

Opinion n° 100
Migration, filiation and identification by genetic testing

On October 3, 2007, a Senator addressed a referral to CCNE in the context of an emergency procedure regarding proposed amendments and sub-amendments to an article in the draft of a law on "migration, integration and asylum". The article states that applicants for a long-stay (over three months) visa to join their family in France may request identification by genetic testing so as to supply evidence of their declared filiation with the visa applicant's mother.

CCNE regrets that issues of such importance as the entry of foreign nationals and laws on filiation are the subject of emergency procedures which generate continual modifications to existing legislation. CCNE does not wish therefore to be limited to the consideration of one or another article or amendment to a particular version of legislative drafting. The Committee may wish to engage in more substantive reflection on the various official texts governing the entry of foreign nationals which raise other issues besides family reunification.

CCNE notes that progressively, successive amendments give increasing importance to the concept of family as it is defined in French law, in particular as regards the recognition of the primacy of social filiation¹.

Despite all the drafting changes to the bill, CCNE fears that the spirit of the text could call into question society's representation of a number of fundamental principles that CCNE wishes to reiterate emphatically. They were already stated in Opinion n° 90: "Access to origins, anonymity and confidentiality of filiation", dated November 24, 2005. The mistake lies in letting it be thought that the gene is the sole key to filiation. Filiation is established by a life story told, not by science. The identity of a person and the nature of that person's family ties cannot be reduced to purely biological dimensions. The protection of children and their best interests must be paramount in decisions concerning families. The benefit of the doubt should *a priori* favour the child.

Incorporating, by whatever means, into the Law the notion of biological identification solely for foreign nationals, introduces *de facto* a symbolic dimension into the representation of a ranking of various kinds of filiation, giving pride of place to genetic filiation in relation to the father or to the mother, which is contrary to the spirit of French law. Many French families are living proof of the relative nature of this criterion: second families and step-families after a divorce, adopted children, children born anonymously, not to mention the numerous dissociations that can be created by assisted reproductive technologies currently on offer.

Apart from the issue of the validity of biological markers to evidence filial relationships, symbolically the emphasis given to such criteria tends to give substance to a

¹ This corresponds to taking into account the concept of "possession of status".

presumption of fraudulent practices. CCNE is concerned by the abnormal burden of proof weighing on the applicant.

Generally speaking, CCNE wishes to draw attention to the profoundly symbolic dimension of any measure which calls for biological truth to be society's supreme arbiter in matters related to social and cultural identity². The outcome could be a furtive generalisation of such genetic identification, which could itself lead to a situation where individual liberties are under threat. It could inject into the cultural and social environment a general acceptance of genetic identification with the attendant risk of discrimination.

CCNE is apprehensive regarding concrete methods of implementing such measures in cultural environments which are very different from our own. Our fellow citizens would perhaps gain a better understanding of the exact reality of such issues if they were confronted with similar demands when they themselves apply for visas.

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² The risk of instrumentalising genetics for social and cultural purposes must not be allowed to mar the image of a scientific discipline which makes such a major medical contribution to the alleviation of distress.