



<https://doi.org/10.22363/2313-2337-2026-30-2-331-348>
EDN: DHITRT

Research Article / Научная статья

DNA Fingerprinting and Genetic Privacy in Algerian and French Law: A Comparative Study

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Abstract. The purpose of this study is to examine the role of DNA fingerprinting in establishing paternity and its application as evidence in criminal proceedings, alongside the legal and ethical challenges of protecting genetic privacy. It analyzes the evolution of the Algerian judicial system and the development of legal frameworks for resolving paternity disputes, including the influence of traditional kinship recognition methods on adopting modern scientific techniques like DNA fingerprinting. In criminal investigations, DNA fingerprinting have proven highly effective for identifying perpetrators, enhancing investigative accuracy, and promoting fairer justice administration. However, its use raises complex legal and ethical concerns regarding potential misuse of genetic data. The study concludes that a balanced legislative approach is essential to safeguard personal rights while preserving DNA fingerprinting as a reliable evidentiary tool, without undermining core privacy principles. It further proposes legislative solutions that meet justice requirements in paternity and criminal cases, incorporating stringent safeguards against genetic privacy violations.

Key words: Paternity Evidence, Biometric Identification, Criminal Investigation, Forensic Science, Genetic Identification

Data Availability Statement. All data generated during this study are included in the published article.

Conflict of interest. The author declares no conflict of interest.

Received: 08th April 2025

Accepted: 15th April 2026

For citation:

Abdelkader, Y. (2026) DNA Fingerprinting and Genetic Privacy in Algerian and French Law: A Comparative Study. *RUDN Journal of Law*. 30 (2), 331–348. <https://doi.org/10.22363/2313-2337-2026-30-2-331-348> EDN: DHITRT

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ДНК-дактилоскопия и генетическая конфиденциальность в алжирском и французском законодательстве: сравнительно-правовое исследование

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Аннотация. Цель исследования – рассмотреть роль ДНК-дактилоскопии в установлении отцовства и ее использования в качестве доказательства в уголовном процессе, а также связанным с этим юридическим и этическим проблемам защиты генетической приватности. Анализируется развитие судебной системы Алжира и формирование правовых основ для разрешения споров об отцовстве, включая влияние традиционных способов признания родства на внедрение современных научных методов, в частности ДНК-дактилоскопии. В уголовном судопроизводстве данный метод подтвердил свою высокую эффективность для идентификации преступников, повышения качества расследований и обеспечения законности при отправлении правосудия. Однако его применение сопряжено со сложными правовыми и моральными вопросами относительно потенциальных злоупотреблений генетической информацией. Автор делает вывод о необходимости выработки взвешенного законодательного подхода, который гарантирует защиту личных прав и одновременно позволяет использовать ДНК-дактилоскопию как надежный и доступный для понимания инструмент, не поступаясь основополагающими принципами приватности. Предлагаются законодательные меры, учитывающие как требования правосудия по делам об установлении отцовства и уголовным делам, так и необходимость внедрения строгих гарантий для предотвращения нарушений генетической приватности.

Ключевые слова: доказательства отцовства, биометрическая идентификация, уголовное расследование, судебная экспертиза, генетическая идентификация

Заявление о доступности данных. Все данные, полученные в ходе этого исследования, включены в опубликованную статью.

Конфликт интересов. Автор заявляет об отсутствии конфликта интересов.

Поступила в редакцию: 08 апреля 2025 г.

Принята к печати: 15 апреля 2026 г.

Для цитирования:

Абделькадер Й. ДНК-дактилоскопия и генетическая конфиденциальность в алжирском и французском законодательстве: сравнительно-правовое исследование // RUDN Journal of Law. 2026. Т. 30. № 2. С. 331–348. <https://doi.org/10.22363/2313-2337-2026-30-2-331-348>
EDN: DHITRT

Introduction

We are in a transformative scientific era, with laboratories advancing discoveries and racing to develop cutting-edge technologies. Machine automation reduces human effort in repetitive tasks, simplifying complex procedures, while communication technologies evolve rapidly.

At a deeper level, genetics and medicine are achieving unprecedented rigor. The 20th century emphasized experimental breakthroughs, particularly in biotechnology, culminating in the decoding of the human genome – often called the “Book of Life.” This milestone built on foundational work, starting with Gregor Mendel’s laws of inheritance in 1866, which paved the way for identifying DNA as life’s genetic blueprint. In 1953, Watson and Crick proposed the DNA double helix structure, revolutionizing genetics.

Today we are witnessing a biological revolution propelled by biotechnology and genetic engineering. Scientists can now edit genetic traits, with governments and societies recognizing its potential across diverse fields.

A key application lies in civil and criminal evidence, where genetic fingerprinting offers the most reliable identification method – yet it carries risks. Misuse of genetic data threatens privacy and individual freedoms, underscoring the urgent need for robust laws governing the collection, storage, and use of genomic information. Without ethical and legal safeguards, unforeseen harms could arise.

The core issue driving this study is: To what extent has genetic fingerprinting been employed in evidentiary contexts, and what ethical and legal challenges does its use present?

To address these questions, this study employs multiple scientific approaches. The deductive method analyses the concept of genetic fingerprinting. We reviewed legal texts and court judgments to assess the judiciary's stance on this technology. Additionally, a comparative approach was adopted, given the recency of research in this area and the lack of detailed regulation in Algerian law. Thus, we consulted frameworks from comparative legal systems.

The Use of DNA Fingerprinting in Establishing Paternity

Amid the remarkable success of genetic engineering – particularly DNA fingerprinting – in proving paternity, it is essential to first outline its scientific foundations before examining its reception in Islamic law, Algerian legislation, and judicial practice.

Principles Governing DNA Fingerprinting

The use of genetic engineering as evidence relies on DNA fingerprint analysis, which identifies an individual's unique genetic profile through rigorous scientific protocols.

Defining DNA Fingerprinting

Historically, paternity testing compared genetic traits between a suspected father and child using methods like blood typing, enzyme analysis, and cell markers (Al-Rifai, 2013).

Physicians and biologists classify methods of establishing paternity into two categories. Definitive (conclusive) systems include DNA fingerprinting and the human leukocyte antigen (HLA) system. Presumptive (probabilistic) systems include ABO blood group testing, the MNS system, and various protein markers.

Advances in genetics – the study of hereditary trait transmission across generations – have revolutionized paternity testing. A breakthrough came in 1985 when British geneticist Alec Jeffreys identified specific nucleotide sequences in DNA strands, coining the term “DNA fingerprinting” or “genetic profiling” (Igourafa, 2010:73–74).

Scientific Basis of DNA Fingerprinting

Scientifically, a true DNA fingerprint is uniquely personal, revealing an individual's genetic charter and traits – much like an identity document, but private and unrelated to civil status details (e.g., name, surname, or domicile). It analyses genetic components to create a unique identifier, distinguishing features such as eye color, skin tone, intelligence potential, and general health status.

According to the Genetics and Genetic Engineering Symposium, DNA fingerprinting is defined as: “Each human being has a unique gene structure (hereditary material) that forms their genetic identity. This material, known as DNA, is primarily located mainly in

the nuclei – and to a lesser extent, mitochondria – of all living cells, from bacteria and fungi to plants, animals, and humans (Al-Qaradaghi, 2003:39).

Algerian Law No. 16-03 on the use of genetic fingerprinting in judicial procedures and personal identification¹ provides a legal definition in Article 2: DNA fingerprinting refers to non-coding DNA sequences. Its analysis rests on the principle that children inherit half their genetic material from each parent – one half from the father's sperm and half from the mother's egg – resulting in genetic features from both, per Mendel's² law of inheritance.

Every person's DNA fingerprint differs from others in length, thickness, and position, making it a true "fingerprint". Matches occur only in identical twins. Moreover, DNA can be extracted from tiny samples of human cells or tissues, including blood, bones, teeth, saliva, mucus, skin, semen, nails, hair, or any other biological material.

Under this milestone discovery, DNA fingerprinting has become an essential tool for resolving paternity disputes. It not only excludes paternity with 100% certainty but also confirms it with 99.99 % accuracy, enabling more effective resolution of related legal matters³.

DNA Fingerprinting Analysis Methodology

DNA fingerprinting offers significant advantages as both the gold standard in biometric identification and a mechanism for linking parental responsibility to rights under the Islamic legal principle *al-ghurm bil-ghunm* (risk accompanies reward).

Additionally, it protects abandoned infants – often left at mosque doorsteps or beside trash bins – by establishing or refuting parental claims. Analysis is required whenever individuals assert or contest parenthood rights over a child.

DNA Fingerprinting Analysis Process

This technique analyses DNA fragments of varying lengths using restriction fragment length polymorphism (RFLP). It requires reference patterns derived from DNA samples of all parties involved (putative father, putative mother and child), which are then electrophoretically separated from smallest to the largest fragments.

Analysis involves:

- 1) restriction enzymes to cut DNA at specific sites;
- 2) electrophoresis apparatus to separate fragments by size.

Samples are collected from each party to generate these comparative profiles.

Electrophoresis separates DNA fragments following extraction of genetic material, generating laboratory results that can exclude paternity where no genetic relationship exists between the child and the alleged parent. In such cases, the exclusion is regarded as biologically and medically definitive, whereas inclusion is typically expressed as a high probability of paternity (often above 99%) (Al-Jundi & Al-Husseini, 2002:50).

If conventional analysis fails due to an insufficient sample, the polymerase chain reaction (PCR) serves as an alternative. Developed by American biochemist Kary B. Mullis

¹ Law No. 16-03 of 9 June 2016, concerning the use of genetic fingerprinting in judicial procedures and personal identification. *Official Gazette*, No. 37 of 2016.

² Gregor Mendel is considered the father of genetics, having achieved pioneering results in the field. His laws of inheritance state that hereditary traits in children are derived from one or both parents.

³ François Enault, *Genomic and Structural Information*, Available at: www.sites.univ-provence.fr/cies/memoire/X_MemoireGenetique.pdf (accessed: 4th April 2025).

in 1983 (Nobel Prize in Chemistry), PCR amplifies specific DNA segments through repeated thermal cycles.

The process targets microsatellite regions, replicating genetic sequences 20-25 times using controlled heating/cooling and chemical reagents. PCR offers advantages over RFLP: it requires smaller samples, accelerates analysis, and produces easily stored photographic results.

However, PCR is highly susceptible to contamination by foreign DNA, necessitating strict protocols. Only specialized laboratories should perform these procedures under rigorous guidelines (Umm al-Khair Buqra, 2010:80).

The Use of DNA Fingerprinting in Establishing Paternity

The Algerian legislator and judiciary have traversed two distinct phases in their approach to DNA fingerprinting in paternity cases. In the first phase, judicial practice rejected DNA analysis as evidence of biological lineage, prioritizing traditional Islamic evidentiary rules. Subsequent developments marked a shift toward embracing scientific methods alongside established legal traditions.

The Judiciary's Position on DNA Fingerprinting in Paternity Cases

The Algerian Judiciary progressed through two phases in addressing paternity disputes. Family court judges initially adhered rigidly to statutory language, rejecting scientific evidence. On February 15, 1999, the Supreme Court upheld a lower court's dismissal of blood tests for paternity, deeming such inquiries contrary to Islamic and jurisprudential evidentiary rules⁴. This stance ignored advances in medical science and evolving social realities, including declining reliance on oaths.

A landmark Court of Appeals decision accepting medical testimony and blood analysis for paternity cases signaled growing openness to science.

The turning point came on 5 March 2006, when the Supreme Court overturned two M'Sila court rulings that had excluded DNA evidence. Declaring the lower decisions null, the Supreme Court held DNA fingerprinting as conclusive proof of paternity.

In the case *R.F. vs. S.Sh.* (15 January 2009), the Supreme Court addressed DNA testing versus *li'ān* (mutual oaths denying paternity). While affirming DNA's reliability, it ruled that *li'ān* proceedings under Article 40 (as amended) take precedence for paternity denial, preventing subsequent contradictory claims (Tchouar, 2003:14).

The Legal Position on DNA Fingerprinting in Establishing Paternity

Prior to its amendment by Law No. 84-11, the Algerian Family Code excluded scientific evidence for proving or disproving paternity, relying solely on traditional methods outlined in Article 40. This left Algerian law lagging behind global legislative progress on DNA fingerprinting.

The primary gap lay in the absence of codified standards governing DNA evidence across all dimensions, leaving its judicial application without concrete legal guidance. Even the Public Health Law – among the closest related frameworks – failed to address DNA's applications for paternity cases in a comprehensive manner.

⁴ Supreme Court Decision issued on 15/06/1999, Case No. 222674, Judges' Journal, Special Issue, 2001, p. 88.

Legislative Reform: Ordonnance No. 05-02 (2005)

Responding to advances in genetics and forensic biology, the Algerian legislator introduced Ordinance No. 05-02 to amend the Family Code, filling previous legal voids.

Key changes included adding a new paragraph to Article 40, which now recognized paternity through: marriage, admission, acknowledgement, evidential knowledge, doubtful marriage (*nikah al-shubah*), and any subsequent irrevocable marriage (per Articles 32, 33 and 34). Crucially, the reform authorises judges to use scientific methods to establish paternity tentatively.

Persistent Legislative Ambiguities

While this reform integrates scientific evidence with traditional proofs of paternity – seeking to balance the preservation of lineage (*pedigree protection*) and the protection of individual honour – the provision remains couched in very general terms. Critics highlight several shortcomings:

Lack of procedural specificity: No clear guidelines exist for invoking scientific methods or defining judicial discretion in cases containing such evidence.

Implicit DNA references: DNA fingerprinting is mentioned only indirectly as a “scientific method” without detailed implementation protocols.

No explicit denial provision: The Family Code lacks direct authorization for using DNA fingerprint to deny paternity.

However, Article 41 states: “Paternity may be questioned by proper means” (*islam dima wa tavaheer*). Legal scholars interpret the plural “means” as opening the door to modern scientific methods for challenging paternity, suggesting legislative openness despite the absence of explicit provisions.

Judicial Discretion and Comparative Perspectives

In the absence of explicit legislative guidance, Article 222 of the Family Code grants judges discretionary authority to order DNA fingerprinting for spouses and child in paternity disputes, provided a valid marriage contract exists. This aligns with Sharia-based jurisprudential principles (Tchouar, 2001:167).

Judges may thus exercise discretion to mandate DNA testing for husband, wife, and child when a legitimate marriage exists, as no legal prohibition prevents such orders. Moreover, DNA testing serves the public interest by preventing the mixing of legitimate and illegitimate lineage, thereby promoting marital and family stability.

Comparative law: French Civil Code

In contrast, French law explicitly regulates DNA testing for parentage under Articles 16-10 to 16-13 of the Civil Code (as amended by Law No. 2023-380 of May 19, 2023). Key provisions include:

Prior Consent: Genetic analysis for medical or scientific purposes requires explicit, written consent after full disclosure of the test nature, purpose, and potential incidental genetic findings.

Right to Withdraw: Individuals may withdraw consent fully or partially – at any time without formalities before, during, or after the analysis.

This comprehensive framework demonstrates clear procedural safeguards absent in Algerian legislation.

Furthermore, the Legal and Administrative Information Office’s official interpretation of Article 16-13 (January 30, 2025) defines a paternity test as “a genetic examination establishing biological relationships between individuals.” Such tests are permitted exclusively in judicial proceedings for: establishing or contesting parentage,

determining financial obligations (maintenance or allowances), identifying deceased persons in police investigations.

Testing must be conducted by accredited experts and technicians.⁵

Additionally, the French Penal Code imposes strict penalties for violations (Articles 226-27, 226-28, and 226-28-1, Code No. 2011-814 of 7 July 2011), including those breaching DNA testing safeguards (Igourafa, 2010:73–75). These deterrent measures – detailed later in the genetic privacy section – ensure rigorous compliance with the statutory safeguards.

The Use of DNA Fingerprinting Technology in Criminal Evidence

Historically, forensic investigations relied on traditional methods to pursue truth and identify criminals. While valuable, these approaches sometimes led to wrongful accusations due to limited accuracy.

A major advance came with Alec Jeffreys' development of DNA fingerprinting in 1984-1985, initially applied in immigration and paternity cases and soon adapted for criminal identification. This innovation transformed forensic medicine, enabling precise crime-solving.

Judicial Stance on DNA Fingerprinting in Criminal Evidence

The integration of DNA fingerprinting marked an irreversible turning point in forensic evidence. This technology identifies mutilated bodies, locates missing persons, and detects concealed offenders – even from a single strand of hair – illuminating the notion of the “unknown soldier” (Shaaban, 2008:375).

DNA profiling has become essential for criminal prosecutions, allowing police to charge the correct suspects and identify victims accurately. It significantly enhances criminal justice effectiveness and precision.

Even offenders who avoid direct contact leave biological traces. Fear-driven haste often causes criminals to overlook injuries – either their own or the victim's – leaving blood at scenes. Forensic experts also recover hair or skin cells beneath the victim's fingernails, enabling assailant identification.

Despite increasingly sophisticated criminal tactics, DNA profiling technology remains a reliable witness to truth, particularly as modern crimes grow more complex than those of the past (Hassan, 2012:72).

Landmark Cases Demonstrating DNA Fingerprinting's Impact

Dr. Sam Sheppard Case (USA)

In one of the most famous wrongful conviction cases, Dr. Sam Sheppard was convicted in 1954 by an Ohio court for the murder of his wife. Although acquitted in a 1966 retrial, doubts persisted until 1999-2000 when post-conviction DNA testing on blood evidence exonerated him completely, demonstrating genetic evidence's power to correct judicial errors.

Monica Lewinsky Scandal (USA, 1998)

DNA fingerprinting proved pivotal in high-profile sexual misconduct cases. Former White House intern Monica Lewinsky produced a blue dress bearing the President's semen,

⁵ *Service Public* / Directorate of Legal and Administrative Information (2025) *Under what circumstances can a paternity test be carried out?* Available at: <https://www.service-public.gouv.fr/particuliers/vosdroits/F14042> (accessed: 19th November 2025).

confirmed by forensic DNA analysis matching a sample from President Bill Clinton. This established DNA as legally binding evidence in the American judiciary's postmodern framework.

Child Abduction Case

DNA testing exposed systematic deception in a child abduction case where police discovered nine children claimed as biological offspring by an arrested woman. Forensic analysis revealed she was the biological mother of only three; the remaining six were relinquished to social welfare institution (Shaaban, 2008:391–392).

Algerian Murder-Robbery Case

Algerian authorities increasingly rely on DNA evidence in criminal investigations. In a residential robbery-murder, Judicial Police in Algiers recovered the victim's wallet containing papers and cards bearing suspicious red stains. The Central Forensic Police Laboratory's DNA analysis confirmed human male blood droplets, providing investigators with a crucial lead (Hassan, 2012:72; Igourafa, 2010:76).

The Legal Position on Genetic Data in Criminal Evidence

Until 2016, Algerian legislation lacked explicit provisions governing DNA fingerprinting in criminal matters. Article 212 of the Code of Criminal Procedure⁶ grants criminal judges broad discretion to admit any evidence that contributes to their personal conviction, irrespective of its probative strength.

Article 143 authorises courts to consult medical experts in technical matters, particularly relevant for violent crimes homicide, rape, and sexual assault. Amid advances in forensic science – including fingerprinting and DNA analysis – Algeria established a dedicated genetics laboratory within the Forensic Police Department on 22 July 2004, marking significant progress in modern forensic integration (Mohafezi, 2012:41).

However, Algerian law does not confer absolute evidentiary weight to DNA fingerprinting nor recognize it as conclusive proof in criminal proceedings. Its evidentiary value remains subject to judicial assessment, with courts evaluating reliability and significance case-by-case.

The French legislator has explicitly recognized DNA profiling through a comprehensive regulatory framework governing biological sample collection, analysis, integration into the Automated National DNA Database (FNAFD), and strict protocols for usage, retention periods, and data erasure. This balanced approach reconciles criminal investigation needs with fundamental individual rights protection.

Regarding biological sample collection, Article 706-56 of the Code of Criminal Procedure, as amended by Law No. 2023-22 of 24 January 2023, empowers judicial police officers to conduct or oversee “biological sampling” for individuals specified in Article 706-54. This includes persons convicted of serious crimes or misdemeanours punishable by ten years' imprisonment or more, those under investigation for such offences, and individuals deemed criminally irresponsible due to mental disorder, prior to DNA analysis and entry into the national database. Prior to proceeding, civil registry data may be consulted solely to verify prior registration, preventing duplication and ensuring data integrity.⁷

⁶ Ordinance No. 66-155 of Safar 18, 1386, corresponding to 8 June 1966, containing the Code of Criminal Procedure, *Official Journal*, 3rd year, No. 84, 1966.

⁷ Code of Criminal Procedure, Article 706-56. Available at: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006071154/LEGISCTA000006138132/ (accessed: 20th November 2025).

The provision designates the entities authorised to perform the analysis. Persons qualified under Article 16-12 of the Civil Code⁸ may perform such analyses without being registered on an expert list, provided that they take the oath prescribed by Article 60 of the Code of Criminal Procedure, unless they are affiliated with the scientific police services. Accredited laboratories within these services may receive direct assignments without oath for formal authorisation (Doutremepuich, 2012:1127), enabling swift investigative responses⁹.

Article 706-56 further regulates national database entry, permitting analysts to register results via digital systems upon the request of competent authorities. Where direct sampling proves impossible, DNA may be obtained from naturally separated biological traces, extending investigative reach despite subject refusal or evasion.

Concerning coercion, Article 706-56 authorizes biological sampling without individual's consent upon public prosecutor's written request for serious offences punishable by ten years' imprisonment or more, or for individuals adjudged criminally irresponsible due to mental disorder (Articles 706-120 et seq.). Refusal constitutes a criminal offence, punishable by one year's imprisonment and 15,000-euro fine, rising to two years' imprisonment and 30,000-euro fine upon felony conviction – applied cumulatively primary penalties – demonstrating clear legislative deterrence. Substituting samples or providing another's biological material incurs up to three years' imprisonment and a 45,000-euro fine, safeguarding genetic evidence integrity.

The Automated National DNA Database (FNAFD), governed by Article 706-54 under specialised judicial oversight, mandates DNA collection from biological traces and offenders convicted of Article 706-55 offences¹⁰ to facilitate identification. This extends to

⁸ French Civil Code – Current Version as of 20 November 2025 [online]. Available at: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070721/LEGISCTA000006136513/ (accessed: 20th November 2025).

⁹ Service Public / Directorate of Legal and Administrative Information (2025) *Under what circumstances can a paternity test be carried out?* Available at: <https://www.service-public.gouv.fr/particuliers/vosdroits/F14042> (accessed: 19th November 2025).

¹⁰ The Automated National DNA Database centralises all biological traces and DNA profiles related to the following offences:

- Sexual offences as per Article 706-47 of the Code of Criminal Procedure, Article 222-32 of the Penal Code, and offences under Articles 222-26-2, 227-22-2, and 227-23-1 of the same Code.
- Crimes against humanity, and crimes and misdemeanours committed intentionally against persons' lives, including torture, acts of barbarity, intentional violence, threats of assault, drug trafficking, violations of personal liberties, human trafficking, prostitution, exploitation of begging, and endangering minors, as provided in Articles 221-1 to 221-5, 222-1 to 222-18, 222-34 to 222-40, 224-1 to 224-8, 225-4-1 to 225-4-4, 225-5 to 225-10, 225-12-1 to 225-12-3, 225-12-5 to 225-12-7, and 227-18 to 227-24 of the Penal Code, as well as the offences referred to in Articles 221-5-6 and 222-18-4 of the same Code.
- Offences and misdemeanours related to theft, extortion, fraud, destruction, sabotage, damage to property, and threats of assault against property, as provided in Articles 311-1 to 311-13, 312-1 to 312-9, 313-2, and 322-1 to 322-14 of the Penal Code.
- Offences against the essential interests of the nation, terrorism, forgery, formation of criminal gangs, aiding criminal organisation, and war crimes, as set out in Articles 410-1 to 413-12, 421-1 to 421-6, 442-1 to 442-5, 450-1, 450-1-1, and 461-1 to 461-31 of the Penal Code.
- Misdemeanours under Articles 222-52 to 222-59 of the Penal Code, Articles L. 2339-2, L. 2339-3, L. 2339-4, L. 2339-4-1, L. 2339-10 to L. 2339-11-2, L. 2353-4, and L. 2353-13 of the Defence Code, and Articles L. 317-1-1 to L. 317-9 of the Internal Security Code.
- Offences relating to the seizure or laundering of proceeds derived from any of the crimes listed in points 1 to 5, as provided in Articles 321-1 to 321-7 and 324-1 to 324-6 of the Penal Code. Available at:

investigatory subjects declared criminally non-responsible due to mental disorder (Al-Rifai, 2013:319–320).

Moreover, the law permits the entry of DNA profiles of persons against whom serious and corroborative evidence involvement in offences listed in Article 706-55, on the decision of a judicial police officer or at the request of the public prosecutor or investigating judge, with such decision recorded in the case file. This mechanism formally incorporates suspects into the database under defined procedural safeguards.

The provision also distinguishes between temporary comparison and permanent registration, allowing a suspect's DNA profile to be checked against the database without systematic retention, thereby differentiating one-off investigative use from institutional storage.

With regard to the technical architecture of the Automated National DNA Database, Article R53-9 of the Code of Criminal Procedure (Regulatory Part – Decrees of the Conseil d'État, as amended by Decree No. 2020-1777, 2021) assigns responsibility for establishing and managing the database's information system to the Minister of the Interior, acting through the National Scientific Police Service. Its objectives include identifying the perpetrators of offences listed in Article 706-55, locating missing persons and identified bodies.

Article R53-10 specifies the categories of data to be entered, according to the competent authority and the nature of the case, drawing a distinction in particular between criminal records and humanitarian records. Article R53-11 specifies the information accompanying each DNA profile – such as the requesting authority, date of the decision, offence category, and technical identifiers – while expressly prohibiting use of the legal classification of the offence as a search criterion, thus reinforcing data protection guarantees. Additionally, Articles R53-12 and R53-12-1 authorise the inclusion or comparison of DNA data transmitted by foreign law enforcement authorities or international cooperation bodies, under statutory conditions, integrating the database into broader international security cooperation frameworks¹¹.

The Necessity of Protecting the Right to Genetic Privacy

Providing genetic privacy rests on several key legal and ethical principles, most notably privacy, human dignity, and the principle of legality, which requires that any state interference with rights be clearly grounded in law.

In contrast, arguments based on public interest often treat genetic data as a resource whose use can serve individual and social justice, especially in fields such as health care and criminal justice.

The Concept of the Right to Genetic Privacy

Before analysing the right to genetic privacy, it is important to situate it within the broader spectrum of individual rights, particularly those linked to private life. For decades, lawyers have debated the nature and boundaries of the right to privacy before the courts,

https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006071154/LEGISCTA000006138132/ (accessed: 19th November 2025).

¹¹ Buisson Fizellier A. Quel cadre légal pour l'identification d'un suspect par prélèvements externes ou biologiques ? Available at: <https://www.bfpl-law.com/publications/quel-cadre-legal-pour-lidentification-dun-suspect-par-prelevements-externes-ou-biologiques> (accessed: 05th March 2025).

and the starting point of this debate has frequently been the challenge of defining the types of information and activities an individual would reasonably wish to keep private.

The notion of private life is not uniform across legal domains. Criminal law, for instance, construes privacy more strictly and concretely than other legal branches, which often rely on the concept of harm to determine liability rather than exhaustively defining protected acts or interests (Shams El-Din, 2008:45). Different areas of law therefore address privacy in distinct ways, making a single, precise definition difficult. In French and German law, for example, violations of privacy constitute criminal offences only when committed through particular means, such as the use of audio or visual recording devices. In such cases, criminalisation depends heavily on context and method, rather than on an abstract or uniform conception of privacy.

The right to genetic privacy exhibits both subjective and objective dimensions. To distinguish between these, the right must first be defined.

In French law, the right to genetic privacy may be described as “the legally recognised right of every human being to control access to and use of their unique genetic information.”

American legal scholars, for their part, characterise it as “an individual’s right to decide which genetic information about them may be disclosed and what they wish to know about themselves.”

From these definitions, two essential aspects of genetic privacy emerge:

- The *subjective* aspect reflects personal autonomy: it concerns the individual’s decision as to who may access their genetic data and under what conditions. Where a person has freely consented to the disclosure of their genetic information, they will generally be precluded from claiming that their genetic privacy has been violated in respect of that authorised disclosure.

- The *objective* aspect relates to the inherent nature of genetic information itself. This does not depend on individual preferences but on the scientific and technical characteristics of genetic data and its classification within the broader fields of genetic science and biotechnology (Protection Genetic Issues in Mental Retardation).

Mechanisms for Protecting the Right to Genetic Privacy

Because genetic fingerprinting is directly linked to individual identity, it requires robust legal and technical safeguards. Without such protections, fear of misuse may discourage people from undergoing genetic testing, causing them to forgo potential medical and legal benefits. At the same time, DNA analysis is among the most reliable forms of evidence in criminal proceedings, which makes public confidence in oversight mechanisms essential.

The right to privacy is constitutionally protected under Article 40 of the 2020 Algerian Constitution¹², which provides that: “The State guarantees the inviolability of human dignity.” Article 41 further stipulates that: “The law punishes violations of rights and freedoms and any act that infringes a person’s physical or moral integrity.”

Additionally, Law No. 16-03, governing the use of genetic fingerprinting in judicial proceedings and personal identification, expressly emphasises the protection of genetic privacy. Article 3 requires that any collection of biological samples respect human dignity, safeguard individual privacy, and ensure the security of genetic data.

¹² Algerian Constitution (2020) dated 30 December 2020. *Official Gazette* No. 82, 2020.

Judicial autorisation is required before biological samples may be collected or genetic analyses conducted. Samples may not be taken from minors unless they are accompanied by a parent, legal guardian, caretaker, or other duly appointed representative; in the absence of such persons, a representative of the public prosecutor must be present. Individuals providing samples must be informed of: (i) the conditions under which their genetic profile will be stored in the National DNA Database, (ii) the retention period applicable to their genetic data, and (iii) their right to request erasure of their data¹³.

The Algerian legislator imposes strict sanctions to protect genetic privacy. Anyone who unlawfully discloses information from the National DNA Database faces six months to three years of imprisonment and a fine ranging from 60,000 to 300,000 Algerian dinars¹⁴.

Article 47 of the Algerian Civil Code (Ordinance No. 75-58 of 1975, as amended) further strengthens protection by providing that “any person who suffers unlawful harm to a personal right may seek cessation of the infringement and claim compensation.” In the medical context, Article 36 of Executive Decree No. 92-276 of 1992, containing the Code of Medical Ethics, reinforces professional secrecy by requiring physicians and dentists to maintain medical confidentiality except in cases expressly provided by law. Article 99 of the same Decree specifies that medical or dental experts must disclose in their reports only the information strictly necessary for the expert mission and must keep all other information confidential.”

Taken together, these provisions show that Algerian law allows the use of genetic fingerprinting while seeking to ensure robust protection of genetic data in line with international standards. At the international level, Article 12 of the Universal Declaration of Human Rights (1948) affirms that everyone has the right to privacy and protection against arbitrary interference with their private life, family, home, or correspondence. UNESCO’s Universal Declaration on the Human Genome and Human Rights (1997) also supports genetic privacy; Article 2 states that every individual is entitled to respect for their dignity and rights regardless of their genetic characteristics.

As for the position of the French legislator, Articles 16-10 to 16-13 of the Civil Code, as amended by Law No. 2023-380 of 19 May 2023, provide that any examination of a person’s genetic characteristics may be conducted only for medical purposes or for scientific research and must be preceded by the express, written consent of the person concerned (Abdel Daim, 2009:895–896). This consent must be obtained after the individual has been fully informed of the nature and aims of the test, including the possibility that the analysis may reveal genetic characteristics unrelated to the initial purpose of the examination. The law also grants the person a right to revoke their consent, in whole or in part, at any time and without any formality, before, during, or after the analysis, provided that the withdrawal is clearly expressed; this constitutes a fundamental safeguard for freedom of choice and the privacy of genetic data.

The Civil Code further prohibits any canvassing or advertising relating to examinations of a person’s genetic characteristics, in order to prevent commercial practices that exploit fear or financial incentives and might induce individuals to undergo unnecessary or unauthorised tests, thereby endangering personal freedom and privacy. In

¹³ Law No. 16-03, 2016, Articles 5-8, 13-14.

¹⁴ Law No. 16-03, 2016, Article 18.

addition, Article 16-13 specifies that no one may be discriminated against on the basis of their genetic characteristics¹⁵.

From a criminal law perspective, the French legislator has established a set of punitive and deterrent sanctions in Articles 226-27, 226-28, and 226-28-1 of the Penal Code for breaches of the legal framework governing genetic testing. Article 226-27 criminalises the performance of a genetic identification or genetic characteristics test for medical or scientific research purposes without the prior, explicit consent required by Article 16-11 of the Civil Code, and provides for penalties of up to one year's imprisonment and a fine of 15,000 euros. Article 226-28 further stipulates that any disclosure or communication of information relating to a person's identity obtained from the examination of their genetic characteristics, as well as the conduct of such examinations or identifications without the authorisation required by Article L. 1131-3 of the Public Health Code¹⁶, constitutes a punishable act, subject to the same maximum penalty of one year's imprisonment and a 15,000-euro fine.

In addition, French law establishes specific financial sanctions for the unlawful use of genetic profiles. Article 226-28-1 of the Penal Code provides for a fine of 3,750 euros for any person who requests the examination of their own or another person's genetic characteristics, or seeks to establish a person's identity by means of their genetic profile, outside the cases provided for by law.

Despite these safeguards, the right to genetic privacy is not absolute. Granting it unconditional protection could unduly privilege individual interests over compelling objective needs, potentially producing significant social harm. Excessive protection of genetic privacy may, for example, hinder the identification and prosecution of sexual offenders and child abusers, increasing the risk of recidivism and leaving potential victims unprotected. In other contexts, strict secrecy surrounding genetic conditions – for instance, in the case of a pilot with a serious seizure disorder – could endanger the lives and safety of others, while undisclosed hereditary risks in marriage may expose future children to severe disabilities. (Al-Rifai, 2013:409).

Accordingly, genetic privacy, though crucial, can come into tension with other urgent rights and interests – such as bodily integrity, life, and public safety – which may justify carefully circumscribed limitations backed by stronger legal protection. Legislators therefore tend to uphold genetic privacy as a core individual right, while carving out narrowly tailored exceptions, particularly in civil and criminal proceedings, to balance personal autonomy with the protection of others and the broader community.

French law provides narrowly framed exceptions to genetic privacy, subject to strict judicial and institutional controls.

¹⁵ French Civil Code – Current Version as of 20 November 2025 [online]. Available at: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070721/LEGISCTA000006136513/ (accessed: 20th November 2025).

¹⁶ Article L1131-3 of the French Public Health Code, as amended by Law No. 2021-1017 of 2 August 2021, provides that: “Subject to the provisions of the final paragraph of Article L. 1131-2-1, only practitioners authorised for this purpose by the Biomedicine Agency referred to in Article L. 1418-1 are permitted to carry out examinations of a person's genetic characteristics or to perform genetic identification for medical purposes, under conditions laid down by regulation. Persons who carry out examinations of a person's genetic characteristics or perform genetic identification for the purposes of scientific research shall be authorised under conditions laid down by regulation.”

Legifrance. (2025) *French Public Health Code, Article L1131-3, as amended by Law No. 2021-1017 of 2 August 2021*. Available at: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000043896423 (accessed: 20th November 2025).

1. Judicial Oversight and Institutional Regulation of the National Automated DNA Database. The French National Automated DNA Database (FNAEG) is placed under the direct control of a judicial authority. Article 706-54 of the Code of Criminal Procedure provides that a competent magistrate is responsible for supervising the collection, registration, and use of genetic data within the file, in order to reconcile the requirements of criminal investigations with respect for fundamental rights, given the highly sensitive and inherently personal nature of genetic information¹⁷.

At the institutional level, Articles R53-16 and R53-17 of the Code of Criminal Procedure¹⁸ establish a specialised committee composed of experts in genetics and information systems. This body is tasked with ensuring transparency in data processing, scientific reliability, and technical safeguards, thereby creating a clear separation between authorities responsible for collecting DNA profiles and those charged with supervising their storage, consultation and use. Such an arrangement strengthens the reliability and legitimacy of the system in the eyes of both the judiciary and society at large.

2. Regulation of Data Retention Periods. The retention of genetic data in the FNAEG is governed by precise legal rules that vary according to the person's procedural status and the nature of the recorded data, reflecting the legislator's effort to balance investigative needs with the protection of individual rights and biological privacy¹⁹. Decree No. 2015-1580 of 2 December 2015, together with regulatory provisions R53-10, R53-12, and R53-14 of the Code of Criminal Procedure, sets strict maximum retention periods in order to prevent unlawful or disproportionate use of genetic information.

According to the current framework, DNA profiles are generally kept:

- For persons finally convicted of certain offences, the standard retention period ranges between 15 and 25 years, with possible extensions up to 40 years depending on the seriousness of the facts or on security-related or humanitarian considerations.

- For persons merely implicated or simply “suspects”, for up to 25 years.

- For missing persons, deceased persons, or relatives entered for humanitarian purposes, for up to 40 or 25 years depending on the category.

The law distinguishes between adults and minors, taking into account the seriousness of the offence and the nature of the judicial measure imposed. The maximum retention period for analytical genetic data is set at 25 years, thereby providing clear legal protection and preventing indefinite storage. In exceptional circumstances – such as missing persons or victims of natural disasters – retention may continue until the individual is identified or located, illustrating the system's flexibility in accommodating humanitarian considerations while maintaining the integrity of criminal investigations²⁰.

¹⁷ Commission nationale pour la protection des données (CNPd) (2004) Opinion on Draft Law No. 5356 concerning procedures for identification by genetic fingerprints in criminal matters and amending the Code of Criminal Procedure, Deliberation No. 78/2004, 8 October.

¹⁸ French Code of Criminal Procedure, Regulatory Part – Council Decrees, amended by Decree No. 2020-1777 of 30 December 2020. Available at: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006071154/LEGISCTA000006137412/2021-07-28/?anchor=LEGIARTI000020791527 (accessed: 21th November 2025).

¹⁹ Léon, A. (2021) [News] Publication of the Decree of 29 October 2021 Amending the FNAEG: Key Points to Remember, *Le Quotidien*, November. Available at: <https://www.lexbase.fr/article-juridique/73944246-brevues-publication-du-decret-du-29-octobre-2021-modifiant-le-fnaeg-ce-qu'il-faut-retenir> (accessed: 20th November 2025).

²⁰ Service Public / Directorate of Legal and Administrative Information (2025) *National Automated DNA Database (FNAEG)*. Available at: <https://www.service-public.gouv.fr/particuliers/vosdroits/F34834> (accessed: 20th November 2025).

3. Right to Erasure and Judicial Safeguards. The law grants any affected individual the right to request the deletion of their genetic data before the expiry of the prescribed retention periods, when the need for retention ceases, or in the event of acquittal or a finding of non-responsibility, pursuant to Article 706-54-1 and regulatory provisions R53-14-2 to R53-14-4. This right is supported by a dedicated judicial mechanism ensuring that authorities properly assess such requests, involving the public prosecutor's office, specific deadlines for responses and appeals, and the possibility of judicial review where a request is refused.

Accordingly, this right constitutes one of the most significant safeguards of genetic privacy, enabling individuals to retain control over their sensitive personal data and preventing its use for unjustified purposes. The French judicial framework therefore reflects a clear commitment to transparency, accountability, and the protection of individual rights within a comprehensive system that seeks to reconcile effective criminal justice with fundamental freedoms²¹.

4. Requirement of Prior Free and Informed Consent. The principle of explicit, informed, written consent constitutes a fundamental safeguard of genetic privacy in the French system. Individuals must give their consent prior to the storage of their genetic profiles, particularly in sensitive contexts such as identity verification or procedures involving victims and close relatives, pursuant to Article 706-54 and regulatory provisions R53-10 and R53-11. They retain the right to withdraw their consent and to request the erasure of their data at any time, reflecting the system's commitment to personal autonomy over sensitive information.

Consent must extend not only to the collection of the biological sample but also to its analysis. It must be given in writing by the data subject or their lawful representative, or by those exercising parental authority or a guardian in the situations provided for under the Public Health Code. In this regard, the law protects the rights of direct relatives (parents, children, and relatives up to the third degree) by prohibiting the storage or comparison of their genetic profiles without their express consent. This reflects acknowledgment of the particular sensitivity of genetic kinship and serves as a safeguard against unlawful use of genetic data, while preserving family privacy²².

5. Limitation of Analysis to Non-Coding Regions of DNA. The French legislature requires that DNA analysis and storage be confined to non-coding regions of the genome, with the sole exception of sex determination, pursuant to Article 706-54 and Article R53-13. This limitation pursues a dual objective: to protect sensitive genetic information from exploitation for discriminatory or otherwise unlawful purposes – for example, in employment or health insurance decisions – and to ensuring that analysis remains strictly confined to criminal identification or scientific research, without extending to unrelated genetic traits (Shams El-Din, 2008:32).

6. Restrictions on Access and Consultation. The legislator has imposed strict limitations on access to the national DNA database, allowing only authorised personnel to

²¹ Léon, A. (2021) [News] Publication of the Decree of 29 October 2021 Amending the FNAEG: Key Points to Remember. *Le Quotidien*, November. Available at: <https://www.lexbase.fr/article-juridique/73944246-breves-publication-du-decret-du-29-octobre-2021-modifiant-le-fnaeg-ce-quil-faut-retenir> (accessed: 20th November 2025).

²² French Code of Criminal Procedure, Regulatory Part – Council Decrees, as amended by Decree No. 2020-1777 of 30 December 2020. Available at: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006071154/LEGISCTA000006137412/2021-07-28/?anchor=LEGIARTI000020791527 (accessed: 21th November 2025).

consult or handle the data. Technical and scientific police officers may access the database solely for the purpose of verifying civil-status information. All operations involving access, modification, transfer, or deletion are recorded electronically and retained for three years to enable subsequent review and auditing, in accordance with Articles R53-18 and R53-18-1. Furthermore, Articles R53-19, R53-19-1, and R53-19-2 expressly prohibit the automated linking of the national database with other databases, except in circumstances expressly provided by law, thereby reducing the risk of privacy violations²³.

In Algeria, rules on genetic analysis remain fragmentary and are found mainly in the amended Family Code. Article 40 provides that “the judge may resort to scientific methods to establish parentage.” The use of verb “may” indicating that recourse to genetic analysis in civil cases is discretionary rather than mandatory. Article 212 of the Code of Criminal Procedure allows criminal offences to be proven by any means, unless the law provides otherwise, which permits Algerian judges to rely on genetic analysis as a means of proof in criminal proceedings.

Alongside concerns relating to the disclosure of genetic data, the use of DNA fingerprinting as evidence presents a number of risks. Misinterpretation of genetic test results is a particular challenge, as non-specialists often struggle to understand and correctly assess genetic information. There is also a risk of deliberate manipulation, for example where an offender plants the DNA of an innocent person at the crime scene, thereby misleading investigators and obstructing the proper administration of justice (Shams El-Din, 2008:47).

DNA fingerprinting represents one of the most significant scientific advances in the field of genetic analysis, offering a high degree of accuracy in establishing parentage and providing forensic evidence. Empirical studies indicate that it surpasses traditional methods of proof in terms of reliability and probative value in parentage cases, thereby contributing to the sound administration of justice by supplying conclusive evidence that helps resolve family disputes and protect children’s rights (Tchouar, 2001). Subsequent research has confirmed the effectiveness of this technique in eliminating legal uncertainty associated with verification of parentage (Igourafa, 2010).

In the criminal sphere, DNA fingerprinting has become a central tool for identifying suspects and exonerating the innocent persons, thereby enhancing the effectiveness of the judicial system and reducing the risk of wrongful convictions, as confirmed by recent legal and criminological studies. However, these advantages are accompanied by significant challenges relating to the protection of genetic privacy and individual rights, particularly in view of potential misuse or unlawful exploitation of genetic data, which may give rise to serious ethical and legal violations (Abdel Daim, 2009). This analysis therefore underscores the need to strike a careful balance between the imperative of using DNA fingerprinting in judicial proceedings and the requirement to safeguard individuals’ rights and genetic privacy.

Conclusion

On the basis of the comparative analysis of Algerian and French law, the following recommendations may be advanced:

²³ Léon, A. (2021) [News] Publication of the Decree of 29 October 2021 Amending the FNAEG: Key Points to Remember, *Le Quotidien*, November. Available at: <https://www.lexbase.fr/article-juridique/73944246-breves-publication-du-decret-du-29-octobre-2021-modifiant-le-fnaeg-ce-quil-faut-retenir> (accessed: 20th November 2025).

– Although the current Algerian Family Code authorises judges to resort to scientific methods to establish paternity, Article 40 should be amended expressly to permit the establishment of parentage by means of DNA fingerprinting, while specifying the procedures and legal standards governing this mode of proof, in line with the approach adopted in Article 16-11 of the French Civil Code.

– To ensure transparency and credibility, in addition to requiring that DNA analyses be conducted out in independent, state-accredited laboratories, it should be possible to appoint certified experts where necessary so as to guarantee rapid and accurate intervention during investigations, following the model laid down by the French legislature in Article 16-12 of the Civil Code.

– A national committee composed of legal, medical, and administrative experts should be established to monitor compliance with all applicable legal rules and to ensure the quality of DNA-based evidence, drawing inspiration from the experience of the French Comité Consultatif National d'Éthique (CCNE).

– A legal framework should be established to permit the international exchange of genetic data, allowing DNA profiles transmitted by foreign police authorities and international cooperation bodies to be registered and compared within the national database, in order to ensure effective monitoring of suspects across legal borders, in line with the approach set out in Article R53-12 of the French Code of Criminal Procedure. Through these recommendations, Algerian law would seek to strike a balance between the protection of individual privacy and the effectiveness of criminal and civil justice, drawing on comparative legislative experience – particularly that of French law – and thereby enhancing transparency, credibility, and the protection of fundamental individual rights.

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