

Legal regulation of compulsory genomic registration in Russia and the UK

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Summary. This article analyzes the legal foundations of compulsory genomic registration in Russia and the UK. The paper assesses the prospects for the development of Russian legislation and law enforcement practice on ethical issues related to the right of access to genomic data, its confidentiality during storage, transmission and destruction.

Keywords: genome, genomic registration, convicts, punishment, criminal record.

Mandatory genomic registration in the Russian Federation and the UK is subject to legal regulation. In the Russian Federation, compulsory genomic registration was first provided for in 2008 by Federal Law No. 242-FZ “On State Genomic Registration in the

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Russian Federation”. In 2011, the Government of the Russian Federation approved the “Regulation on the procedure for compulsory state genomic registration of persons convicted and serving sentences of imprisonment”. Under these provisions, the legal reasoning for compulsory state genomic registration is a court sentence that has entered into legal force, on the basis of which an individual has been found guilty of a serious or particularly serious offence against sexual inviolability and sexual freedom of the person and sent to serve the sentence in an institution performing criminal sentences. At the same time, genomic profiles obtained in accordance with the law are entered into the DNA database, and can be processed in order to prevent, disclose, investigate and prosecute crimes that the convicted person has previously committed or may commit in the future. In the UK, legal regulation of compulsory genomic registration has appeared since the creation of the world's first national DNA base in 1995 and has changed more than once. The main acts in this sphere are the Data Protection Act 1998, the Crime and Security Act 2010, and The Data Protection Act of 2018 (which is the UK implementation of the General Data Protection Regulation (GDPR)).

There are differences in the group of persons subject to mandatory genomic registration in Russia and the UK. The Russian Federation provides for compulsory genomic registration of persons convicted and serving a sentence of imprisonment for serious or particularly serious offences, as well as all categories of crimes against sexual inviolability and sexual freedom of an individual; unidentified persons whose biological material was seized during the course of investigative actions. In addition, unidentified corpses are subject to mandatory state genomic registration. In the UK, initially compulsory genomic registration applied only to convicted criminals and defendants. Over the past 20 years, regulations regarding the collection, use and storage of genetic data in the UK have changed. Until 2008, even persons arrested for any crime were subject to compulsory genomic registration in England,

Wales and Northern Ireland. The exception was Scotland, where samples were taken only from persons who committed serious crimes, and samples of persons found not guilty were destroyed. As a result, the national DNA database expanded rapidly and now contains information of convicted individuals and those arrested by found *not* guilty of a crime by the court. This practice applies to children too. After the judgment of the European Court of Human Rights in 2008 that the DNA of innocent people cannot be stored in a database, the Crime and Security Act was adopted in the UK in 2010, which in particular aimed at resolving some ethical issues related to a DNA database.

As the National DNA Database in the UK grows, public concerns about privacy and human rights are increasing². To solve this problem, the UK government publishes National DNA Database Statistics on a quarterly basis; in 2007, the UK National DNA Database Ethics Group was established; government reports of the Commission on Human Genetics (HGC) on the use of biometric data were published; quite a lot of events were held with the public, human rights groups and civil liberties.

The UK Data Protection Act 2018 and the General Data Protection Regulation (GDPR) provide mechanisms for the protection of genetic data, as well as specific protection for the personal data of perpetrators and convicts, including their right to delete information from existing databases if they are not found guilty of a crime; right to correct incorrect information, etc³. In the Russian Federation the Federal Service for Supervision of Consumer Rights Protection and Human Well-Being in January 2019 uploaded on a

² Liz Heffernan. The Law Reform Commission's proposed DNA database: issues of scope. // *Medico-Legal Journal of Ireland*. M.L.J.I. 2006, 12(2), 56-64.

³ Leslie E. Wolf, Erin Fuse Brown, Ryan Kerr, Genevieve Razick, Gregory Tanner, Brett Duvall, Sakinah Jones, Jack Brackney & Tatiana Posada. The Web of Legal Protections for Participants in Genomic Research. *Health Matrix* 29.Issue 1. 2019.

webpage for a public debate the draft amendment to federal law dated July 27, 2006 No. 152-ΦЗ “On personal data” and Article 39.1 of the Law of the Russian Federation of February 7, 1992 No. 2300-I “On the Protection of Consumer Rights”. The bill provides for the processing of personal data obtained from biological and genetic material of a person and services associated with the use and handling of biological and genetic material of the individual.

Overall, the current legal acts in both Russia and the UK do not solve a number of ethical issues related to the right of access to genomic data, its confidentiality during storage, transmission and destruction. It seems that despite the mandatory genomic registration, the solution of these issues should be based on the principles of processing genetic data. First, the convicted must have the right to familiarize themselves with their genetic data. Secondly, convicts, like other persons during voluntary genomic registration, must maintain freedom of choice to use their genetic data, if it is not related to the prevention, disclosure and investigation of crimes, as well as the identification of the persons who committed them. Thirdly, convicts should not be deprived of the right to privacy of their genetic data for purposes not related to the prevention, investigation of crimes and identification of the persons who committed them.

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