

Forensic DNA phenotyping – the advanced DNA analysis

Abstract

Forensic DNA phenotyping is a novel form of DNA analysis that uses DNA to obtain information about external characteristics of the suspect such as eye, skin or hair color, but also about diseases. Thereby, it can be a useful tool in identifying the unknown suspect. The coalition agreement between the CDU, CSU and SPD of 2018 provides for the introduction of forensic DNA phenotyping for law enforcement purposes. Nevertheless, so far there has only been limited discussion of this topic in academia. This dissertation explores the scope and limits for a possible introduction of forensic DNA phenotyping in the Code of Criminal Procedure: Firstly, to better understand forensic DNA phenotyping, some terms of molecular biology, anthropology and statistics as well as the function of DNA analyses are explained. In this context, practical problems and challenges in the use of DNA analysis are also addressed. Subsequently, the Strafprozessordnung (StPO, German criminal procedure code) with special attention to § 81e StPO is examined as to whether and to what extent it permits forensic DNA phenotyping and which legislative considerations lie behind it. In addition to the current law in Germany, the legal acceptance of DNA phenotyping in other countries is briefly described. Next, the EU and constitutional requirements and limits for forensic DNA phenotyping are examined, particularly with regard to the right to informational self-determination. Moreover, the draft law of the states of Bavaria and Baden-Württemberg on forensic DNA phenotyping will be summarized and discussed, followed by an own legislative proposal. Finally, a comprehensive evaluation of whether and to what extent forensic DNA phenotyping can be approved in Germany will be given.