

Judging ‘Close Family Relations’ in Irregular Migration: The Production of Legal, National and Familial Orders in Finnish Courts



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ABSTRACT

This article examines the ways in which Finnish courts co-construct families and the legality of immigration in their decisions over the facilitation of ‘illegal immigration’. Building on scholarship that stresses the central role of migrant social networks and family ties in cross-border mobility, it challenges the placing of transnational organised crime at the centre of debates concerning irregular migration. Analysing how the Finnish courts engage with hegemonic family ideals and the notion of lived family relations in their decisions, this study aims to reveal the shifting criteria that appears in the background of the courts’ decision-making yet highlights an overall receptive approach to diverse facilitator–traveller family ties demonstrated by different judges. The conclusion reached is that Finnish judges are prepared to push the boundaries of what is legal in the context of irregular migration and challenge the ‘national order of things’ in order to account for motives that relate to family ties between the facilitators and the travellers. In the climate of increased regulation of cross-border mobility, highlighting the law courts’ receptive approach to diverse facilitator–traveller family ties reveals a more complex role of the state in managing migration and challenges the prominence of the migration–security nexus.

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INTRODUCTION

Irregular migration refers to the flow of people from one country to another outside of the formal rules of migration (Triandafyllidou 2016: 3). This type of migration, undoubtedly, takes many forms depending on the networks of resources and brokers that a migrant is able to mobilise. The role of brokers is particularly crucial in irregular migration, and the relationships between migrants and brokers are often far more complex than the pervasive discourse on exploiting ‘smugglers’ would suggest (Achilli & Abu Samra 2021; Perkowski & Squire 2018: 9–12). Indeed, while the central role of migrant social networks in irregular migration has received increased attention from migration scholars (Abel 2012; Ray 2017; Vergano 2020: 7), the focus of policy and broader scholarship on ‘smugglers’, whose activities intertwine with international organised crime and are driven by the pursuit of financial gain, remains strong (Coen 2011; Kaizen & Nonneman 2007; UNODC 2010, 2018; Ventrella 2010). Through focusing on the family relationships involved in the facilitation of irregular migration to Finland, however, this study seeks to add volume to the first-mentioned scholarship.

In addition to challenging the placing of transnational organised crime at the centre of debates concerning irregular migration, this study draws attention to the internally contested nature of immigration control in a state. Indeed, through studying the ways in which Finnish district courts and courts of appeal co-construct families and ‘il/legal immigration’ in their decisions, this article offers insight into the day-to-day workings of a state institution that contributes towards controlling immigration. These institutional, everyday discrepancies of ‘the state’ in governing irregular migration have remained understudied (but see Eule 2017) while there has been a strong emphasis on examining the immigration control by various nation-states more broadly through the lens of securitization (Bourbeau 2011; Tsoukala 2011). In the Nordic context, research regarding migration and bordering practices has likewise highlighted the state-led intensified control of cross-border mobility and the consequences of restrictive immigration policies to migrants (Khosravi 2010; Palander & Pellander 2019; Tervonen, Pellander & Yuval-Davis 2018: 139). Although some studies have underlined the obscurity and unpredictability of decisions regarding immigration (Bodström 2020; Fingerroos, Tapaninen & Tiilikainen 2016; Näre 2018), the overall tendency has been to stress the intensified immigration control. Although this emphasis is hardly misinformed, my study suggests that there is more to the picture. Consequently, I seek to demonstrate the conflicting dynamics of how the Finnish courts advance the securing of the national borders, on one hand, yet how they contribute towards enabling the transnational mobility of family members on the other. Through highlighting the Finnish courts’ overall receptive approach to diverse facilitator–traveller family ties, this study contributes towards a more nuanced understanding of the complex dynamics inside the European border and migration regimes (Casas-Cortes et al. 2015; Eule, Loher & Wyss 2018; Tsianos & Karakayali 2010) challenging the prominence of the migration–security nexus.

In this article, I use the term ‘illegal immigration’ when referring to the criminal offence of the *facilitation of illegal immigration* (*laittoman maahantulon järjestäminen*) as defined and understood in Finnish law (The Criminal Code of Finland 17:58). The notions of migration and migrant ‘illegality’ have, however, been criticised by the UN and in academic scholarship as political constructions through which certain people and practices are criminalised, marginalised and even dehumanised (De Genova 2002; Galemba & Thomas 2013: 211). In my own usage, then, I have opted for the

notion of irregular migration in the hope of adopting a more neutral term that looks at the processes of clandestine cross-border mobility beyond the issues of il/legality.

LEGAL BACKGROUND: THE FACILITATION OF 'ILLEGAL IMMIGRATION' IN FINLAND

In Europe, migration and its criminalisation have both intensified in the recent decades (Mitsilegas 2014) reaching new highs around and after the so-called migration 'crisis' of 2015. The state-led, increased criminalisation of migration is inseparably connected to the related international regulations and the heightened criminalisation becomes clearly visible when looking at the history of the facilitation of 'illegal immigration' as a crime in Finland. The crime was first introduced in the Finnish Aliens Act in 1993, and in 1999 the facilitation of 'illegal immigration' was moved from the Aliens Act to the scope of Criminal Law. The initial wording of the law defined the facilitation of cross-border mobility as illegal *only* when it was tied to gaining financial profit, yet this condition was removed in 2004 when also an aggravated form of the crime was added to the legislation. The aggravated form of the offence relates to cases that have resulted in serious bodily harm or have included the involvement of an organised criminal group. Introducing the aggravated form of the crime into the law, moreover, meant that the maximum sentence for facilitating 'illegal immigration' extended from the previous maximum of two years into the new maximum of six years (Aliens Act 639/1993, HE34/2004). Against this backdrop, it is hardly surprising that the combined number of criminal cases regarding the normal and aggravated facilitation of 'illegal immigration' in Finland nearly tripled from 2011 to 2016 (Statistics Finland, 2020).

While the migration-security nexus, then, largely defines the ideological environment in which the Finnish judges decide on 'illegal immigration', the significance of family ties that motivate the facilitation of irregular cross-border mobility can prove crucial for the outcome of a criminal case. Indeed, in assessing the (aggravated) facilitation of 'illegal immigration' as a criminal offence, the court can take into account possible motives deriving from family relations as an alleviating factor:

An act which, when taking into account in particular the humanitarian motives of the person committing it or his or her motives relating to *close family relations*, and the circumstances pertaining to the safety of the foreigner in his or her home country or country of permanent residence, and when assessed as a whole, is to be deemed committed under vindicating circumstances, does not constitute arrangement of illegal immigration. (The Criminal Code of Finland 17:§8:2, emphasis added)

The references to 'humanitarian motives' and 'close family relations' included in the above cited law derive directly from international regulations. According to the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air (UN 2000), which was ratified by Finland in 2006, the smuggling of migrants indicates activities resulting in financial or other material profit for the benefit of criminal groups. Therefore, the Smuggling Protocol does not aim to penalise the activities of those who assist migrants 'for humanitarian reasons or on the basis of close family ties' (A/55/383/Add.1: 16). However, while the reference to close family relations is clearly pronounced, neither the Smuggling Protocol nor the Finnish national legislation

provide a clear definition for the notion of close family relations. A government note (HE164/2013: 27) suggests that when family ties are assessed in cases of 'illegal immigration', the definition of a family member as cited in the Aliens Act of Finland can be used as a starting point. According to the Act (4:§37), a family member is a *spouse* (married, registered same-sex or a live-in partner with certain conditions), a *child* under 18 years of age (biological or foster) or a *parent* (or other guardian) of a minor. This reduced definition of a family member, however, does not serve as a restrictive guideline to be imposed by the law courts, but the assessment is ultimately dependent on a case-by-case evaluation by the respective law court. This open-ended guideline leaves considerable room for the courts to decide on what kind of family tie impacts the construction of the criminal subjectivity of a facilitator and, hence, what type of mobility counts as 'illegal'.

In what follows, I will focus on Finnish judges' assessments of 'close family relations' in 47 cases regarding the (aggravated) facilitation of 'illegal immigration' and highlight the criteria used in these assessments. The aggravated form of the offence was rarely applied to the cases of this study where family relations between the facilitator and the traveller arguably motivated the 'illegal immigration'. However, there were two cases in my material that were prosecuted as aggravated facilitation of 'illegal immigration' and yet arguably involved close family relations. In these cases, according to the prosecutor, organised criminal groups were involved, whereas some of the accused facilitators argued that the people they assisted in entering Finland included their family members.

The cases regarding the facilitation of 'illegal immigration' only concern the facilitators and not the travellers who are protected by international regulations regarding asylum-seeking. Consequently, as long as the traveller applies for asylum after arriving in Finland, s/he cannot be charged for 'illegal immigration'. It is important to note, however, that while the courts might not criminalise the facilitation of a family member's entry to Finland, the not-guilty verdict does not in itself amount to a successful family reunification. Instead, if the traveller wishes to stay in the country based on family ties, s/he faces the family reunification process of Finland which, in fact, has become increasingly strict over the last decades (Halme-Tuomisaari, Tapaninen & Aunela 2018: 5). During the process of family reunification, an applicant is likely to encounter several acts of 'bureaucratic bordering' as s/he is faced with financial obstacles, paperwork and waiting times before potentially being united with his/her family member(s) (Näre 2020).

COURT DECISIONS AS RESEARCH MATERIAL

The research material for this article consists of public court verdicts from 178 legal cases: 151 on the facilitation of 'illegal immigration' and 27 on the aggravated facilitation of 'illegal immigration'. The ethical approval for my research and data collection was granted by the ethics committee of human sciences at the University of Oulu. Following my data requests for all the Finnish district courts, courts of appeal as well as the Supreme Court, a total of 20 courts reported that they had dealt with either normal or aggravated facilitation of 'illegal immigration' between January 2011 and February 2017. Focusing on a period of approximately six years allowed me an access to a large number of cases and made it possible to follow the build-up of cases around the 2015 European migration 'crisis', which I was also interested in.

The Finnish court verdicts regarding the facilitation of ‘illegal immigration’ follow a uniform structure, starting with general identification details after which the prosecutor’s claims are presented. The prosecutor’s account is followed by a response from the defence after which the evidence is identified and explained. The verdict document ends with the judge’s conclusion and the statement of the sentence and compensations. The verdicts, then, combine multiple accounts and voices, yet it is the judge’s decision at the end of the document that I am primarily interested in here. I examined each of the court verdicts, the lengths of which varied from three to 167 pages, with the help of qualitative data analysis software NVivo. I looked for any references to family members and relatives in the decisions and, from the context, determined whether the family relation was argued as something that defined the facilitator–traveller relationship. According to the data analysis, in 47 out of 178 cases, family ties were identifiable.

Appealing to ‘close family relations’ alone or together with a reference to ‘humanitarian influences’ impacted the outcomes of the cases I studied in four ways (Table 1). In eight cases, family relationship alone or together with a reference to overall ‘humanitarian influences’ served as vindicating circumstances and led to a complete dismissal of the criminal charge. In 22 instances, the court did not dismiss the charge of (aggravated) facilitation of ‘illegal immigration’ based on family ties but considered the alleged relationship alone or together with a reference to overall ‘humanitarian influences’ when measuring the punishment. In 19 of these cases, the courts issued more lenient sentences for the defendants referring to the influence of family relations, and on three occasions the defendants were even exempted from any punishment. In the remaining 17 cases, the court interpreted the alleged family relation neither as a justification for a dismissal of the charge nor as grounds for a diminished sentence. This division of outcomes shows that when assessing the meaning and quality of family ties in connection to the facilitation of ‘illegal immigration’, the Finnish courts arrive at varying conclusions, yet more often than not, regard the alleged family relations as relevant to the outcome of the case.

Charge dismissed	8
Charge accepted, lenient sentencing	19
Charge accepted, no punishment	3
No impact	17
Total	47

Table 1 The impact of family relations alone or together with ‘humanitarian influences’ on the outcomes of cases on the facilitation of ‘illegal immigration’ (January 2011–February 2017).

Previous studies regarding irregular migration facilitation have, likewise, benefitted from using court decisions as research material (Campana 2018; Sanchez 2014). While inevitably portraying only some aspects of the complex reality of irregular migration, court decisions nonetheless speak of real-life events regarding clandestine border-crossings that are otherwise likely to remain hidden from outsiders. Court documents, then, provide insight into the workings of irregular migration but also, and more importantly for the aims of this particular study, they provide crucial insight into the workings of the institutions that seek to regulate irregular migration. Indeed, inspired by anthropological scholarship on documents as objects of ethnographic research (Hetherington 2011; Hull 2012; Riles 2006), I study the Finnish courts’

documents as material that speaks more broadly of the legal institutions themselves, their rules, practices and ideologies. The Finnish courts' verdicts, consequently, do not merely state the outcome of a legal case, but make visible a variety of normative assumptions regarding notions such as 'close family relations' that underline legal deliberations.

THE FINNISH COURTS' SHIFTING CRITERIA FOR 'CLOSE FAMILY RELATIONS'

REPRODUCING AND CHALLENGING HEGEMONIC FAMILY IDEALS

The analysis of court decisions on 'illegal immigration' in which the facilitator claims to be related to the traveller provides insight into the different judges' views on what constitutes a close family tie. Migration scholars have studied the construction of close family ties particularly in connection to marriage migration and argued that the ways in which the state controls the entry and stay of family members reveals normative assumptions regarding family life (Fink 2001; Strasser et al. 2009). Migration scholar Saara Pellander has studied the role of Finnish immigration bureaucrats as moral gatekeepers who decide if the marriage of migrant applicants corresponds with what they regard as suitable for gaining Finnish residency (Pellander 2015: 14). Similarly to immigration bureaucrats, Finnish court officials can be seen as moral gatekeepers whose work with formal immigration regulations intertwines with various normative frameworks and value systems (see also Leinonen & Pellander 2014). Scholars have noted that court cases involving people from cultural minorities can problematically become sites where cultural difference is produced and assumed hegemonic values of the cultural majority are enforced (Aliverti 2018; D'hondt 2010). However, in the cases of facilitating 'illegal immigration' assessed by the Finnish courts, hegemonic family ideals were both underlined and challenged by the judges and lay judges. The judges' expectations regarding close family ties became visible in a number of verdicts, yet in the following five instances these expectations became particularly noticeable.

Applying the idea of 'Finnish culture' as a point of reference when evaluating suitable family ties became evident in a case where a person facilitated an irregular entry for a Somali man who travelled on a cruise ship from Stockholm to Helsinki. In court, the facilitator appealed to family reasons by arguing that he and the traveller are part of the same 'tribe' (*heimio*). In the verdict, the judge considered the relationship between the men and concluded:

The district court states that it is both impossible and unnecessary to determine whether [A] and [B] are somehow related to each other as there is a lack of concepts regarding tribes and clans in Finnish culture.

In that case, the judge reasoned that there is no (close enough) family relation between the men and found the facilitator guilty of a crime. The alleged lack of suitable terminology regarding tribal relations 'in Finnish culture' appears, at first, as a welcome acknowledgement of the shortcomings relating to the normativity of the national culture in the trial. Arguably, however, the judge's conclusion on the *impossibility* of evaluation when talking about family ties unorthodox in Finland works to strengthen the national culture's hegemony in trials. The judge appears to conclude that if the evaluative measures deriving from the national culture are not sufficient, assessment is 'both impossible and unnecessary'.

Another case in which the judge's assessment of close family relations reflected the hegemony of the national culture included a Finnish woman C and her partner D. Even when the immigration authorities had in their recent decision on D's residence permit regarded him and C as a married couple, the judge assessed the relationship differently. According to the verdict, after a yearlong online relationship, the couple met in Gambia, where C converted to Islam and became married to D in accordance with the local customs. After that, the next physical reunion for the couple took place two years later. Later that same year, C assisted D to enter Finland unauthorised by air under a false name. In Finland, the couple married again and, according to C, now lived 'an ordinary, happy family life'. The judge, however, was sceptical regarding the quality of the long-distance relationship predating their time in Finland:

These days, it is possible to enter into a relationship even if the persons never physically met. These relationships, however, are not the types of family relations suggested in the law [...] [C] had only met [D] twice before booking the trip [to Finland].

Although the judge recognised that foundations for a relationship can be created in a number of different ways, it remains unclear why a physical connection appeared as an imperative prerequisite of a close relationship for her. The dismissal of the customary marriage and regarding the limited physical connection as unusual hardly reflected any objective reading of the law, but rather revealed some of the normative assumptions held by this particular judge. The judge, in the end, convicted C for the facilitation of 'illegal immigration' yet, paradoxically, concluded that the motives, which 'are quite close to the reasons outlined in 17:8.2§ of the criminal law', constitute a justification for a reduced sentence of 870 euros.

Ideals relating to suitable communication practices between family members came to the fore in a case where an Afghan man, E, living in Finland assisted his daughter's spouse to enter the country through irregular means. The son-in-law arrived on a cruise ship departing from Sweden, and the judge paid special attention to the communication between different parties leading up to the event:

The defendant [E] has... told that the person who asked for his assistance in organising the cruise travel was his daughter's spouse's father, not the spouse himself. This suggests that the relationship between [E] and the person he assisted in entering the country has not been a particularly close one.

It is likely that in this instance the judge failed to recognise the cultural specificity of communication practices and their link to the wider social hierarchies regarding, for example, age and status. Having a middleman communicating between two people in a situation such as the one described earlier, felt most likely not out of place for the people involved but worked to display central generation- and gender-related hierarchies regarding decision-making. The judge assessing the case clearly understood the indirect communication style as atypical for close family members, which highlighted his own cultural ideals relating to how family members should interact. Despite the disregarding of the 'close family tie' argument by this judge, however, the court of appeal reassessed the case and, as I will show later, issued a reduced sentence for the father-in-law.

Despite the dominant culture's inescapable intertwining with the national law and trials (see also Rosen 2006, 2018), the assumed minority views did, perhaps surprisingly,

receive the courts' recognition in some of the cases I studied. In one of those cases, an Iraqi couple living in Finland drove five of their relatives across the border between Sweden and Finland in order to assist them in their asylum-seeking processes. In his assessment of the facilitation of 'illegal immigration', the judge considered the family relations as well as the cultural backgrounds potentially influencing the case. According to the verdict, the parents of the couple had urged the couple to assist their relatives in travelling to Finland. The judge concluded that 'According to Iraqi cultural norms, the defendants did not have the option to act against their parents' will' and that 'In their culture, assisting close relatives is an obligation'. In the end, the judge found the couple guilty of facilitating 'illegal immigration' but exempted them from any punishment.

Another case in which the court's assessment took into account the potential cultural differences in evaluating family ties included an Iraqi man and his cousin who travelled to Finland through irregular means. The district court judge concluded that the facilitation of 'illegal immigration' was carried out for acceptable reasons due to issues including the unsafe situation of the country of origin and lack of financial gain for the facilitator. The judge did not explicitly state whether the family tie between the facilitator and the traveller impacted her decision to excuse the act, but she did comment on the relationship:

Even when a cousin is not considered a close relative in Finland, it is understandable that in other cultures this may be different, and the feeling of solidarity and desire to help [...] extend to a wider circle of relatives.

As demonstrated in the earlier cases, different courts ended up striking a different balance between enforcing assumed hegemonic values of the cultural majority, but also of the cultural minority, in assessing 'close family ties'. The idea of the national culture was present in the trials, but interestingly judges used it both as a normative yardstick and as an insufficient point of reference when measuring suitable family relations. The criterion for a family relationship that counts, then, is in a constant normative flux, highlighting the uncertainties and inconsistencies at play when a state institution responds to irregular migration. This is an important point to highlight in the discussions on the European border and migration regimes, in which stressing the agency and varied mobility strategies of migrants have become common (Collyer 2012; Mainwaring 2016; Sigona 2012; Triandafyllidou 2017), yet the everyday, ideological discrepancies of 'the state' that seeks to govern irregular migration have often been overlooked (but see Eule 2017). Some scholars have stressed the arbitrariness of immigration bureaucrats, yet they have tended to link the arbitrariness to a broader ideology and political objective that seeks to prevent immigration (Bodström 2020; Näre 2018). The everyday institutional responses of Finnish courts to the facilitation of 'illegal immigration', however, show that the governing of immigration intertwines with complex normative orders and value systems. The facilitation of immigration, then, is a contested category that can be illegalised by individual judges based on their more or less explicitly pronounced normative understandings on what constitutes a close family relationship.

THE TEMPORAL FLUX OF LIVED FAMILY RELATIONS

The Finnish courts' decisions regarding family ties and the facilitation of 'illegal immigration' highlight some of the normative ideals on family life held by different judges, but they also indicate that the courts lay emphasis on social, lived family

relations. While anthropologists, among other scholars, have challenged the value of the biology/culture dichotomy in studying 'relatedness' (Carsten 2000, 2013), the division appears relevant in the on-going debates regarding immigration, family reunification and DNA evidence. A study on family reunification practices in Austria, Finland and Germany, for example, argued that while there is a general trend towards an increased use of DNA testing in the context of immigration, Finnish immigration authorities do not see the role of biology as determinative in evaluating 'genuine family life' (Heinemann, Naue & Tapaninen 2013; Heinemann et al. 2015). The DNA truth is contested in Finland as it is not alone sufficient in proving a family tie but can only be used to support other types of evidence (e.g. interviews) regarding genuine family life (Heinemann, Naue & Tapaninen 2013: 199–200; see also Halme-Tuomisaari, Tapaninen & Aunela 2018). DNA testing is, arguably, only used as the last resort and, in comparison with Germany and Austria, the Finnish immigration authorities work with a more extensive definition of the family that is not based solely on consanguinity or marriage (Heinemann, Naue & Tapaninen 2013: 199; Heinemann et al. 2015: 41).¹

Corresponding with the findings regarding Finland in Heinemann's study, several of the courts I studied stressed the social, lived family relations in their evaluations of close family ties and paid little attention to DNA. This was the case, for example, when the court assessed the relationship between the earlier mentioned Afghan man, E, and his son-in-law. In the court, the father-in-law claimed that due to the existing family relationship he felt compelled to help his son-in-law even when this meant acting unlawfully. The district court judge, however, doubted the closeness of the family tie particularly with regard to the alleged married couple. Although the couple had been together for five years and they had a child together, the lack of social, lived family relations eroded the kinship argument: 'The defendant [E] has told that the person he assisted in entering the country is his daughter's spouse, with whom, however, she has never lived. The district court sees [...] that the act is not to be considered as carried out for acceptable reasons'. Consequently, the judge found the father-in-law guilty of facilitating 'illegal immigration' and sentenced him to 30 days of suspended sentence. Interestingly, after the district court judge disregarded the 'close family relation' argument based on the seeming lack of social, lived family relations, the defendant offered further details on the claimed close relationship in his appeal:

The person [E] assisted in entering Finland was his wife's cousin, daughter's spouse as well as his daughter's child's father. [E] had known him already as a child. In Afghanistan they had lived as neighbours.

Stressing the intertwined family relations and a shared past benefitted F's case as the court of appeal reduced his sentence to a fine of 300 euros. This case highlights the shifting criteria applied by different courts in deciding on the il/legality of migration and shows, furthermore, that even a family relation that falls clearly outside of the Aliens Act's definition can be taken into account when a judge decides on the il/legality of irregular migration.

Another case in which the court paid attention to the potential shared history between the facilitator and the traveller included a Somalian man, F, and his half-brother who

1 The Finnish immigration authorities' evaluation of family ties rests on the definition provided by the Aliens Act of Finland. See page 4 of this article.

arrived in Finland on a cruise ship without official travel documents. In the verdict, the judge evaluated the relationship between the men:

[F] has told that he has not lived together with his half-brother, but has met him earlier. [F] has told [...] that he has not grown up in the same place as the boy. The father had lots of women and [F] did not know about the boy.

In the end, the judge did not consider the alleged family relationship as significant but sentenced the defendant to a fine of 600 euros for the facilitation of 'illegal immigration'. Arguably, then, the lack of a shared past or other proven social kinship between F and his half-brother led the judge to ignore the close family relation argument.

While in the cases of E and F, the judges paid close attention to the lived family relations of the past, other judges proved to be more interested in the present living arrangements between some of the claimed relatives. A defendant, G, who was one of 11 defendants charged in a large case on the aggravated facilitation of 'illegal immigration', argued that one of the persons he assisted to enter Finland was his nephew. According to G, he had known the boy from his childhood and felt like he had raised him, but the court concluded:

According to [G]'s account, he has had a close relationship with [his nephew H] in Iraq. [G] has, however, lived in Finland for a longish time before the incident [alleged facilitation of illegal immigration] and has not, as stated also by himself, kept in touch with [H] after [H] arrived in Finland. Taking this into account, [G]'s relationship with [H] cannot be regarded as the type of close family tie referred to in the law.

Another defendant charged in the same case, J, argued, likewise, that two of the people he assisted in entering Finland were his nephews. According to the court paperwork, the nephews had both stayed with their uncle J for several months after they arrived in Finland. Furthermore, the lived social family tie prior to their time in Finland, particularly between J and K, attracted the court's attention:

It has been made apparent that [nephew K] has lived with [uncle J] when [nephew K] was little. [Uncle J] had adopted [nephew K] [...] With regard to [nephew K] and [nephew L], [uncle J]'s actions must be considered as carried out for acceptable reasons due to close family relations.

In the cases of G and J, then, the courts paid special attention to the time after the alleged facilitation of 'illegal immigration' when evaluating the closeness of family ties. The assessments of these cases highlight the shifting temporal focus of court decisions regarding family relations in irregular migration, but also indicates that if the lived family relation is seen as strong, even an uncle-nephew family relationship can render the facilitation of irregular migration legal. Furthermore, the proceedings in a case including a father who facilitated the travel of his daughter from Iran to Finland shows that even within the same case different courts lay emphasis on varying moments in lived family relations. In that case, the district court judge drew attention to the long period of separation between the father and the daughter before the facilitation of 'illegal immigration' and found the father guilty of the crime. However, after the court of appeal reassessed the case, it concluded that the father's extreme actions in bringing his daughter to Finland indicated that the family relation was genuine despite the long period of separation. In evaluating the family relation,

then, the court of appeal laid emphasis on the time of the incident, rather than the past years, and concluded that the father–daughter family tie sufficed to justify the act completely. This significance of time and temporality is also visible in the context of family reunification applications, as the Finnish Immigration Service tends to see a prolonged period of separation as undoing genuine family ties (Halme-Tuomisaari, Tapaninen & Aunela 2018: 13). The Finnish courts' approach to time was, however, less straightforward than that and the courts focused varyingly to the past and the present in their assessments of lived family relations.

The Finnish courts' varied approaches to co-constructing family ties and 'il/legal immigration' reveal the constant normative and temporal flux underlining the judicial assessments regarding close family ties and, furthermore, highlights the everyday irregularity of a state institution in controlling irregular migration through criminalisation. While it could be argued that this irregularity is telling of the state's failure to fully and consistently regulate immigration (e.g. Castles 2010), it can also be reasoned that 'imperfect' migration control is an inherent feature of migration policy (Massey, Durand & Pren 2016). The messiness of migration control links to the competing interests of different actors (e.g. states, migrants, non-governmental organisations, EU) constituting the border and migration regimes (Eule, Loher & Wyss 2018), and the discrepancies, I argue, also underline the multiple rationales and complex moralities at play when different actors within a state institution deal with issues of irregular migration and families. Indeed, state institutions are hardly neutral bureaucratic entities that simply enforce rules and laws, but they mobilise values and ultimately reflect the broader ideological environment in which they operate in (Fassin 2015; Näre 2018; see also Sharma & Gupta 2007: 11–18). In deciding on 'illegal immigration' facilitated by relatives, then, the Finnish judges enact legal order but also inevitably reflect and produce representations of nationhood and families. In the previous sections, I have unpacked different judges' views on 'close family relations' in more detail, yet more remains to be said about the broader ideological environment that appears in the background of these court negotiations.

PRODUCING LEGAL, NATIONAL AND FAMILIAL ORDERS IN FINNISH COURTS

When issuing verdicts on 'illegal immigration' and family ties, the Finnish courts necessarily become sites of contested orders where powerful legal, national and familial ideologies are all present. The state-led criminalisation of cross-border mobility of undocumented immigrants works to maintain the 'national order of things' (Malkki 1995), in which geographical rootedness of human beings represents the ideal and immigrants are, thus, seen as out of place. Immigrants, regarded as outside the real or imagined nation-state system, constitute a sort of excess population that appears 'unnatural' and calls for measures of control (Khosravi 2010: 122). Through punishing individual facilitators, the courts institute control and contribute towards normalising the national order yet, interestingly, family relations do serve to justify some cases of disturbance for the national order when irregular migration is facilitated by a relative. While the criteria for family relations that count proves shifting when looking at individual court cases, there is no denying that family relations do matter for most of the courts. As Table 1 highlights, when a defendant's motive for facilitating 'illegal immigration' was explained through family relations, the courts more often than not took it into account in a way that favoured the defendant. Furthermore, a number of courts were even particularly flexible in their interpretation of 'close family relations'

and in several instances the judges ended up disregarding the reduced definition of a family member as cited in the Aliens Act. The facilitators who were either discharged (eight cases) or received no punishment of the crime (three cases) facilitated irregular cross-border mobility for a wife, son and daughter, but also for a brother, half-brother, nephews, cousins, daughter's husband, uncle and for somewhat vaguely defined 'wife's relatives'. Furthermore, the 19 cases in which the courts issued more lenient punishments for defendants due to close personal relationships, included people who facilitated irregular migration for brothers, cousins and a nephew but also for their tribesman, sisters' husbands and even a mother's second cousin's child. So, while the Aliens Act would have only recognised the facilitator's spouse and own offspring as close family members, a number of courts took a significantly more lenient approach in determining what kind of family relations matter. Hence, in a number of cases even a person's not-so-close family tie, certainly if assessed against the Aliens Act's definition, served to either undo the illegality of facilitating irregular migration or, more often, result in a reduced sentence for the facilitator.

The Finnish courts' receptive approach to diverse facilitator-traveller family ties appears surprising in the current climate of increased securitisation of migration. Framing migration as a security threat became common in the post-9/11 world (Karyotis 2007; Tirman 2004) as the 'migrant threat' was produced by, in particular, politicians, security professionals and media outlets in the US and in Europe (Bigo 2002; Bourbeau 2011; Tsoukala 2011). The migration-security nexus is, likewise, visible in Finland where the criminalisation of the facilitation of 'illegal immigration' has intensified significantly over the past decades. This is part of a more general trend where national security concerns have gained increasing foothold in Finnish immigration law and in policy (Palander & Pellander 2019).

Indeed, in their analysis of Finnish legal texts and policy reports, Jaana Palander and Saara Pellander found that there has been a clear move towards increased securitisation of human mobility in immigration policy and legislation since the 1980s. They, moreover, identified a further strengthening of securitisation and anti-immigration rhetoric since 2000, concluding that Finland is part of 'building the "fortress Europe" against "illegal immigration"' (Palander & Pellander 2019: 190). The findings of my study, however, paint a more complex picture by suggesting that what is considered 'illegal immigration' is constantly contested in court cases where family relations intertwine with irregular migration. This, as mentioned earlier, does not mean that the family reunification process that some of the facilitators and travellers are likely to enter, or have perhaps already been subjected to by the time of the trial, would be successful. My research material does not offer information on what happened to the travellers after their arrivals to Finland, and the Finnish judges, indeed, have very limited power when it comes to legalising long-term migration. Yet showing that Finnish judges are prepared to push the boundaries of what is legal in the context of irregular migration and challenge the 'national order of things' in order to account for motives that relate to family ties, adds a more humane narrative concerning the management of migration alongside to the dominant one that increasingly securitises migration.

CONCLUSIONS

When issuing verdicts on 'illegal immigration' and family ties, the Finnish courts turn into sites of contested orders where powerful legal, national and familial ideologies are all present. Despite the strong context of securitisation of migration that ties into

the criminalisation of the facilitation of 'illegal immigration', I found that the Finnish courts regularly challenge the migration-security paradigm through emphasising the significance of family ties in the facilitation of 'illegal immigration'. Although the criteria in assessing 'close family relations' was in a constant normative and temporal flux, most of the judges demonstrated a receptive approach to facilitator-traveller family ties. This became visible as several judges interpreted the definition of a family member as outlined in the Aliens Act in a loose manner.

The people who facilitate irregular cross-border mobility for family members challenge the legal and national orders of a state in an effort to maintain familial relationships and enable the physical proximity of family members. A number of judges were responsive to this rationale, showing understanding of and reproducing the 'familial order of things' which, furthermore, adds insight into discussions highlighting the discursive power of migration categories and labels. National borders produce a mix of classifications and subjectivities, and 'illegal immigration' constitutes a particularly powerful category as it helps to maintain the idea of a unified national identity of citizens (cf. Behdad 1998; Khosravi 2010: 115). Irregular migration facilitators, the vehicles of 'illegal immigration', are frequently linked to transnational organised crime (Baird & Van Liempt 2015: 5-8; UNODC 2010, 2018) and villainised in the European anti-smuggling agenda as smugglers who exploit vulnerable migrants (Perowski & Squire 2018: 3). While framing irregular migration facilitators as exploiting smugglers has undeniable discursive power, the Finnish judges' decisions show, however, that assigning a facilitator with the label of a 'close family member' can lead to regarding the person's involvement in 'illegal immigration' as secondary. Consequently, it is the label relating to family ties rather than migration that proves more powerful in these situations.

Ultimately, then, this article speaks against the 'categorical fetishism' characterising the deeply politicised discussions around those on the move in the context of the European migration 'crisis' (Crawley & Skleparis 2018; see also Apostolova 2015). Migration-related categories, such as 'migrants' and 'refugees', are embedded in a social world where lawyers, politicians, advocates and academics all push their conceptual boundaries and mobilise them to represent a particular type of social reality (cf. Zetter 2007). The category of an exploiting smuggler, then, is no different from that and its links to political agendas that strive to control irregular migration through criminalisation seem particularly clear (cf. Perkowski & Squire 2018). Scholars have, indeed, recently began highlighting the complex dynamics between irregular migration facilitators and the travellers (Achilli & Abu Samra 2021; Perkowski & Squire 2018: 9-12), yet it is not just the academics who push the boundaries of who become to be regarded as smugglers, facilitators or 'illegal' travellers. As this study shows, the state actors within those institutions that regulate migration through crime, and contribute towards producing the European border and migration regimes, are not defined by a desire to place people into neat categorical boxes, but they show an understanding of the messy social realities behind irregular migration.


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