

Gen-ethisches Netzwerk (GeN) e.V.
Brunnenstr. 4
10119 Berlin



To: German Minister of Justice

Open Letter: Stop the police's DNA collection frenzy!

Dear Minister Sabine Leutheusser-Schnarrenberger,

We the signatories reject the centralized storage of data acquired from bodily evidence as a dangerous instrument of state surveillance. In our view, the following changes to current practice are absolutely necessary:

1. A reform of the constitutionally dubious law of 2005

The drastic expansion of the DNA-database of the federal police (BKA) began with the passage of reform legislation in 2005. Since then, the DNA of suspects – even those accused of only minor offenses – can be collected if they are considered to be repeat offenders. The new law also allows DNA samples to be analyzed and profiles to be collected without judicial review, as long as the accused ‘voluntarily’ agree to it. Just how voluntary such consent can be during, for example, an interrogation is open to serious question. According to investigations of data-protection ombudsmen, officials can thereby circumvent judicial review in well over 90% of all cases of DNA-sampling. As a result, DNA-analysis has now become virtually commonplace in police investigations. Evidence for this can be witnessed in the fact less than 4% of the data relates to serious crimes such as sexual abuse, physical violence, hostage taking or murder. And yet, supposedly, it was to solve these very crimes that the database was created in the first place.

We demand a revision of the law that will significantly limit the ability of police to create and store DNA-profiles!

2) Independent, comprehensive, and routine judicial oversight of the DNA-analysis data compiled by the federal police (BKA)

The central DNA-database of the federal police already contains more than 700,000 personal DNA-profiles. To date, the legal basis for storing data has only rarely and randomly been examined by data-protection ombudsmen. One such examination by officials in Baden-Württemberg in 2007 revealed that legal safeguards had been seriously compromised. More than 40% of the DNA-profiles examined by the officials had to be deleted from the database. Time and again, the storage of DNA-profiles in BKA-databases has been successfully challenged in the constitutional court. Routine and independent oversight of data collection is therefore necessary, as is the immediate deletion of illegally stored DNA-profiles.

We demand independent and viable oversight of the police, as well as binding rules -- subject to independent verification -- governing the routine deletion of data.

3. Prohibition on the use of DNA samples and data to acquire information about biological relationships and personal characteristics

Current law allows the use of DNA-profiles to identify individuals. These profiles are compiled using segments of DNA that are considered to be uncoded and that supposedly therefore do not allow conclusions to be drawn about biological characteristics. Furthermore, as of 2005, information about chromosomal sex may also be stored. So far the law prohibits the analysis of so-called coded DNA-segments in order to establish other characteristics. But in human genetic research the distinction drawn between 'coded' and 'uncoded' DNA-segments is becoming increasingly untenable. There is good reason to be concerned that DNA-profiles will be used to acquire evermore information. So-called 'partial hits', i.e. when police database searches reveal partial matches, can already shed light on biological relationships. In strictly technical terms, this can be prevented by storing the DNA-profile in digital codes ("hashes").

We demand robust rules prohibiting the use of DNA-samples in police investigations in order to gather evidence about biological characteristics

4. Withdrawal from global agreements on DNA-data-exchange

Around the world some 56 countries maintain centralized police DNA-databases. In spite of heterogeneous legislation governing data protection, efforts to link the databases together in a network are proceeding apace. The so-called *Prüm Procedure* involving the networking of European databases has already been anchored in a resolution of the European Union (EU) and is scheduled to be completed by 26 August 2011. Recently the European Court of Human Rights (EuGH) ruled that the use of a DNA-database by British police constituted a serious violation of fundamental rights of data protection. If only for this reason, the efforts of the federal police to link their DNA-analysis data with the DNA-data of other countries must cease immediately.

We demand an immediate stop to projects involving the international exchange of data, such as the agreement with the USA on transatlantic data exchange!

These measures are only just the beginning. In the long term, police DNA-databases must be eliminated. In the name of a dubious notion of "security", the preemptive logic which justifies their use is constantly and fundamentally undermining fundamental rights: the fact that individuals, once accused or convicted of a crime, can for years and even decades be subject to surveillance and criminalized, violates the principle of rehabilitation. The principle that a person is innocent until proven guilty is farcical in the face of mass genetic testing. The logic of police DNA-databases obscures the societal and social contexts of crime: the ongoing expansion of DNA data storage to cases of petty crime such as theft means that socially underprivileged and marginalized groups will be disproportionately affected. The more the logic of these practices is extended across society, the more plausible and achievable will the notion of seamless population surveillance become -- a notion that is already beginning to find voice in judicial and domestic policy debates.

In the name of all signatories

Gene-ethical Network (Gen-ethisches Netzwerk e.V.)

Berlin, 19 May 2011