

DNA TESTS AS AN ARBITER OF TRUTH – THE CASE OF FAMILY REUNIFICATION

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Seminar 3: Comparing the use of DNA in criminal investigations & DVI across European borders

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OUTLINE AND IMPORTANT NOTE

Family reunification

DNA tests in the context of family reunification (general remarks; the Austrian case)

DNA tests as an arbiter of truth, a lie detector and a means of defence

Comparing DNA tests in the case of family reunification, criminal investigations and DVI

Research on DNA tests in the context of family reunification in Austria was conducted jointly with Kevin Hall, Goethe University Frankfurt/Main, Germany

FAMILY REUNIFICATION (1)

Family reunification refers to the right of foreign family members living abroad to join relatives who hold long-term residence permits or are citizens of a given country

Meant to protect the family in accordance with the Universal Declaration of Human Rights, the European Convention on Human Rights, and the Charter of Fundamental Rights of the European Union

(Heinemann et al. 2015, 2)

FAMILY REUNIFICATION (2)

Integral part of many countries' immigration policies

Family-related immigration: Statistically most significant mode of legal long-term immigration to the European Union (European Commission 2011, Müller 2012)

Important EU policy document: Council Directive 2003/86/EC on the right to family reunification (ratified by all EU members except Denmark, Ireland and the UK; shortcomings regarding harmonisation and implementation)

(Heinemann, Naue & Tapaninen 2013; Heinemann et al. 2015, 93)

DNA TESTS IN THE CONTEXT OF FAMILY REUNIFICATION – GENERAL REMARKS

In use since the 1990s (in the context of an “obsessive deployment of surveillance strategies” (Fassin 2011))

(Exact) usage rates and statistics unavailable for most countries

To establish biological/genetic relatedness (narrow understanding of family)

Limits of the technology itself: e.g. regarding the effect of mutations; human error when taking samples

Immigration officials consider DNA evidence as an efficient and objective tool, as exact and beyond manipulation (compared to documents and interviews with case officers)

(Heinemann et al. 2015, 103; Heinemann, Naue & Tapaninen 2013)

‘ROLES‘ OF DNA TESTS IN THE CONTEXT OF FAMILY REUNIFICATION

- # Used as a proof of family/biological relatedness (when required documents are missing)*
- # Narrows the group of persons eligible for family reunification*
- # Highlights a double standard for family recognition*
- # May prolong, but also may shorten the procedure*
- # Used as a biological criterion to determine who should be granted citizenship rights*
- # Used as a specific form of racial profiling (specific groups subjected to this procedure)*
- # Framed as a positive option, but: problematic informed consent process (in the context of limited options: free consent?; Austria: no informed consent forms)*

(Heinemann et al. 2015, 105f; Heinemann, Naue & Tapaninen 2013)

DNA TESTS IN THE CONTEXT OF FAMILY REUNIFICATION – THE AUSTRIAN CASE (1)

Testing trustworthiness in the context of institutionalised mistrust:

Regarding the interviews in the context of the asylum procedure (contradictions, false evidence, not giving all information in due time; "ritual for the verification of trustworthiness", Aas 2006, 150)

Regarding identity papers, marriage certificates and other documentation from certain countries (nearly always treated as false)

(Hall & Naue 2015)

DNA TESTS IN THE CONTEXT OF FAMILY REUNIFICATION – THE AUSTRIAN CASE (2)

Focus on contradictions, lies and inconsistencies (in order to convince the case officer):

“Well, I think that the Federal Asylum Agency [now: Federal Office for Immigration and Asylum, BFA] is always very much focused on revealing any contradictions ... and lies, and on finding any inconsistencies. They are very much focused on that and when tangible issues arise such as diverging dates, names, birth dates, then they become very sceptical and suspicious, yes, and certainly it is helpful when one explicitly states in the first-instance interview what the family situation looks like.” (NGO 8)

(Hall & Naue 2015, 70)

DNA TESTS IN THE CONTEXT OF FAMILY REUNIFICATION – THE AUSTRIAN CASE (3)

Regarding human error when taking samples in the Austrian embassies:

*"We take the mouth swab ... we send the kits where one can put these mouth swabs really contamination-free. They are air-dried, everything can be labelled properly if the people on-site do it properly, and from this perspective there is a quite high guarantee that the samples arrive here correctly; and then we conduct a DNA analysis in a totally normal way."
(Geneticist 1)*

(Hall & Naue 2015, 66)

DNA TESTS IN THE CONTEXT OF FAMILY REUNIFICATION – THE AUSTRIAN CASE (4)

Focus on restricting family reunification and immigration:

"Actually, I don't know how often such cases occur, but they occur repeatedly ... that, for example, via DNA analyses it might very well be established that the children are common children, but now the marriage is questioned, and then the children are allowed to enter Austria but not the mother ... the problem is now, it seems, that for them [the Federal Asylum Agency/now: Federal Office for Immigration and Asylum] too many persons want to enter the country via family reunification, and it is written in the law that only if ... a marriage by civil law exists is family reunification possible, and is not possible for unmarried couples. Now they [the Federal Asylum Agency/now: Federal Office for Immigration and Asylum] say that, for example, especially in countries like Afghanistan, if they don't have credible marriage certificates then it is a fact that she is the mother of her child, but it is not documented that a marriage exists." (NGO 5)

(Hall & Naue 2015, 72)

DNA TESTS IN THE CASE OF FAMILY REUNIFICATION

Twofold task:

1) As a tool for verification/falsification of information given in the context of the interviews with officials

2) Mobilised as one 'means of defence' against immigrants (especially against refugees)

(Hall & Nave 2015, 76)

DNA TESTS AS A LIE DETECTOR: EXTRACTING CONFESSION IN AN INTERACTION

Apparatus to extract a confession, achieved in an interaction between at least two persons

Interaction: Interrogator calls upon the power of science to unveil truth and makes the interrogated person believe that signs of hidden knowledge take a corporeal manifestation which the lie detector is able to make visible due to its scientific powers.

On the scientific side the DNA test and the lie detector have nothing in common (former compares non-coding areas of DNA of different persons with one another to establish a biological kinship relation, the latter compares physiological signs of stress with the normal state of the body)

But on the performative side, the results of both partake in the official's scientific enactment of the subject as trustworthy or not

(Hall & Naue 2015, 76)

DNA TESTS AS AN ARBITER OF TRUTH: CONVINING THE CASE OFFICER

DNA test: supposed to convince the official of what the reuniting person believes confidently to be true (the reuniting person's truth and knowledge about family ties as a matter of his/her lived experience):

"Well, she [the official] said at the beginning, well, I have to ... an original certificate and a marriage certificate, so, a certificate of birth and something like that, I have to prepare, and I have done all this. And she said in a straightforward way that this is not enough. Then I said, ok, if this is not enough ... I'll undergo the DNA test." (Reuniting person 1)

(Hall & Naue 2015, 76f)

DNA TESTS AND FAMILY REUNIFICATION: LIE DETECTOR, ARBITER OF TRUTH AND MEANS OF DEFENCE

DNA tests help the case officer in deciding whether the reuniting person's claims and statements are trustworthy

But: Two interpretations exist!

A) The case officer's focus on fraud (negative interpretation; monetary sanctions if fraud is proved)

B) The reuniting person's focus on an additional option to convince the case officer (positive interpretation)

(Hall & Naue 2015, 77)

COMPARING DNA TESTS IN THE CASE OF FAMILY REUNIFICATION AND CRIMINAL INVESTIGATIONS (1)

Often-highlighted voluntariness of DNA testing:

Refusal to provide a DNA sample for DNA profiling in a criminal case on a voluntary basis leads to general suspicion against the person involved (cf. Prainsack 2010)

DNA testing as a potential means of overcoming an 'administrative expression' of mistrust (context: developing efficient methods of identification; Aas 2006: "The body does not lie")

The 'truth' of genetics is assessed in connection with other pieces of evidence – quite similar to what Lynch, Cole and McNally (2008) or Heinemann, Lemke and Prainsack (2012) have described for the forensic context

(Heinemann, Naue & Tapaninen 2013, 200f)

COMPARING DNA TESTS IN THE CASE OF FAMILY REUNIFICATION AND CRIMINAL INVESTIGATIONS (2)

Genetic profile of applicants for family reunification might be used for criminal prosecution:

Austria: No regulations exist that directly apply to paternity testing; laboratories apply very different policies and periods of storage, most seek guidance in general regulations on data storage of medical diagnoses in the Medical Professions Act (para. 51 (3); at least 10 years) and the Criminal Procedure Code (paras 75, 124; at least 30 years)

To be able to identify the samples and to connect them to a person, Austrian geneticists use a documentation protocol: The label on the sample connects it to photos, fingerprints and passport on the protocol and states a certain putative family role like mother, father, son or daughter (Geneticist 2) – combination of diverse forms of evidence

(Heinemann et al. 2015, 103 f; Hall & Naue 2015, 67)

COMPARING DNA TESTS IN THE CASE OF FAMILY REUNIFICATION AND CRIMINAL INVESTIGATIONS (3)

#Focus on embedded trustworthiness:

Lie detectors operate on the presupposition that truth or signs of hidden knowledge take a corporeal manifestation (Gibson 2001, 61)

Process of biometric identification perceived as a "simple, empirical questions of false and positive that can be answered by technology" (Aas 2006, 152); Aas (2006, 154): "mind is deceiving while the body is truthful"

Use of DNA evidence in crime investigation connected to the idea of a truth machine, Lynch et al. 2008, 336: "DNA points the way to guilt or innocence only when it is surrounded by a story containing other claims and evidences"

(cf. Hall & Naue 2015; Heinemann, Naue & Tapaninen 2013)

COMPARING DNA TESTS IN THE CASE OF FAMILY REUNIFICATION AND CRIMINAL INVESTIGATIONS (4)

#Main focus on the identification of relations, not of individuals:

Unlike DNA profiling in criminal investigation and DVI, the prime use of DNA kinship testing in family reunification cases is not the identification of individuals but the estimation of genetic proximity/biological family relations

It is the (non-)existence of these biological relations that is at stake in decision-making on family reunification (and, as mentioned, increasingly leading to a vicious circle: focussing on the marital and therefore on contractual relations, then on genetic/biological relations, then again on contractual relations – ‘this is a genetic family, but is it a family in the legal sense?...’)

(Heinemann et al. 2015, 101 and 103)

THANK YOU VERY MUCH FOR YOUR ATTENTION!

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