

Abstract Doctoral thesis:

Suspected Sham Marriages. An intersectional analysis of the state constructions of ‚residence marriage‘ and its effects on Austria's Alien Law

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In German-speaking social sciences little is known about the history of ‘immigration marriages’ and its current implications. This dissertation investigates the construction of the phenomenon of ‘Scheinehe’ (‘sham marriage’) and explores the legal instruments in Alien and Immigration Law that seek to prevent marriages of convenience. The repercussions are being analysed by the use of the Alien Police Law in 2005, when ‘residence marriage’ was constituted, for the first time, as a criminal offence.

For the last decades, Austrians married mainly other Austrians and/or partners from European Union states. Concerning marriages with Third Country Nationals (TCN) there is an interesting gender gap: the group of the Asian women and the African men dominate. Therefore, the main goal of the current study was to determine - among other things - whether these two groups are subjected to the same amount of police investigation. Following intersectional theory, not only gender and race/nationality are important, but also further categories of analysis are being introduced (e.g. age differences, class or residence status) in order to grasp the phenomenon adequately.

The empirical material used were 99 questionnaires documenting the investigation procedure of the Viennese alien-police; the records of all Viennese court proceedings taking place in 2006 and 2007; and 23 expert-interviews with legal representatives.

Investigation into the legal practice of the Viennese branch of alien police and the Viennese district courts 2006 and 2007 shows: to prove the fact that a marriage is a ‚residence marriage‘ is hard in most cases, and only one third of the accused are found guilty. Only those who confess having entered into a ‚residence marriage‘ are being sentenced. The court rarely follow the arguments of the alien police and judge more carefully. This indicates a different interpretation of the term ‚residence marriage‘ between the alien police and the court.

The authorities commonly portray the suspected couple as an Austrian woman from lower social class marrying a TCN (e.g. asylum-seeker). Indeed, this very constellation is more often subjected to police investigation and court trials. This group - discriminated on several levels - is suspected of entering into a ‚residence marriage‘ more often, although, they are less likely to meet necessary requirements for minimum income to attain a residence permit. The statistically by far more frequent constellation of a marriage between a male Austrian and female TCN, in concrete terms Asian women, is not met with suspicion neither by alien police nor in court trials.

The results of this dissertation indicate that the construct of 'sham marriage' is a flexible narration: the historically derived construct is being used to subject certain binational couples to regulative norms and to increasingly exclude such couples from possible residence advantages.