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Provisions for the use of DNA in accordance with Law 16/03

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Abstract :

The genetic imprint (DNA) has demonstrated its role in detecting difficult crimes. One of the most important objectives of the genetic fingerprint is to detect the perpetrators of mysterious crimes. After the adoption of Law No. 16/03 Algeria, the genetic fingerprint was adopted as a means of proof, despite all the problems it raises, particularly with regard to the violation of the physical integrity of the human person, as stipulated in the Constitution..

Keywords: Detecting crimes; Law No. 16/03; Criminal proof; genetic imprint

1. INTRODUCTION

The genetic imprint (DNA) is a practical, accurate and helpful way of knowing the perpetrators of the crimes. It is an innovative method of criminal evidence compared to the rest of the evidence. As a result of the development in the medical field, by searching for the truth of the crime in terms of proving it or denying it to a particular person or against a particular person, in the sense that every cell in the human body has a card known to him (ID card), DNA is an imprint that is not repeated from one to another except for identical twins, so this uniqueness is exploited.

The genetic imprint is lifted by effects left at the crime scene, such as blood, hair, semen or saliva, so the genetic imprint is the scientific evidence that is very good at revealing the truth about the most complex crimes, given their categorical consequences, if done legitimately and in strict scientific ways. The use of this tool is up to the criminal judicial authorities, which have the power to detect the crime specified in article 04 of Act No. 16/03, concerning the use of DNA imprint in judicial proceedings and the identification of persons. After the promulgation of Law 16/03, the genetic imprint was adopted as a means of proof, brought about by technological development in genetics, **This makes us wonder :What is the opposability of the genetic imprint in proving crimes ? This search problem includes the following questions : What is the legal framework for genetic imprint under Algerian legislation ? What extent the opposability of the DNA imprint to prove the crime before the coroner (criminal court judge)?**

We will answer to these questions through the two following detailed points :

Section I: What is the genetic imprint?

Section II: The prominence place of the genetic imprint in the proof evidences in Algerian legislation.

2: What is the genetic imprint?

The first person to release the genetic imprint was the English Professor Alec Jeffreys, at the University of Leicester, England, in 1985, when he performed routine tests of human genes, and he discovered that DNA, which is unique to everyone like fingerprints, called it genetic imprints or DNA, and scientists have taken it. The Genetic imprint is a major scientific leap, as it is important in the forensic and life worlds in general¹.

2-1- Types of human imprints :

Besides the genetic imprint, human imprints were relied upon and appeared, before the genetic fingerprint was discovered :

A- The Fingerprint:

The part which contains the fingerprint in the finger is the fingertips, which is the end of the fingers, and scientists came up with the secret of the fingertip in the 19th century, and it turns out that the fingertip is a prominent line in the skin, which is adjacent to the lows and above the lines of the Sweatpores. openings, which are extended, twisted and branched out to eventually take a distinct shape differs from one person to another, and it is impossible to match this shape in two people, even in brothers and twins, and the fingerprint on the fetus is formed in the fourth month, the month that the soul is blown in the fetus, the fingerprint is used to find and detect the perpetrators in the crimes, because, as we said, it's impossible to match the fingerprints of two different people².

B- Sweat imprint:

Analysis of a person's sweat was enabled by spectroscopy to identify its elements, because it was discovered that each person had his own sweat imprint, where the smell of sweat was one of the evidence at the crime scene, so she used police dogs to smell it, and to identify the criminal from his scent.

C- Ear and hair imprints:

The ear imprint does not change from birth to death, and British scientists have developed a computer system to easily identify the ear imprint, to speed up and update the command. The computer system has been produced to identify the ear imprint along with the fingerprint recognition. This system allows the search of an ear imprint information base, because criminals wear gloves, but do not cover their ears as they use them to spy and listen through, either The hair imprint

is an effective component of the genetic imprint, as it is a strong evidence that it is not damaged over time, and the victim or offender can be identified³.

d- Eye imprint (iris):

Created by an American medical device manufacturer, the company asserts that there are no similar eyes in everything, Where the eye imprint is taken by looking at the lens of the device, which in turn takes a picture of the retina, and when someone is suspected, is being pressured a particular button with the device, the image is compared to the image stored in the memory of the device. The time of this process is not more than one and a half seconds⁴. Nevertheless, the eye imprint has not been used as evidence of proof or for the detection of crimes, so it has no opposability in law⁵.

e- Lips imprint:

is that crimson muscle, where the lips imprint is taken by a device with invisible ink and the device is pressed on the person's lips after a sensitive type of sheet has been placed on it and the lips imprint is printed on it. The accuracy is that the lips imprint can be taken even from the butt of the cigarette⁶. It has also been shown that the lips imprints do not change with age. The control of the twins' lips imprints has shown that they are always as close as possible and that their properties are inherited by the father or mother⁷.

f- Scent imprint:

Every human being has an imprint of his own unique scent, without other human beings, and the following Quranic Verse indicates it. In the words of the Prophet Jacob peace be upon him, God said, "And when the wind is rage, their father said: I would find Yusuf's scent if you are not refute"⁸. In this verse, we find confirmation of our Mr. Yusuf's scent imprint, which distinguishes him from all human beings, and has used this characteristic or imprint to track any particular person's traces, such as wolf dogs, who, after smelling a certain human's clothes, can take him out of thousands of people⁹. The United States judiciary has recently settled on accepting the legality of this evidence, resulting from the policeman's dog get to know, although it had to be strengthened by other evidence, in the sense that this identification is not accepted alone in proof, therefore not relied upon without other evidence to support it, nevertheless the scent imprint -if we can release this term on it-, will still have to pass many temporal phases and process, So it has to become one of the most reliable pieces of evidence before the competent investigative authorities of the different countries of the world¹⁰.

g- Dental imprint:

With advances in criminal science, the term dental imprint has recently emerged, meaning that each person's teeth have distinctive traits that make them unique in their anatomical, radiological and chemical properties, that makes it possible to identify anonymous by comparing their fingerprints with a known missing person imprint, or through dental imprint databases as they are in the human imprint system¹¹.

h- Acoustic (audio) imprint:

The sound in the human (the manifest sound without whispered) occurs as a result of the vibration of the acoustic tendons in the throat, aided by the air of exhale with the adjacent muscle, which is surrounded by 9 small cartilages, all shared with the lips, tongue and throat, to produce an acoustic tone that distinguishes the human from the other. Criminal research has taken advantage of the sound imprint of a particular human personality investigation, where they can identify the speaker even by a word. The sound imprint is now used in European banks, where some customers are allocated lockers, these are only opened with the customer's sound imprint¹².

2-2- Concept of genetic imprint:

Scientific advances in the field of evidence have resulted in the emergence of the genetic imprint evidence system, which is an updated method of criminal evidence compared to other methods of proof.

A- Definition of genetic imprint:

The genetic imprint of these multiple genes goes back to the world. Alec Jeffrey, where he demonstrated that DNA was repeated several times in random sequences, that the probability of its similarity between two people on Earth was almost impossible, so it was a means of identifying people, and that the difference between DNA and its distinction between one individual and another made it conclusive evidence. A section of States only relied on it to prove filiation issues or to identify perpetrators, by taking a sample of human waste or residue (such as blood, saliva, urine, hair and bones), and analyzing it¹³.

The genetic imprint have been defined by the Islamic Organization of Medical Sciences (ICMA), as well as the Islamic Doctrinal Complex of the Islamic World Association, as "genetic structure relative to genes, that is, detailed genetics, which denote the identity of each individual¹⁴." Others have defined it as the genetic structure resulting from DNA testing of one or more genetic

connotation systems, and it is agreed that the genetic footprint shows human diversity, its evolution, genetic traits and genetic structure¹⁵.

From the above, we find that the genetic imprint is so-called DNA. By which individuals are precisely identified, acts as a vector of genetic information, and thus can differentiate between people with high accuracy, with the exception of identical twins, extracted from blood, semen, saliva and hair... is now used as a means of proof in cases of rape, robberies and murder, and is used to establish descent.

by X-ray sensitive films , genetic fingerprint can be photographed and uploaded to , where DNA is considered to be The imprint that will follow in the third millennium, because it's the most powerful tool by which to identify and detect the offender, by lifting it from the traces of his blood at the crime scene, even if it's from an finite blood spatter, and then matching it with millions of DNA imprints, stored in criminal computers and in DNA banks, and any DNA imprint will be identifiable in seconds¹⁶.

B- Sources to get genetic imprints:

The genetic imprint is obtained from several sources, especially with the development of the medical field. The contents of the nucleus and the hereditary traits carried by chromosomes, which cannot be resembled by a person who negate genetic traits - except for cases of similar twins - are discovered more precisely than fingerprints, where the essential vital material for extracting the genetic imprint is taken from one of the following parts: Blood, semen, hair root, bone, saliva, urine, amniosic fluid (of the fetus)¹⁷. The cell of the fertilized egg after its division, any cell of the body, tissues, sweat, teeth, mucus, hair, fingernails, and any part visible by the naked or invisible eye left by the human body... and the amount required as much as the size of the pin is sufficient to determine the genetic imprint¹⁸.

Medical discoveries show that it is found inside the nucleus, which settles into the human cell "46" of chromosate pigments, and these chromosomes are made up of genetic material. - deoxyribonucleic acid – which is symbolized by (RNA) . that is, Genetics , and each chromosome contains a large number of Genetic Hereditary, which in the human cell may be approximately one to one hundred thousand Hereditary Gene , these Hereditary Gene that control human traits, and the way they function, as well as other genes regulatory functions¹⁹.

2-3- The importance of genetic imprintin the proof :

The genetic imprint has some characteristics that make it important in the field of proof, which we will address in this points.

- Every human being has a identification card that each cell carries, which distinguishes him or her from another and does not have conformity with any other person, however close he or she may be, except in the case of twins from a single egg, so the genetic fingerprint, gives us definitive identification evidence, since this card cannot be forged. The importance of the genetic imprint in the area of penal evidence is not limited to its multiple sources and the accuracy of the results obtained by the offender, but is more important in terms of its probative power because the DNA part is highly resistant to decomposition and septic agents, and it is resistant to climatic effects from the heat, humidity, coolness and dehydration of long periods, thus increasing the probative effectiveness of the genetic imprint²⁰.

- Identification or exile of individuals character, such as the return of prisoners and missing persons after a long absence, as well as the identification of persons who have evaded punishment, the identification of individuals in the case of bodies mutilated by war and accidents also²¹.

- By virtue of which the birth is proved or exile, as well as the evidence is adopted or invalidated and to weigh between, as used in conflict on the newborn, in the case of intermingling of births in hospitals, suspicion of piping children, as well as in the case of an anonymous claim of descent his lineage to another person, and other uses²².

- The genetic imprint has become a powerful presumption of banishment and proof, as it has become recognized mean in all European and American courts, in rape crimes, sodomy, sexual offences and theft, because the perpetrator often leaves human residue at the crime scene or on the body of the victim, in the form of blood pollution as a result of his injury due to violence, when attempting to escape, sperm contamination, drool on the cigarettes t, or cups, leftovers, traces of human hair or human skin under the fingernails of the victim or the offender²³.

3. The prominence place of the genetic imprintin the proof evidences in Algerian legislation

The perpetrator can be identified by comparing his genetic imprint with the material taken from the crime scene, and the use of such means often helps to identify the offender, regardless of the type of sample analysed, as a small amount of cells is sufficient to perform an analysis.

3-1- Genetic imprintposition among the other criminal evidence in the comparative legislations

The jurisprudence differed on the legality of the evidence derived from the analysis of the genetic imprint, similar to all recent scientific evidence. This difference was reflected on the legal adaptation of this procedure. One aspect of the jurisprudence adopted by the majority of French jurisprudence, supported by part of Egyptian jurisprudence, was that genetic imprint analysis was an act of inspection²⁴. This procedure involves not only housing but also persons. The subject of a inspection is intended to be his or her physical entity, that is, his or her body, whether it be his or her internal organs or the external organs. This view therefore consider that obtaining the biological specimen from the accused with a view to obtaining material evidence in an any offence whose proof is being searched involves an assault on the person's secrets, which is therefore within the scope of the inspection²⁵.

The legality of the inspection of a person was not disputed in the present day. The Egyptian legislature explicitly provided for the inspection of persons and the French legislature too, unlike the Algerian legislator, who dealt with the inspection of premises without inspecting persons. While another trend was that genetic imprint analysis was an act of expertise, depending on the expert's technical opinion²⁶.

Whatever it may be, the genetic imprint is direct evidence of the accused's presence at the crime scene, the existence of a link between him and the crime committed on the one hand, and, on the other hand, indirect evidence of his commission of this crime, it is a admissible presumption of proving the opposite of the crime or to confirm the charge, it is therefore considered judicial evidence²⁷. Which is an anonymous fact conclusion, from a known fact of the mental tying that exists between, which makes it different from the evidence²⁸. Even though it's a material evidence²⁹. So a team of scholars went on to accept it as an evidence and considered it as a physical presumption, which raises the question of the location of the genetic fingerprint among the presumptions? In this case, the jurisprudence was also divided into two parts:

A- The first part of the jurisprudence : in his point of view The genetic imprint is considered to be a definitive presumption because scientific experiments have shown that if the genetic imprint meets its conditions with precision, control and replication, it is a definitive evidence and its results are accurate.

B-The second part of the jurisprudence: In his view, the genetic imprint does not amount to peremptory evidence, since it brings us back to the restricted system of proof. Moreover, scientific theories, however accurate, remain questionable. This is justified by the fact that the origin of the genetic fingerprint is peremptory, but that the surrounding circumstances and complex procedures of the analysis have wasting their value³⁰.

So it can be said that the genetic imprints of the physical scientific evidence, in which the expert is given the lead role, that he confirms the results obtained after a careful medical examination and then puts it in the hands of the penal judge³¹.

Although there is clear support for the use of genetic imprints in the area of criminal evidence by both Arab and foreign legislations, there are only some pieces of legislations explicitly providing for the use of this modern technique, while some legislations does not explicitly address this technique. The French legislature considered the genetic imprint as an independent evidence, as stipulated in articles 226 and 28 of the 1994 French Penal Code, which set out the scope and conditions for the use of the genetic imprint. It should be noted that the Algerian legislature has introduced new rules that can be used to establish numerous criminal cases, explicitly through the use of genetic imprints in judicial proceedings as a new scientific mean of proof through the Act N° 16/03. However, it can also be said that it referred to implicitly before this Act was enacted. As article 68 of the Criminal Procedure Code of Algeria provides that the investigating judge may order a medical examination or order any action that he deems useful. The genetic code has also been adopted by establishing the Genetic imprint Laboratory of 20 June 2004, which is attached to the Scientific and Technical Laboratory of the Judicial Police Directorate. This laboratory is considered to be the first of its kind at the Arab level and the second at the African level³².

3-2- The use of genetic fingerprint under the Act N° 16/03

The genetic imprint is an effective means of searching for the truth, in terms of proving or negating the crime with complete accuracy, given the advantages it enjoys. DNA testing in identification is preferable. On the results of traditional tests regarding the identification of persons through forensic medicine, given that the examination of mixed bodily matter is one of the problems facing traditional methods of proof. This mixing does not pose any problem in revealing the truth with regard to DNA analysis, which makes it very important in ethical issues, given that the DNA part is highly resistant and persistent in the dry atmosphere,

and the DNA material is not damaged. What allows it to be kept and used for several years, if this conservation is done properly, plus it's not different from cell to cell, which means it's identical in all body cells and it doesn't change for life, which makes it easier to take³³.

The use of genetic imprint analysis leads to the association of the commission of various crimes with one particular actor, which distinguishes it from other traditional methods of proof, because the use of genetic imprints in evidence is derived by decisive scientific methods that cannot be discussed or controversial one, nor can their credibility be questioned, whereas reaching the same result by conventional methods remains relative, since traditional methods do not have the same scientific power to prove³⁴. Given to the acceptance and turnout of the genetic imprint in criminal evidence by virtue of its importance, legislative preparations have been made to establish controls and limits to prevent the misuse of this technique to reach illegal or unnecessary purposes, so the process of passing laws regulating the genetic imprint has continued³⁵. This is enshrined in Algerian legislation through the Act N° 16/03 of 19/07/2016, concerning the use of genetic imprints in judicial proceedings and the identification of persons, introduced several controls and conditions for the use of genetic fingerprints as an evidence:

- A law has been enacted on this important means of evidence, in accordance with the provisions of its first article, which states: "The purpose of this law is to establish rules for the use of genetic imprints in judicial proceedings and procedures for the identification of the missing or unidentified persons."
- Chapter II of this Act in accordance with article 05, which provides for the use of the genetic fingerprint, states that: "Biological samples may be taken in order to obtain genetic fingerprints from persons suspected of committing felonies or mesdemeanors against State security, against persons or public morals, funds, public order or offences under the Anti-Narcotics Act or the Act on Combating Money Laundering and the Financing of Terrorism."
- The Order for genetic imprint analysis is authorized only by the Republic's agents, investigating judges and judges, as provided for in article 04. which states that: "Republic's agents, investigating judges and judges shall be empowered to order biological sampling and genetic analysis. "As for those entitled to take samples, it was answered in article 06, which states that: "According to recognizable standards, biological samples shall be taken by: Competent judicial police officers and agents, persons eligible for this purpose under the supervision of judicial police officers, persons employed by the judiciary, "These genetic

analyses must also be carried out by certified laboratories and experts in accordance with article 07, and a central genetic imprints authority must be established by a judge assisted by a technical cell under article 09.

- The analysis is conducted on samples according to article 02, human rights must be respected when they are taken. Article 03 also prohibits the use of samples or genetic imprints obtained for purposes other than those prescribed by law. Also, samples may be taken from a child only in the presence of his or her parents, guardian, Person having the custody or legal representative. If this is not possible in the presence of the representative of the competent public prosecutor, article 05 also adds that biological samples can be taken from the crime scene. Because in cases of rape, sperm damaged with vaginal fluid during 24 to 48 hours, so his procedure came to win the time .

3-3- The rights of persons under examination in accordance with Act No°16/03.

The Algerian Constitution (amended in 2020) guarantees the sanctity of the body. If it is violated, the perpetrator is liable to punishment in accordance with article 39 of it. also the law N° 16/03 Obligate to respect the dignity and special freedoms of persons and to protect their genetic information(Article 3), because DNA expresses a human's genetic identity, no one can force him to perform the analysis except with his consent or with the order or authorization of the judiciary (Art. 4), If there is not the consent of the person concerned. Otherwise this would constitute a violation of the right to privacy.

If a person refuses to undergo an analysis despite a court order, he is liable to a term of imprisonment of one to two years and to a fine of 30,000 to 100,000 DA. (Art. (Article 16), The analysis is also carried out by qualified sampling persons in State-recognized laboratories. (Art 6, 7), It also prohibits the use of samples or fingerprints other than their intended purposes.(Article 8). Otherwise, the person concerned shall be liable to imprisonment from one to three years and a fine from 100,000 to 300,000 DA (Article 17).

This genetic imprint is kept in the National Genetic imprints Base for a period not exceeding 25 years in relation to the assets and branches of missing persons, 25 years in respect of suspected persons who have been followed , who have benefited from a dismissal order or a final verdict of acquittal, 40 years for sentenced persons from the date on which the sentence became final, missing persons and unidentified deceased persons, and the genetic imprint is automatically removed of the National Genetic Fingerprint Base, ordered by the

judge in charge of the Central Service of Genetic imprint; or by the request of the Public Prosecutor's Office or of the persons concerned at the end of the said period (Art14), The person from whom the sample is taken must also be informed of the conditions relating to the registration of his or her genetic fingerprints in the National Genetic imprint Database, the duration of their preservation and the right to apply for their cancellation (Art 13), A penalty of 6 months' to 3 years' imprisonment and a fine of 60,000 to 300,000 DA is imposed on anyone who reveals the data recorded in the National Genetic imprints Database (Art 18).

4. Conclusion

Based on what we've already research After analysing the elements of this article that enabled us to answer the problems at hand, we have reached the following results:

- The genetic imprint is the genetic traits of every human being. So in order to protect genetic privacy and not to prejudice this right, special legislation to protect this privacy must be enacted.
- The genetic imprint must be analysed by perfect means and medium in order to preserve genetic information as it can be an undeniable and accurate means of proof, thereby the judge take it with the importance it deserves.
- Genetic imprints are essential scientific evidence in criminal proof to keep pace with the evolution of the crime and its methods of commission. Although the Algerian legislature has promulgated Act No. 16/03, it does not provide the legal framework for its opposability as to whether it is peremptory or relative, and thus its employment as a legal basis in the judgement issued by the judge. We therefore recommend that its opposability be codified through subsequent amendments to the Criminal Procedure Code.

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²¹- Hossam Al-Ahmad, op cit, pp 30, 31.

²² - Ashraf Abdul Razak Weg, op cit, p 34.

²³ - Mohamed Lotfi Abdel Fattah, op cit, p 96.

²⁴- An inspection is a procedure of investigation that leads to the seizure of the crime evidence in question in order to uncover the truth, is therefore not a procedure of detection of crimes prior to their occurrence, but rather of investigation and detection of the perpetrator after their occurrence. See, Ahmed Fathi Srur, the Mediator in Criminal Procedure law, Cairo, dar el Nahdha, 2014, p. 898.

²⁵- Aqila Ben Lagha, The opposability of Modern Criminal proof Evidence, Magister'sthesis, Faculty of Law, Ben Aknoun University, Algeria, 2011/2012, p. 26.

²⁶- Ibid, pp 26, 27.

²⁷- The judicial presumption is based on the inference of an unknown fact from a known fact by way of certainty and sureness, and differs from the legal one in that the judge extracts the unknown fact using logic and experience. See, Ahmed Fathi Srur, op. cit , p 493.

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²⁹- Physical evidence is "emitted by self-speaking material facts." See: Ahmed Fathi Srur, op. cit , p 499.

³⁰ - Aqila Ben Lagha, op cit, pp 26, 27.

³¹ - Mohamed Al-Madani Bussak, op cit, pp 19, 20.

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³⁴ - Ibid, pp 36, 37.

³⁵- Mohamed Al-Madani Bussak, op cit, p 39.