNA police database, in the case of serious crimes, the judge responsible for setting bail, at the request of the Public Prosecutor's Office, may agree to carry out analyses on the traces obtained in the investigation of the crime that can determine, with a reasonable degree of probability, external features or characteristics of the subject such as the colour of their eyes, hair, skin, age, biogeographical origin or others that can be determined by genetic analysis and that can significantly narrow down the number of suspects. The analysis shall not be aimed at obtaining health information.*
- 2. The decision shall take into account the seriousness of the facts under investigation and the absence of others methods of investigation that would reasonably allow the identity of the perpetrator to be established. It shall also determine which trait(s) are to be investigated.*
- 3. The data obtained shall not be stored or entered in the DNA database.*
- 4. The results shall only have effect as a source of research and only if they have been validly produced pursuant to the provisions of this Article. The determination of identity by means of genetic analysis shall be carried out by obtaining the genetic profile of the person identified as the possible perpetrator of the acts, pursuant to the terms established in this law.*

(7) Proposal for the inclusion of a new article (338b) on serial DNA profiling

Once again, the need to regulate these aspects has already been explained. The concrete proposal is based on the reflections of the Legal and Bioethics Group when subject to discussion and also on the most comprehensive regulation in comparative law, which is the German Code of Procedure.

Given that it involves non-suspects being required to submit samples, with family members being affected, it is assumed that there is a need to:

- restrict the investigation to the most serious crimes;
- require the justification that the perpetrator belongs to a homogeneous population group (age, area, etc.); how this can be justified is left open;
- subject the procedure to prior court authorisation;
- regulate the content of informed consent; in this respect the general lines of the German Code of Criminal Procedure are followed.

In this case, the destruction of samples is provided for, as it is merely an investigative measure in relation to non-suspects. Obviously, if there is a match, the genetic profile of this person will be entered in the database and the sample will be stored pursuant to the specific legislation.

Proposal for a new article

Article 338 b. Serial DNA analysis

1. When investigating the commission of a crime against life or sexual indemnity or freedom or a serious crime against physical or moral integrity or against freedom, or crimes committed by criminal organisations, the judge responsible for setting bail may authorise the analysis and collection of DNA profiles from non-suspects who voluntarily agree to hand over a biological sample, provided that the following requirements are met:

1) That the necessary means of investigation have been reasonably exhausted in order to determine the authorship of the criminal acts.

2) That the persons requested to cooperate form part of a homogeneous population group in which there are reasonable grounds to believe that the perpetrator of the offence may be found.

3) That the measure is proportionate and appropriate in terms of the seriousness of the facts under investigation, the number of persons affected and the likelihood of success of the measure.

2. The purpose of the analysis shall be to compare the inconclusive samples with the profiles taken from volunteers to determine whether they originate from volunteers or from a direct or collateral relative. The samples obtained may only be used for the purpose of obtaining the genetic profile and shall be destroyed once this purpose has been fulfilled. Genetic profiles obtained from donors may not be entered in the police DNA database, and once they are no longer needed for the criminal investigation, they shall be deleted from all files or registers in which they are stored.

3. The non-investigated persons referred to in this Article shall be informed under the terms set out in Article 337, and specifically that:

(1) the samples obtained shall be used for DNA profiling and shall be destroyed without delay as soon as they are no longer required for this purpose;

(2) the result of the test shall be compared with the DNA profiles extracted from the reference samples to establish whether they come from them or from their relatives in the direct or collateral line;

(3) the result of the analyses may lead to the person giving the sample or a person related to them, in a direct or collateral line, being prosecuted for the facts investigated;

(4) DNA profiles shall not be entered into the police DNA database.

(8) Proposal for the inclusion of a new article (338(c)) on genealogical database research

The current reality and potential of these databases has already been explained. The proposal is based on:

- the total exceptionality of this measure, which should be restricted to exceptionally serious cases;
- the subsidiary use of this instrument;
- the submission to judicial review;
- the requirement that donors of samples in the database have been informed of the possibility that the profiles may be used for the purpose of criminal investigation of serious crimes.

Proposal for a new article**338 c. Searching profiles in genealogical databases**

When investigating a crime against life or sexual indemnity or freedom of extraordinary gravity or a crime of terrorism, in which a genetic profile of the perpetrator has been obtained, the judge responsible for setting bail, at the request of the Public Prosecutor's Office, may authorise the comparison of the suspect's profile with those deposited in publicly or privately owned DNA databases for genealogical, ancestry or other search purposes and in which the donors of the samples have been informed of the possibility of the data being transferred for the purpose of criminal investigations, to determine whether they come from them or from a relative in direct or collateral line.

The final determination of the profile match of suspects who have been identified shall be made by matching the genetic profile taken pursuant to the provisions of this Law.

C) Proposal for implementation

We propose including a new precept to regulate the inclusion of profiles of convicted persons in the Bill of the Organic Law on Criminal Proceedings.

The current solution - restricted to offences under Art. 129a of the Criminal Code - is wholly unsatisfactory. Only two genetic profiles have been registered during the entire period of the precept. This is due to the legislative choice to regulate the consequence as a penalty and therefore subject to the request of the parties.

It is highly contradictory that the entry of genetic profiles occurs at the suspicion stage with a relatively wide range of offences and that when there is a final judgement it is much more difficult to do so, despite the fact that the guarantee of the subject's guilt - and therefore the danger that they pose to society - is based on a final ruling.

To this end:

- the offences that allow their inclusion under the current Article 129 a of the Criminal Code are extended, in line with the access system for suspects under Law 10/2007;
- the current weighting of dangerousness is maintained, under the same terms as in the current Criminal Code;
- it is established as a consequence that requires the enforcement court to expressly rule in all these cases, with provision for communication of the final ruling in the event that the profile is already included in the database.
- an automatic decision is set for the most serious cases, consistent with the rest of the proposal.

It is not unusual in comparative law for those serving prison sentences to be required to donate a sample of their genetic profile. There are no systematic reasons that require the imposition of a specific penalty to supply the police database, whereas this can be done at a preliminary stage of the investigation, i.e. when there are only indications of criminality and it is possible that the proceedings may end up being closed or acquitted.

Proposal for a new article

Article 895 a. Registration of DNA profiles of convicted persons

In the case of the execution of sentences for serious crimes and, in any case, the crimes referred to by law regulating the police database on identifiers obtained from DNA, the executing court shall agree to obtain the genetic profile of the convicted person for registration in the police database for the time established in that law, when the circumstances of the act, background, assessment of their personality or other available information indicate a relevant danger of the crime being repeated.

In any case, the court shall agree to obtain and register the DNA profile of the convicted person in the case of an intentional crime against life, against sexual indemnity or freedom, or a terrorist crime.

If the profile has already been obtained at the investigation stage, the lawyer for the Justice Administration shall inform the person responsible for the conservation of the profiles in the police database of the initiation of the execution, for the purposes established in the corresponding regulatory law with regard to the deadlines for cancellation.

D) Proposed additional provision

We propose including a provision similar to the current one to safeguard the role of the National Commission as the entity entrusted with the accreditation of laboratories authorised to compare genetic profiles in the investigation and prosecution of crimes and the identification of corpses.

Third additional provision

The National Commission for the forensic use of DNA will be responsible for assessing compliance by the laboratories authorised to compare genetic profiles in the investigation and prosecution of crimes and the identification of corpses with the quality standards required by the National Accreditation Body (ENAC), as well as the correct participation in the periodic controls to which they must submit themselves, the establishment of coordination criteria between them, the preparation of official technical protocols on the collection, conservation and analysis of samples, the determination of the security conditions for their safekeeping and the establishment of all those measures that guarantee the strict confidentiality and reserve of samples, analyses and data obtained from them, pursuant to the legal provisions.

Madrid, 08 March 2021

ANNEX I. RECOMMENDATIONS OF THE LEGAL AND BIOETHICS PANEL ON THE USE OF NEW DNA MARKERS (2019)

1. Firstly, worth mention is the need for a legal regulation to cover this type of phenotypic analysis, reviewing the concepts of coding and non-coding DNA, with the use and purpose of the information obtained being important.
2. Phenotyping should only be used when DNA samples have been taken from the crime scene or from the victim and no matching profile has been found in the DNA database (i.e. the samples are clearly in doubt), and other avenues of investigation have been exhausted.
3. Lawmakers need to ensure that there is minimum interference with the rights of the individual, ensuring confidentiality and the use of such analyses.
4. It shall only be used as an investigative tool to narrow the circle of possible suspects, but cannot be used as evidence at trial. The results of these analyses should not be made public in order to avoid ethnic discrimination against minority groups of the population.
5. Once suspicion has been focused on a particular individual, a cross-matching analysis using traditional STR DNA markers will still be necessary.
6. The list of offences for which this route of investigation can be pursued should be established. One possible criteria would be to use the one set out in Organic Law 10/2007 itself, although it could be excessively broad.
7. In any case, prior court authorisation is required for these studies. It will be up to the judge to make the corresponding proportionality ruling in each specific case. When the time comes for the prosecutor to lead the investigation, we consider that it is then up to the judge to issue this authorisation, without the prosecutor's order being sufficient.
8. The law should define which traits can be inferred, limited to ancestry markers and externally visible trait markers. The question should be raised as to whether these features should be those visible from birth, and the possibility of extending this to other data such as age. Under no circumstances may it affect highly sensitive data, such as predisposition to certain diseases.
9. It is necessary to provide for the possibility of regulating this type of analysis, not only for criminal investigation purposes, but also for humanitarian purposes.
10. Lawmakers should consider whether there is a need for specific regulation of phenotypic databases, either for forensic and/or civil purposes.

11. The right to privacy and of the results of phenotypic analyses should be preserved also at the level of the companies that make these inferences for family tracing purposes, by controlling the access of the information to their own databases.
12. In any case, it is necessary to ensure the rights of access, rectification, cancellation and opposition of this type of data (ARCO rights).
13. The preparation of legal operators in this field (forensic application of new DNA markers and new analysis technologies) is essential. Judges, prosecutors, lawyers, etc., need to understand the scope of these scientific developments and their potential impact on the rights of individuals.

ANNEX II

CHAPTER IV of Title I, Book III of APLOLECRIM, in full, with suggested amendments (in red and strikethrough)

Article 324. *Bodily searches*

1. Bodily searches are external examinations, without physical interference with the body of a person, carried out by an authority or officer.
2. Notwithstanding frisks or superficial inspections that may be carried out by members of the Security Forces and Corps in the exercise of the preventive and security functions attributed to them, the Judicial Police may require persons suspected of having committed an offence or those who have been arrested to present any objects they are carrying.
3. They may also search their clothes and belongings to seize any objects related to the offence or weapons and dangerous instruments they may be concealing.

Article 325. *Methods for performing such inspections*

1. Bodily searches shall be carried out in the manner least harmful to the person who has to undergo them, respecting his or her dignity and privacy.
2. Even if the person to be inspected consents to the inspection, the following rules shall apply:
 - (a) If the inspection requires the person to undress, exposing intimate areas of their body or parts of their body that are not normally exposed, or consists of touching their body, either directly or through the clothing, the inspection shall be carried out by an officer of the same sex as the person inspected and in a private place, so that the inspection cannot be observed by other persons, except in cases of imminent and serious risk to the safety of the officers, the person concerned or third parties.
 - (b) Where direct observation or examination of the vaginal or rectal cavities is required, prior court authorisation shall always be required, which the prosecutor shall request, stating the reasons justifying the request. These inspections shall always be carried out by health personnel.
3. If the person concerned is in detention, consent shall be given with the assistance and on the advice of a lawyer.

Article 326. *Body interventions*

1. For the purposes of acquiring or securing sources of evidence, interventions on the body of a person consisting of the removal of substances or elements or the taking of biological samples for appropriate analysis may be carried out in the investigation of a criminal offence.

2. Bodily interventions, whether serious or minor, shall always be carried out in the manner that is least damaging to the person who has to undergo them, respecting his or her dignity and privacy.

3. Biological substances or samples obtained from a bodily intervention may only be used for the purposes of the investigation for which they were obtained, ~~and shall be destroyed as soon as they are no longer needed~~, **notwithstanding the provisions of Chapter VI concerning samples obtained for the purpose of DNA profiling and the recording and searching of genetic profiles in the law enforcement DNA identifier database.**

Article 327. Minor bodily interventions

1. Bodily interventions aimed at obtaining hair, nails, oral mucosa or other biological samples that do not require access to intimate areas of the person under investigation or cause greater pain or suffering than the superficial discomfort inherent to the procedure of taking the sample, shall be considered minor and may be carried out by the forensic doctor or **by qualified medical** personnel of the Judicial Police, provided that the person concerned consents to their performance. If the person is in detention, consent may only be given with the assistance and advice of a lawyer.

2. If, after being requested to do so, the person concerned refuses to give their consent, the procedure shall be carried out pursuant to the provisions of Article 329 of this Act.

3. For the purposes of this Article, consent shall cover both the procedure for taking the samples and the use to be made of the information obtained from the samples.

Article 328. Major bodily interventions

1. When the purpose of bodily interventions is the extraction of any substance or element to be obtained from intimate areas or from the interior of the body and, in any case, when it is necessary to administer anaesthesia or to subject the person concerned to sedation, the intervention shall be considered major and shall require the prior authorisation of the judge responsible for setting bail, even if the person concerned consents to it being carried out.

However, for the taking of a blood sample by venipuncture or finger prick, the authorisation of the Public Prosecutor's Office shall be sufficient, if the person concerned has consented to the taking of the sample.

2. Major bodily interventions shall be carried out by qualified medical or health personnel, according to the technically appropriate method of intervention, in the forensic medical clinic or in the appropriate medical or health facility.

In the event that there may be a risk to the health of the person concerned, the public prosecutor shall obtain a report from the competent medical practitioner on the consequences that the bodily intervention may have on the health of the person concerned, and

shall include this report in his application to the judge who is to authorise the intervention.

3. A serious bodily intervention may only be ordered when it is objectively indicated for the establishment of a serious crime and the same result cannot be obtained by other means less harmful to the physical integrity of the person under investigation. The latter shall, in any event, be heard before the taking of evidence is ordered.

4. Under no circumstances shall bodily interventions be carried out that entail a certain and direct risk to the life or health of the person concerned.

Article 329. *Coercive enforcement*

1. The person under investigation is required to undergo the practice of a bodily inspection or intervention, if it has been ordered and is carried out under the terms established in this law.

2. If the person under investigation opposes to the execution of the process, the judge responsible for setting bail, taking into account the need for the action and the seriousness of the act under investigation, may impose its compulsory execution, establishing, if necessary, the measures that may be used for the execution of the procedure against the will of the person concerned.

To this end, the decision ordering enforcement shall justify the need for the enforcement action and state the means of enforcing the decision.

Article 330. *Body searches or bodily interventions on persons not under investigation*

1. Under the conditions and in the cases set out in the previous Articles, any person not under investigation may be required to submit to an inspection or bodily intervention, if its execution is indispensable for the establishment of the facts.

~~2. In the case of minors or persons whose capacity to act has been changed by the courts, their consent shall be required when, due to their personal conditions and maturity, they are able to understand the meaning and purpose of the procedure. In such cases, the consent of their legal representative must also be obtained.~~

In the case of minors over fourteen years of age, they may themselves give consent. In any case, they shall be assisted by their legal representative.

In the case of persons under fourteen years of age, the consent of their legal representative shall be required, after having heard their opinion, unless their personal circumstances and maturity are such that they have sufficient judgement to understand the scope and meaning of the procedure, which shall be justified in a reasoned manner by the public prosecutor's office. In this case, the presence of their legal representative shall be sufficient.

3. Persons whose capacity to act has been changed by the courts shall require the consent of their legal representative, if this is necessary from the scope and content of the corresponding court ruling.

4. Examination or intervention may be refused on the same grounds on which a witness may be excused from testifying under this Act.

CHAPTER VI of Title I, Book III of APLOLECRIM in full with suggested amendments (in red and strikethrough)

Article 334. *Collection and collection of biological traces.*

1. When, in the course of the investigation, biological traces are found whose genetic analysis may contribute to the clarification of the facts under investigation, ~~the judicial police, the forensic doctor or qualified medical personnel~~ they shall be collected, taking the necessary measures to guarantee the authenticity and unalterability of the source of evidence.

2. In any case, the collection of biological remains for genetic analysis shall be subject to the following rules:

a) It shall be carried out by ~~the forensic doctor~~, medical practitioner or ~~qualified staff of the judicial police~~ with specialised training and appropriate technical equipment, ~~including qualified personnel from the judicial police.~~

b) All persons taking part in the procedure shall be identified in the report.

c) A record shall be drawn up identifying the object and the place where the traces are found, ~~their description~~, ~~the type of biological material to which they belong~~ and the date and time of collection.

d) The storage conditions, seals and security measures taken to ensure the authenticity of the biological material shall be indicated.

e) The traceability of the sample and the identity of all persons who have been in contact with the sample shall be recorded.

f) The protocol followed to avoid contamination of the sample shall be recorded.

Article 335. *Taking samples from the person under investigation*

1. ~~Where, in order to establish the facts under investigation or to determine the perpetrator, it is necessary to compare the DNA profiles obtained in the course of the investigation with the genetic profile of the person under investigation,~~ **For the purposes set out in this Chapter, the taking of samples from the person under investigation shall require his or her consent under the terms of Article 337.** ~~If consent is not given,~~ the judge responsible for setting bail, at the request of the Public Prosecutor, may agree to this, authorising the

biological samples of the person under investigation to be obtained and analysed for this purpose.

2. When the sample is taken directly from the body of the person under investigation, it shall be considered a bodily intervention, and the provisions of the ~~previous~~ **chapter IV of this Title** shall apply.

~~However, the authorisation of the judge responsible for setting bail shall not be necessary if the person concerned gives their consent pursuant to the provisions of Chapter IV of this Title.~~

~~3. If the person under investigation does not provide their consent, the Public Prosecutor's Office may seek the authorisation of the judge responsible for setting bail to use, for the purposes expressed in this article, samples deposited that can be reasonably attributed to them. In this case, the person under investigation shall be informed of the circumstances under which the sample was obtained and shall be allowed to provide another authentic sample for a counter test.~~

Exceptionally, if a serious crime has been committed and the investigations have been declared secret or the whereabouts of the **person under investigation are unknown** the judge responsible for setting bail, at the request of the Public Prosecutor's Office, may authorise ~~the sample and the genetic profile to be obtained~~ **from deposited samples attributed to the person under investigation** to be obtained without ~~his or her~~ knowledge.

In urgent circumstances, the Judicial Police may seize and analyse the sample attributed without court authorisation, communicating and transferring the results obtained from these analyses to the Judicial Police as quickly as possible.

In both cases, once the circumstances that led to the sample being taken without knowledge no longer exist, the person under investigation shall be informed of the manner in which the sample was obtained and shall be allowed to provide another authentic sample for the purpose of carrying out a counter test.

4. Without the express consent of the person under investigation or judicial authorisation, samples or information of the person under investigation obtained for other purposes shall, ~~under no circumstances,~~ **not** be brought into the proceedings.

However, in case of the commission of a serious offence, the judge responsible for setting bail may authorise the use of samples obtained for diagnostic, therapeutic or biomedical research purposes if there are proven reasons that justify this.

Article 336. *Taking samples from the person not under investigation.*

1. For the purposes set out in this Chapter, for the collection of biological samples **or traces of the victim or of other persons not under investigation who are involved in the offence, the consent of the victim or the person under investigation shall be required**

~~pursuant to Article 337. persons not under investigation their consent shall be sufficient, subject to their being informed of the purpose for which they are to be used.~~

2. If this ~~involves an offence against the life or sexual freedom or indemnity or terrorism,~~ and the person concerned by the measure does not consent, the judge responsible for setting bail, at the request of the public prosecutor's office, taking into account the seriousness of the offence under investigation and ~~the indispensability of the measure for the proceedings~~ ~~the need for intervention may~~ authorise that they be required to facilitate the taking of the sample, even imposing that the sample be taken against their will.

To this end, the decision ordering the ~~involuntary taking~~ of the sample shall justify the need for the ~~compulsory taking of the sample and the absence of other means of obtaining the information which is essential for the proceedings.~~ ~~and~~ In addition, the means of enforcing the decision shall be indicated, ~~which shall be the most appropriate means for respecting their privacy and dignity.~~

3. Information generated by the samples of persons not under investigation may only be used for the purposes of the investigation in which they were obtained ~~notwithstanding, with regard to traces and genetic profiles obtained from the possible perpetrator, the provisions of Article 338.~~

Article 337. Guarantees and information

1. Any person who is required to provide biological samples for the purpose of genetic analysis to obtain a ~~genetic profile~~ DNA markers shall, before giving consent, be informed in a comprehensible manner about:

- a) *the form in which the sample is to be obtained,*
- b) *the purpose for which it was obtained,*
- c) *the analyses to be carried out on it,*
- d) *the data and information to be obtained through the analysis,*
- e) *in the case of the suspect, if the legal conditions are met, that the genetic profile obtained will be entered in the police DNA identifier database, and*
- f) *their rights in relation to the processing and deletion of this data and information.*

2. ~~If the person concerned is in detention~~ The information referred to in the previous paragraph shall be provided verbally and in writing. ~~Where the person concerned is in detention,~~ consent shall only be valid if the person giving consent is at that time legally assisted.

3. ~~Minors over fourteen years of age may themselves give their consent.~~ In any case, at the time of receiving the information and giving consent, they shall be assisted by their legal representative.

In the case of persons under fourteen years of age and persons whose capacity to act has been changed by the courts, the provisions of the second and third paragraphs, respectively, of Article 330 of this law shall apply.

~~Minors over fourteen years of age and whose capacity to act has been changed by the courts may give consent when, due to their personal conditions and maturity, they are able to understand the meaning and purpose of the procedure. In any case, they shall be assisted by their legal representative when giving consent.~~

~~In the case of minors under fourteen years of age and persons who do not understand the scope and meaning of the procedure, the consent of their legal representative is required.~~

Article 338. Analysis of the samples to obtain the DNA profiles *and their inclusion and search in the police DNA identifier database. Transfer of data*

1. Samples or traces to be analysed for the purpose of **obtaining** DNA **profile** markers for identification purposes shall be submitted to duly accredited laboratories **according to the required scientific and quality standards**.
2. ~~The data extracted~~ **The information obtained** from the analysis shall be limited to the extraction of DNA profiles for the purpose of identification, without providing any information concerning the health of individuals.
3. **Unidentified genetic profiles obtained from traces shall be registered and searched with the existing DNA profiles in the police database or in those foreign databases which, according to international legislation and treaties, are accessible to the operators of the police DNA database, in the cases provided for in the law regulating the police database of DNA identifiers.**
4. **The DNA profile of the person under investigation obtained for the purpose of comparison with the traces collected as part of the investigation of the crime shall be entered in the police database on DNA-based identifiers for the purpose of prevention and investigation of other criminal offences, in the cases provided for in its regulatory law.**
5. **If the DNA profile of the person under investigation was not obtained as part of the investigation, but they are suspected of having committed a crime as provided for in the law regulating the police database, and from the corresponding circumstances, background, assessment of their personality or other available information there is a relevant danger of criminal repetition, the judge responsible for setting bail, at the request of the Public Prosecutor's Office, will authorise the taking of samples from them to obtain their DNA profile and register it in the police database for the purpose of prevention and investigation of other criminal acts.**

In any case, the judge will authorise the obtaining of the genetic profile of the person under investigation if it concerns the commission of an intentional crime against life, against sexual indemnity or freedom or terrorism.

However, the authorisation of the judge responsible for setting bail shall not be necessary if the person concerned gives their consent pursuant to Article 337 of this law.

6. DNA profiles entered into the police DNA identifier database under the previous paragraphs shall be shared with foreign authorities under the terms set out in international legislation or treaties.

7. The cancellation of identifiers obtained from DNA in the police database shall take place in the cases and under the terms established in its regulatory law. In any case, the profile of the person under investigation registered under the provisions of the previous paragraphs shall be deleted as soon as the investigation rules out their involvement in the criminal act, even if the investigation continues against other persons or is abandoned due to the lack of a known perpetrator, provided that they are not to remain in the database in relation to the commission by the person under investigation of other criminal acts.

For these purposes, the legal counsel for the Justice Administration shall notify the person responsible for the conservation of the profiles in the police database of the decisions that put an end to the proceedings in which they were obtained and, in any case, the acquittal, the dismissal and the decision to close the proceedings on account of the statute of limitations of the offence, as well as the expiry of the period for the cancellation of the criminal record if a conviction or acquittal has been handed down due to the concurrence of exonerating causes for lack of imputability or culpability.

8. Samples found at the scene of the crime, on the body or on the victim's clothing shall be preserved with due guarantees of security until their destruction is ordered, ex officio or at the request of the person responsible for their custody, by the court authority.

If the proceedings are against a specific person, the destruction of the samples shall not be ordered until the proceedings have been concluded as part of a final ruling and, if the ruling results in a conviction being handed down, until the ruling has been enforced or the penalty or offence is time-barred.

9. Samples obtained for the purpose of obtaining and registering the DNA profile of the person under investigation in the police database shall be stored and destroyed pursuant to the provisions of the corresponding regulatory law.

In the case of the investigation of a new serious crime, these samples may be subject to further analysis for use in other proceedings.

Article 338 a. *DNA analysis for phenotypic traits of external appearance and biogeographical origin*

1. When a genetic profile has been generated using traces obtained in the investigation of the crime and no match has been obtained with suspects or with the profiles in the police database on DNA-based identifiers, in the case of serious crimes, the judge responsible for setting bail, at the request of the Public Prosecutor's Office, may agree to carry out analyses on the traces obtained in the investigation of the crime that can determine, with a reasonable degree of probability, external features or characteristics of the subject such as the colour of their eyes, hair, skin, age, biogeographical origin or others that can be determined by genetic analysis and that can significantly narrow down the number of suspects. The analysis shall not be aimed at obtaining health information.
2. The decision shall take into account the seriousness of the facts under investigation and the absence of other methods of investigation that would reasonably allow the identity of the perpetrator to be established. It shall also determine which trait(s) are to be investigated.
3. The data obtained shall not be stored or entered in the law enforcement DNA identifier database.
4. The results shall only have effect as a source of research and only if they have been validly produced pursuant to the provisions of this Article. The determination of identity by means of genetic analysis shall be carried out by obtaining the genetic profile of the person identified as the possible perpetrator of the acts, pursuant to the terms established in this law.

Article 338 b. Serial DNA analysis

1. When investigating the commission of a crime against life or sexual indemnity or freedom or a serious crime against physical or moral integrity or against freedom, or crimes committed by criminal organisations, the judge responsible for setting bail may authorise the analysis and collection of DNA profiles from non-suspects who voluntarily agree to hand over a biological sample, provided that the following requirements are met:
 - 1) That the necessary means of investigation have been reasonably exhausted in order to determine the authorship of the criminal acts.
 - 2) That the persons requested to cooperate form part of a homogeneous population group in which there are reasonable grounds to believe that the perpetrator of the offence may be found.
 - 3) That the measure is proportionate and appropriate in terms of the seriousness of the facts under investigation, the number of persons affected and the likelihood of success of the measure.
2. The purpose of the analysis shall be to compare the inconclusive samples with the profiles taken from volunteers to determine whether they originate from volunteers or from a direct or collateral relative. The samples obtained may only be used for the purpose of obtaining the genetic profile and shall be destroyed once this purpose has been fulfilled.

Genetic profiles obtained from donors may not be entered in the police DNA database, and once they are no longer needed for the criminal investigation, they shall be deleted from all files or registers in which they are stored.

3. The non-investigated persons referred to in this Article shall be informed under the terms set out in Article 337 and specifically that:

- (1) the samples obtained shall be used for DNA profiling and shall be destroyed without delay as soon as they are no longer required for this purpose;
- (2) the result of the test shall be compared with the DNA profiles extracted from the inconclusive samples to establish whether they come from them or from their relatives in the direct or collateral line;
- (3) the result of the analyses may lead to the person giving the sample or a person related to them, in a direct or collateral line, being prosecuted for the facts investigated;
- (4) DNA profiles shall not be entered into the police DNA database.

338 c. Searching profiles in genealogical databases

When investigating a crime against life or sexual indemnity or freedom of extraordinary gravity or a crime of terrorism, in which a genetic profile of the perpetrator has been obtained, the judge responsible for setting bail, at the request of the Public Prosecutor's Office, may authorise the comparison of the suspect's profile with those deposited in publicly or privately owned DNA databases for genealogical, ancestry or other search purposes and in which the donors of the samples have been informed of the possibility of the data being transferred for the purpose of criminal investigations, to determine whether they come from them or from a relative in direct or collateral line.

The final determination of the profile match of suspects who have been identified shall be made by matching the genetic profile taken pursuant to the provisions of this Law.

Article 339. Content of the report and the evidentiary value of the proceedings.

1. The information obtained from the investigation shall be compiled in an expert report which, to be considered as having evidentiary value, shall be ratified and submitted for examination pursuant to the provisions of this law for expert evidence.
2. The expert report shall contain, in a clear and comprehensible manner, the result of the comparison of the DNA profiles, information on the analysis procedure used to obtain them and details of the accreditation of the laboratory where the analysis was performed. Under no circumstances shall it include statements on the guilt or innocence of the person under investigation or on any aspect other than the methodology and result of the analysis carried out.

ANNEX IV. Form for taking biological samples from the investigated, prosecuted or accused persons with informed consent in criminal investigation

Approved at the plenary session of the CNUFADN on 15 December 2021

1. DETAILS OF THE PROCEDURE

Police proceedings No.: Date of proceedings:.....
Acting agents: Professional card number.....
Court proceedings no. Court:.....
Criminal offence investigated:

2. DETAILS OF THE SAMPLE DONOR

Name and surname:.....
DNI/Passport//Identifying document: Country:.....
Birth date and location:
Address:.....

Legal representative or person providing assistance or authorising the sample (in case of minors or persons with disabilities who require support).

Name and surname:
Capacity in which they act:
(legal representative or support)
Class:
(parent, guardian, tutor, de facto guardian, legal defender or other)
DNI/Passport//Identifying document: Country:
Birth date and location:
Address:

3. SAMPLE COLLECTION DATA CONSENT CLAUSE

In,at the offices of,located at,at on, consent is hereby requested to proceed with the taking of biological reference samples, as part of the criminal investigation in question consisting of a mouth swab (BY [X] STERILE KIT) for the performance of DNA analyses that exclusively provide genetic information revealing the identity of the person and their sex and the performance of comparative studies necessary for the above-mentioned court proceedings.

Pursuant to Organic Law 10/2007, of 8 October, regulating police DNA databases, as well as Organic Law 7/2021, of 26 May, on the protection of personal data processed for the purposes of the prevention, detection, investigation and prosecution of criminal offences and the execution of criminal penalties, the following **information** is hereby provided:

A) Purposes of treatment

- 1) The police and judicial purpose for which biological samples are taken and analysed is to identify the perpetrator of a crime, to bring them before the courts, to clarify the circumstances of the crime and for the judicial authority in criminal proceedings to determine the perpetrator's responsibility for the criminal acts or their innocence.
- 2) The samples or traces taken for biological analysis will be analysed by duly accredited laboratories by the National Commission for the forensic use of DNA, and the judicial authority shall decide on whether or not the samples or traces are subsequently retained.
- 3) The data and results obtained after carrying out these analyses may be used for genetic identification regarding merely identifying DNA, in this investigation or in other earlier or future investigations which result from the commission of those crimes for which current legislation authorises the system and handling of DNA profiles; the information will remain on police files for cases in which crimes are committed.
- 4) Use and possible transfer of data. The genetic profile obtained and registered in the police database on DNA identifiers and other data contained therein may only be used by the Judicial Police Units of the State Security Forces and Corps, as well as by the Judicial and Prosecutorial Authorities.

Furthermore, the data entered in the police database in relation to identifiers obtained using DNA may also be transferred to judicial authorities, public prosecutors or the police authorities of third countries, in accordance with the provisions of current international conventions ratified by Spain, to the police forces of the autonomous regions with statutory power to protect individuals and property and to maintain public security, for the investigation of the crimes enumerated in letter a of section 1 of article 3 of the same law, and also to the National Intelligence Centre, which may use the data to carry out its

functions relating to the prevention of such crimes, in the manner envisaged in Law 11/2002 of 6 May, regulating the National Intelligence Centre.

B) Storage period for personal data

The storage of DNA profiles in the police DNA database shall be in line with the content of Article 8 of Organic Law 7/2021 of 26 May, and shall not exceed:

- the time indicated by law for the prescription of the crime;
- the time indicated by law for the cancellation of a criminal record, if an enforceable guilty verdict has been returned, or an acquittal due to the existence of exonerating circumstances or lack of liability or culpability, unless a court decides to the contrary.

They will always be cancelled when an action is dismissed or a verdict of not guilty is returned for reasons different from those referred to in the preceding point, once the rulings are final.

The removal of identifiers obtained from DNA from the database will always entail the elimination of the DNA profile, personal data and sample held by the laboratory.

C) Rights of the person concerned

1) The data subject may exercise their rights to information, access, rectification, erasure and limitation of processing under the terms and in the manner provided for in Articles 22 to 26 of Organic Law 7/2021, of 26 May, on the protection of personal data processed for the purposes of the prevention, detection, investigation and prosecution of criminal offences and the execution of criminal penalties.

2) Likewise, the data subject has the right to file a complaint with the Spanish Data Protection Agency, whose contact details are as follows:

- a) Postal address: c/ Jorge Juan, 6, 28001, Madrid (personal assistance by appointment)
- b) Telephone: 91 266 35 17
- c) Virtual head office: <https://sedeagpd.gob.es/sede-electronica-web/>

D) Identification of data controllers and data protection officers (each institution shall identify its own controller and officer and their contact details).

1) Data controller before whom the rights of information, access, rectification and deletion of data may be exercised:

Contact details:

2) Data protection officer:

Contact details:

Having been informed of the above, and having been given a satisfactory explanation in relation to all the doubts they wished to raise, they GIVE their express CONSENT for:

Obtaining a biological sample for its analysis and comparison as part of the judicial investigation in question, as well as for its registration in the DNA database regulated under Organic Law 10/2007, of 8 October.

Signed: Donor of the sample

Signed by: Legal representative or support

Together with:

The lawyer (required if the donor is in detention)

Signed: Agent No. 1

Signed by: Agent No. 2

(OPTIONAL for the acting force)

FINGERPRINTS	
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ANNEX V. Form for taking biological samples from victims with informed consent in criminal investigation

Approved at the plenary session of the CNUFADN on 15 December 2021

1. DETAILS OF THE PROCEDURE

Police proceedings No.: Date of proceedings:.....
Acting agents: Professional card number.....
Court proceedings no. Court:.....
Criminal offence investigated:

2. DETAILS OF THE SAMPLE DONOR

Name and surname:.....
DNI/Passport//Identifying document: Country:
Birth date and location:
Address:

Legal representative or person providing assistance or authorising the sample (in case of minors or persons with disabilities who require support)

Name and surname:
Capacity in which they act:
(legal representative or support)
Class:
(parent, guardian, tutor, de facto guardian, legal defender or other)
DNI/Passport//Identifying document: Country:
Birth date and location:
Address:

3. SAMPLE COLLECTION DATA CONSENT CLAUSE

In,at the offices of,located at,at on, consent is hereby requested to proceed with the taking of biological reference samples, as part of the criminal investigation in question consisting of a mouth swab (BY [X] STERILE KIT) for the performance of DNA analyses that exclusively provide genetic information revealing the identity of the person and their sex and the performance of comparative studies necessary for the above-mentioned court proceedings.

Pursuant to Organic Law 10/2007, of 8 October, regulating police DNA databases, as well as Organic Law 7/2021, of 26 May, on the protection of personal data processed for the purposes of the prevention, detection, investigation and prosecution of criminal offences and the execution of criminal penalties, the following information is hereby provided:

A) Purposes of treatment

- 1) The police and judicial purpose for which the biological samples are taken and analysed is to clarify the facts and identify the perpetrator of the crime or crimes subject to investigation, as well as to make available to the judicial authority the data obtained in the criminal proceedings that are necessary to determine the responsibility of the perpetrator of the criminal acts or their innocence.
- 2) The samples or traces taken for biological analysis will be analysed by duly accredited laboratories by the National Commission for the forensic use of DNA, and the judicial authority shall decide on whether or not the samples or traces are subsequently retained.
- 3) The data and results obtained from these analyses may be used for genetic identification on purely identificatory DNA, exclusively as part of this investigation.
- 4) Use and transfer of data. The genetic profiles obtained from the samples and the other data recorded may only be used by the Judicial Police Units of the State Security Forces and Corps, as well as by the Judicial and Prosecutorial Authorities, in the investigation of the crime that has given rise to the investigation.

B) Storage period for personal data

DNA profiles and other personal data shall be retained for as long as they are necessary for the police and judicial investigation of this case. In any case, the data shall be stored pursuant to the provisions of Article 8 of Organic Law 7/2021, of 26 May, and shall be deleted once a final ruling or final order to dismiss the case has been handed down, and in the case of provisional dismissal, when the statute of limitations for the offence has elapsed.

Deletion shall entail the removal of the DNA profile, personal data and sample held in the laboratory.

C) Rights of the person concerned

1) The data subject may exercise their rights to information, access, rectification, erasure and limitation of processing under the terms and in the manner provided for in Articles 22 to 26 of Organic Law 7/2021, of 26 May, on the protection of personal data processed for the purposes of the prevention, detection, investigation and prosecution of criminal offences and the execution of criminal penalties.

2) Likewise, the data subject has the right to file a complaint with the Spanish Data Protection Agency, whose contact details are as follows:

- a) Postal address: c/ Jorge Juan, 6, 28001, Madrid (personal assistance by appointment)
- b) Telephone: 91 266 35 17
- c) Virtual head office: <https://sedeagpd.gob.es/sede-electronica-web/>

D) Identification of data controllers and data protection officers (each institution shall identify its own controller and officer and their contact details).

1) Data controller before whom the rights of information, access, rectification and deletion of data may be exercised:

Contact details:

2) Data protection officer:

Contact details:

Having been informed of the above, and having been given a satisfactory explanation in relation to all the doubts they wished to raise, they GIVE their express CONSENT for:

The collection of biological samples, their analysis and comparison as part of the police investigation in question.

Signed: Donor of the sample

Signed by: Legal representative or support

The inclusion in the police database on identifiers obtained from DNA regulated in Organic Law 10/2007, of 8 October, and their use and transfer for use exclusively in the investigation for which the sample was taken.

Signed: Donor of the sample

Signed by: Legal representative or support

Together with:

Signed: Agent No. 1

Signed by: Agent No. 2

(OPTIONAL for the acting force)

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ANNEX VI. Form for taking biological samples from the investigated, prosecuted or accused persons with informed consent in criminal investigation (Institutes of Forensic Medicine and Forensic Sciences)

Approved at the plenary session of the CNUFADN on 15 December 2021

1. DETAILS OF THE PROCEDURE

Procedure/Case No..... Court:

Criminal offence investigated:

Lawyer: Member no.

2. DETAILS OF THE SAMPLE DONOR

Donor of the sample:.....

Legal representative or person providing assistance or authorising the sample (in case of minors or persons with disabilities who require support

Name and surname:

Capacity in which they act:

(legal representative or support)

Class:

(parent, guardian, tutor, de facto guardian, legal defender or other)

DNI/Passport//Identifying document: Country:

Birth date and location:

Address:.....

3. SAMPLE COLLECTION DATA CONSENT CLAUSE

At the headquarters of the judicial body indicated, at on, consent is hereby requested to proceed with the taking of biological reference samples, as part of the criminal investigation in question consisting of a mouth swab (BY [X] STERILE KIT) for

the performance of DNA analyses that exclusively provide genetic information revealing the identity of the person and their sex and the performance of comparative studies necessary for the above-mentioned court proceedings.

Pursuant to Organic Law 10/2007, of 8 October, regulating police DNA databases, as well as Organic Law 7/2021, of 26 May, on the protection of personal data processed for the purposes of the prevention, detection, investigation and prosecution of criminal offences and the execution of criminal penalties, the following information is hereby provided:

A) Purposes of treatment

1) The police and judicial purpose for which biological samples are taken and analysed is to identify the perpetrator of a crime, to bring them before the courts, to clarify the circumstances of the crime and for the judicial authority in criminal proceedings to determine the perpetrator's responsibility for the criminal acts or their innocence.

2) The samples or traces taken for biological analysis will be analysed by duly accredited laboratories by the National Commission for the forensic use of DNA, and the judicial authority shall decide on whether or not the samples or traces are subsequently retained.

3) The data and results obtained after carrying out these analyses may be used for genetic identification regarding merely identifying DNA, in this investigation or in other earlier or future investigations which result from the commission of those crimes for which current legislation authorises the system and handling of DNA profiles; the information will remain on police files for cases in which crimes are committed.

4) Use and possible transfer of data. The genetic profile obtained and registered in the police database on DNA identifiers and other data contained therein may only be used by the Judicial Police Units of the State Security Forces and Corps, as well as by the Judicial and Prosecutorial Authorities.

Furthermore, the data entered in the police database in relation to identifiers obtained using DNA may also be transferred to judicial authorities, public prosecutors or the police authorities of third countries, in accordance with the provisions of current international conventions ratified by Spain, to the police forces of the autonomous regions with statutory power to protect individuals and property and to maintain public security, for the investigation of the crimes enumerated in letter a of section 1 of article 3 of the same law, and also to the National Intelligence Centre, which may use the data to carry out its functions relating to the prevention of such crimes, in the manner envisaged in Law 11/2002 of 6 May, regulating the National Intelligence Centre.

B) Storage period for personal data

The storage of DNA profiles in the police DNA database shall be in line with the content of Article 8 of Organic Law 7/2021 of 26 May, and shall not exceed:

- the time indicated by law for the prescription of the crime;
- the time indicated by law for the cancellation of a criminal record, if an enforceable guilty verdict has been returned, or an acquittal due to the existence of exonerating circumstances or lack of liability or culpability, unless a court decides to the contrary.

They will always be cancelled when an action is dismissed or a verdict of not guilty is returned for reasons different from those referred to in the preceding point, once the rulings are final.

The removal of identifiers obtained from DNA from the database will always entail the elimination of the DNA profile, personal data and sample held by the laboratory.

C) Rights of the person concerned

1) The data subject may exercise their rights to information, access, rectification, erasure and limitation of processing under the terms and in the manner provided for in Articles 22 to 26 of Organic Law 7/2021, of 26 May, on the protection of personal data processed for the purposes of the prevention, detection, investigation and prosecution of criminal offences and the execution of criminal penalties.

2) Likewise, the data subject has the right to file a complaint with the Spanish Data Protection Agency, whose contact details are as follows:

- a) Postal address: c/ Jorge Juan, 6, 28001, Madrid (personal assistance by appointment)
- b) Telephone: 91 266 35 17
- c) Virtual head office: <https://sedeagpd.gob.es/sede-electronica-web/>

D) Identification of data controllers and data protection officers (each institution shall identify its own controller and officer and their contact details).

1) Data controller before whom the rights of information, access, rectification and deletion of data may be exercised:

Contact details:

2) Data protection officer:

Contact details:

Having been informed of the above, and having been given a satisfactory explanation in relation to all the doubts they wished to raise, they GIVE their express CONSENT for:

Obtaining a biological sample for its analysis and comparison as part of the judicial investigation in question, as well as for its registration in the DNA database regulated under Organic Law 10/2007, of 8 October.

Signed: Donor of the sample

Signed by: Legal representative or support

Together with:

Signed: The lawyer (required if the donor is in detention)

ANNEX VII: Form for taking biological samples from victims with informed consent in criminal investigation (Institutes of Forensic Medicine).

Approved at the plenary session of the CNUFADN on 15 December 2021

1. DETAILS OF THE PROCEDURE

Procedure/Case No..... Court:

Criminal offence investigated:

Lawyer: Member no.

2. DETAILS OF THE SAMPLE DONOR

Donor of the sample:.....

Legal representative or person providing assistance or authorising the sample (in case of minors or persons with disabilities who require support

Name and surname:

Capacity in which they act:

(legal representative or support)

Class:

(parent, guardian, tutor, de facto guardian, legal defender or other)

DNI/Passport//Identifying document: Country:

Birth date and location:

Address:.....

3. SAMPLE COLLECTION DATA CONSENT CLAUSE

At the headquarters of the judicial body indicated, at on, consent is hereby requested to proceed with the taking of biological reference samples, as part of the criminal investigation in question consisting of a mouth swab (BY [X] STERILE KIT) for

the performance of DNA analyses that exclusively provide genetic information revealing the identity of the person and their sex and the performance of comparative studies necessary for the above-mentioned police and/or court proceedings.

Pursuant to Organic Law 10/2007, of 8 October, regulating police DNA databases, as well as Organic Law 7/2021, of 26 May, on the protection of personal data processed for the purposes of the prevention, detection, investigation and prosecution of criminal offences and the execution of criminal penalties, the following information is hereby provided:

A) Purposes of treatment

- 1) The police and judicial purpose for which the biological samples are taken and analysed is to clarify the facts and identify the perpetrator of the crime or crimes subject to investigation, as well as to make available to the judicial authority the data obtained in the criminal proceedings that are necessary to determine the responsibility of the perpetrator of the criminal acts or their innocence.
- 2) The samples or traces taken for biological analysis will be analysed by duly accredited laboratories by the National Commission for the forensic use of DNA, and the judicial authority shall decide on whether or not the samples or traces are subsequently retained.
- 3) The data and results obtained from these analyses may be used for genetic identification on purely identificatory DNA, exclusively as part of this investigation.
- 4) Use and transfer of data. The genetic profiles obtained from the samples and the other data recorded may only be used by the Judicial Police Units of the State Security Forces and Corps, as well as by the Judicial and Prosecutorial Authorities, in the investigation of the crime that has given rise to the investigation.

B) Storage period for personal data

DNA profiles and other personal data shall be retained for as long as they are necessary for the police and judicial investigation of this case. In any case, the data shall be stored pursuant to the provisions of Article 8 of Organic Law 7/2021, of 26 May, and shall be deleted once a final ruling or final order to dismiss the case has been handed down, and in the case of provisional dismissal, when the statute of limitations for the offence has elapsed.

Deletion shall entail the removal of the DNA profile, personal data and sample held in the laboratory.

C) Rights of the person concerned

1) The data subject may exercise their rights to information, access, rectification, erasure and limitation of processing under the terms and in the manner provided for in Articles 22 to 26 of Organic Law 7/2021, of 26 May, on the protection of personal data processed for the purposes of the prevention, detection, investigation and prosecution of criminal offences and the execution of criminal penalties.

2) Likewise, the data subject has the right to file a complaint with the Spanish Data Protection Agency, whose contact details are as follows:

- a) Postal address: c/ Jorge Juan, 6, 28001, Madrid (personal assistance by appointment)
- b) Telephone: 91 266 35 17
- c) Virtual head office: <https://sedeagpd.gob.es/sede-electronica-web/>

D) Identification of data controllers and data protection officers (each institution shall identify its own controller and officer and their contact details).

1) Data controller before whom the rights of information, access, rectification and deletion of data may be exercised:

Contact details:

2) Data protection officer:

Contact details:

Having been informed of the above, and having been given a satisfactory explanation in relation to all the doubts they wished to raise, they GIVE their express CONSENT for:

The collection of biological samples, their analysis and comparison as part of the police investigation in question.

Signed: Donor of the sample

Signed by: Legal representative or support

The inclusion in the police database on identifiers obtained from DNA regulated in Organic Law 10/2007, and their use and transfer for use exclusively in the investigation for which the sample was taken.

Signed: Donor of the sample

Signed by: Legal representative or support

Together with:

Signed: The forensic doctor

Signed by: The legal counsel for the Justice Administration

