Council Decision 2008/615/JHA requires that Member States of the European Union open and keep national DNA analysis files for the investigation of criminal offences. The purpose of the present article is to discuss whether the European institutional framework with regard to the protection of personal data in the course of DNA analysis is adequate from a human rights perspective; in other words, whether such institutional framework properly delimits state action in accordance with the fundamental principles of lawfulness, necessity and proportionality.

1. Introduction

For a number of years, the creation of DNA analysis files has been in widespread use by the police as a supervising mechanism over large groups of citizens. As of 2008, however, Council Decision 2008/615/JHA\(^1\) not only entitles but actually requires EU Member States to maintain national DNA analysis files for the investigation of criminal offences, as well as to allow other Member States to obtain access to the reference data in these files, thus enabling them to conduct automated searches by means of comparing DNA profiles.\(^2\)


Although these measures admittedly constrict the right of self-determination over one's personal information, they are considered justifiable in view of the overarching social purpose of combating serious crime. That being noted, DNA analysis does present its own problems: on the one hand, the technical methods employed to date have been shown to be less than fully reliable; on the other, DNA samples are constantly diffused to the environment, no particular attention being paid by the individual concerned, which makes it easy for potential culprits to plant them in a crime scene, thus disorienting investigations and incriminating innocent persons. Despite such flaws, DNA analysis is regarded as one of the most effective methods to identify a person, and hence as an invaluable tool for law enforcement authorities. In point of fact, the durability of DNA – i.e. its ability to remain intact and trace a human being from the moment of birth to the moment of death - makes its analysis superior to that of, e.g., fingerprints, which are subject to impairment due to manual labour, medical intervention or

3) DNA analysis allows, in particular, access to very sensitive information of every person reflecting his profile in relation not only to his past, but also to his present and his near future. It can reveal features such as sex, origin, characteristics of personality, diseases suffered, as well as predispositions for developing illnesses in the future. DNA analysis can also provide information for other persons found in the same genetic line. Therefore, the DNA constitutes a particular sensitive personal data.


6) For this reason it is rightly withheld that the identity of suspects must already stem from other elements, proof or token of evidence (See Opinion of the Hellenic Data Protection Authority 15/2001, item 7).