

DEFINITIONS OF A CHILD'S ORIGIN

Mamaraimova G.*Senior Lecturer, Department of Civil Procedural
and Economic Procedural Law of Tashkent State University of Law*
ID: 0000-0002-2325-1350DOI: [10.24412/3453-9875-2021-77-3-42-46](https://doi.org/10.24412/3453-9875-2021-77-3-42-46)**Abstract**

This article deals with the issues of determining the pedigree of the child in accordance with the laws of the Republic of Uzbekistan, including the registration of the child's birth, paternity in court, paternity in court, paternity and other different aspects have been analyzed. Today, in determining the pedigree of a child, the probabilities of whether the biological father is recognized as the legal father and not are studied. As a result of the application of the norms of the legislation in practice, the problems of determining the pedigree of the child were studied and given solutions. This article also analyzes the institution of paternity appeal as an important institution for determining the lineage of the child by the author. Applicants and claim deadlines for this institution were analyzed. The biological paternity rights were analyzed in the appeal to paternity. As a biological father, the legal and practical aspects of determining whether a woman can divorce from one marriage to another within three hundred days and have a child during that marriage are studied. The article analyzes the legislation of several foreign countries on the pedigree of the child, as well as the history of Islamic law in this regard.

Keywords: definitions of a child's origin, paternity, determination of paternity, determination of the fact that the child was born from this or that mother, birth registration, objection to paternity, objection to motherhood.

We all know that the issue of heredity is the most important personal issue in human life. Generation will inevitably affect an individual's place in society, his or her reputation among the people, as well as the issues of family ties. The most important chain in determining a person's lineage is to determine from which parent he or she was born. Through a person's parents, his other relatives, including brothers, sisters, grandparents, aunts, uncles, and other cousins, are identified.

So, the most important point in the issue of pedigree is the definition of parenthood. The birth record in the birth record book is evidence that the child was born to the parent indicated in it. Therefore, paternity and motherhood are usually determined at the time of birth registration.

We know that the registration of births in our country is carried out by the civil registry offices. The basis for registering the birth of a child is a medical certificate of birth of the child. When the child is born in a medical institution, a medical certificate of birth of the child is issued. If the child is born outside the medical institution without medical assistance, a certificate is drawn up stating that the child was born and from which mother he was born. Prior to the amendment to the legislation [1], births were registered on the basis of this act. However, since these acts often did not always reflect the original truth for the purpose of avoiding adoption or for other purposes (these acts were likely to change the child's mother), births are no longer recorded on the basis of these acts. According to the birth certificate of a child born outside the medical institution, a medical certificate of birth is issued by the district doctor (paramedic or obstetrician) and the birth is registered on this basis.

When registering the birth of a child, the mother's column is filled in according to the mother's information specified in the above medical certificate of birth. The medical certificate, which is the basis for the registration of this birth, will contain complete and

detailed information about the child's mother. According to the current legislation, the above document contains information about the mother's last name, first name, patronymic, place of residence, date of birth, nationality, citizenship, marital status. As mentioned above, based on this information, the child's mother column data is supplemented. The information on the child's mother determines from which mother the child was born (legal mother).

This means that the birth of a child and from which mother it was born is determined on the basis of a medical certificate of the birth of the child. However, this certificate is not always available at birth. After the birth of a child, for some reason, these medical certificates are not obtained. In this case, it will not be possible to register the birth by the civil registry authorities. In this case, the facts of when the child was born and from which mother it was born will have to be determined by the court. After these facts are established by the court, according to the document issued by the court, the birth of the child is registered by the civil registry offices, as well as the motherhood is determined by filling in the child's mother.

In the birth record, motherhood is determined not only by the filling of the mother's head, but also by the filling of the father's head by the father of the child. The mother of the child is the person with whom the child was legally married at the time of birth. This law is the same not only in our country, but also in other countries. For example, according to Article 1592 of the German Civil Code, the father of a child is the person with whom the child's mother was legally married at the time of birth (there are other rules, of course) [2]. It is known that the person indicated on the father confirms that the child was born from that father. If a woman has not had her legal marriage annulled but is not living with her legally married husband and has a child, then the person who was legally married to the child's mother at the time of the child's birth but did not

live with the child's mother is indicated as the father. This, once again, confirms in the legal field that the child was born of this man. That is, simply put, a biological father cannot always be a legal father, for which a legal marriage is essential.

In the above case, if the child's real father (biological father) wants to be identified as the child's father, he must apply to the civil registry office to establish paternity together with the child's mother, but with the child's mother to determine his paternity by the civil registry office. the consent of the person legally married is required. Similarly, in such a situation, the consent of the person who is married to the child's mother is also required to formalize the child's mother as a single mother. Today, when entering and leaving the country is as transparent as possible and our citizens go abroad in search of work or for other purposes, it is not always possible to find and obtain the consent of the person legally married to the child's mother. In such cases, because of the order in the law, we may find that a person who is not the biological father of the child may become the legal father of the child against his or her will.

The fact that a woman was not legally married to anyone at the time of childbirth in the registration of the birth of a child and the determination of paternity thereby changes the implementation of these records. In this case, paternity is established at the joint application of the parents (biological father, a person who assumes that he is the father of the child or a person who is not related to the child at all) at the birth of a child from an illegitimate mother. If the child is not recognized by the father, the woman is registered as a single mother. They are often accustomed to using the term single mother. There are a number of benefits in the legislation for a single mother. A single mother is an unidentified mother of the child's legal father. It replaces the term single mother with a single mother raising a child. A woman raising a child alone has a father, i.e. she is duly registered. However, if a woman is raising her child separately from the father for various reasons (divorce, husband's death, etc.), it is not a "single mother" but a "single mother." A single mother is a person who does not have a legal father of the child. In this case, only motherhood is determined when registering the birth of a child. However, according to the procedure for recording the birth of a child born to a single mother, a single child should not be left blank on the father. In this case, the entries on the parent column must be completed. In this case, it is allowed to write the father's name in the birth record book according to the mother's last name, the father's name, father's name and nationality - according to the mother's instructions. Paternity is not determined only by the fact that the entries in the paternity column, which is a legal fact determining paternity in the birth register, are filled in this way. That is, records that always create paternity do not create legal paternity this time. The person specified in the record shall not be considered the father of the child and no rights and obligations between them shall arise, change or be revoked.

If the child's mother was not married to anyone at the time of the child's birth, but the marriage ended due to the death of her husband, the divorce, or the marriage was declared invalid, and the child is born within three hundred days, that child is considered a married child. That is, if a child is born within three hundred days after the dissolution of the marriage, the child is considered to have been born from that marriage [3] and the husband in the dissolved marriage or the husband in a marriage declared invalid as the father of the child. In this case, the most important aspect is that the woman has not entered into a new marriage.

If a woman enters into a new marriage after a divorce or within three hundred days after the dissolution of her marriage due to the death of her husband, and the child is born, the child is considered to have been born from a new marriage and the child's legal marriage is indicated. This procedure is derived from the legal concept that the child's mother is the father of the child with whom the child is legally married at the time of birth.

In the experience of foreign countries, Book 1 of the Italian Civil Code deals with family relations, and Article 231, entitled "Fatherhood of the Earth", stipulates that the father of a child is the father of the child when the child is born and the child's mother is pregnant. Articles 113, 117, and 118 of the Spanish Civil Code also contain provisions on the presumption of paternity. According to Article 1593 of the German Civil Code, a woman enters into a new marriage within 300 days after the end of a marriage, and the child is considered born from a new marriage. In this case, the woman's ex-husband may dispute the pedigree of the child [6].

There is a "paternity presumption" [7] in private law and in public law regarding the determination of a child's lineage. According to this presumption, there is an order that the husband of the child's mother is the father of the child without any evidence proving that he is the biological father.

Above we have seen that in the case of paternity, the person who is married to the child's mother at the time of birth has preferential rights, and this procedure applies not only in our national legislation but also in many countries around the world. If we look for a solution in Islamic law, when Muhammad S.A.W. was approached in the sixth century over a paternity dispute over a child, Muhammad S.A.W. concluded: "Whoever is born in the bed of a child is his child." This indicates that the father of the child is also the person whose mother was in the marriage when the child was born [8]. The paternity presumption, which is solved by our current legislation, was given the right solution as early as the 6th century.

One of the most important procedures in determining paternity of a child is the recognition of paternity. Recognition of paternity A person who is not married to the child's mother recognizes the child as his or her own child. This is done in two ways. FXDYo and in court. In this case, it is important not only for the father to recognize, but also for the mother to recognize the consent of the father of the child. This recognition

of paternity is also reflected in Article 1592 of the German Civil Code. It is called the norm fatherhood and consists of rules that define who the father of the child is. In the first place in determining paternity, if the person who was married to the mother at the time of birth is the father of the child, the second method is the rule of recognizing the child. That is, the recognition of the paternity of the child is determined to constitute paternity.

According to our national legislation, if a person who considers himself the father of a child at the birth of a child from an unmarried mother applies to the civil registry office for paternity together with the child's mother, paternity is established without proof that the person is a biological father.

It is also possible to file a paternity claim if the paternity is not recognized by the biological father or if the person who is not married to the child's mother assumes that he is the biological father of the child and the mother does not agree. In this case, we can distinguish three levels of evidence in determining paternity in court.

The first important argument is that the defendant acknowledges the paternity of the child, in which case, if the alleged father admits that he is the father of the child, the court will make a decision on paternity without examining the circumstances of the case. The basis for assigning such a degree to this argument is that the recognition of paternity stems from the rules governing the determination of paternity of a person without biological tests and from the rules governing the legal consequences of recognizing a claim in a civil process. At the same time, we can see the will of the mother in determining paternity. That is, in cases where the mother has applied and the man is responsible, the mother is deemed to have consented to the recognition of that person as the father by filing an application. If the man comes out with a paternity claim, it is important that the mother acknowledges the claim.

Secondary evidence in determining paternity is the existence of other evidence that the presumed father lived and shared with the child's mother before the birth of the child, or that they raised or provided for the child together, as well as other evidence that the presumed father is the child's father.

The third level of evidence is medical examinations (DNA, etc.) that confirm the child's relationship with the father of the alleged child.

Based on the above, it follows from the presumption of paternity and the rules of recognition of paternity that persons who have been granted legal paternity of a child may not always be the biological father of the child. The fact that the child's legal father is not the child's biological father is not a problem. Perhaps the will of those who are not the biological father of the child is important in establishing their legal paternity in relation to the child. In this case, we can observe two different situations, the first is the circumstances in which the will of the child and the mother of the child play a role in the fact that the person who is not the biological father of the child becomes the biological father of the child. And conversely, there are cases where paternity can be determined by the non-

biological father becoming the father of the de jure child out of his or her will. Such cases are due to paternity presumption. In particular, a person who is legally married to a woman at the time of childbirth but does not live with her is considered and designated as the father of the child under this presumption. Therefore, it is advisable to annul a marriage without excessive barriers when it is broken in practice and the parties enter into a "family relationship" with other persons in practice. This in turn prevents objections to paternity that may arise later. Claims of paternity are more dangerous to society than claims of divorce.

We have analyzed above that a child may be a de jure father because of the presumption of paternity, even if the child is not the biological father, against the will of the individual. Of course, in such situations, there are cases of objections to paternity. Below we analyze the procedure for appealing paternity under our national law and try to give it a legal assessment.

Article 63 of the Family Code of the Republic of Uzbekistan provides for objections to paternity and motherhood. According to him, a person registered in the birth book as "father" or "mother" of the child has the right to appeal against this record in court within one year from the date when such a record was known or should have been known to him. If by that time the person registered as the father or mother of the child is a minor, the one-year period shall be calculated from the time the person reaches the age of eighteen. As mentioned above, this is not just an objection to records, but an objection to genealogy. After all, the persons recorded in the birth book as parents mean that the child was born from that parent.

If we discuss the procedure for appealing against paternity and motherhood, the most important thing is that the persons authorized to file this claim. According to our national law, only the child's legal mother and legal father can make this claim. We will evaluate the correctness or incorrectness of this limit through our analysis. In particular, the third part of Article 62 of the Family Code of the Republic of Uzbekistan stipulates that if a child is born within three hundred days after the marriage and the woman enters into a new marriage during this period, the child is considered born in a new marriage. It has been determined that there may be a conflict. This means that if the mother of the child enters into a new marriage within three hundred days after the dissolution of the previous marriage, and the child is born within that period, the child is considered to have been born in a new marriage. In this case, the legal father of the child is the husband of the child's new marriage. In such a situation, the law provided that the ex-husband and his family members could dispute the child's ancestry over the child's annulled marriage. But how is this done? By applying for paternity? Below we find the answers to these questions.

In the second paragraph of the fifth paragraph of the Decision of the Plenum of the Supreme Court of the Republic of Uzbekistan "On the application of legislation in paternity cases by the courts" Family code

The first part of Article 207 provides that the court may refuse to accept an application for paternity if the father of the child is another specific person. This

means that the ex-husband and his family members cannot file a claim for paternity based on the child's ancestry. In this case, it must be revoked by first filing a paternity appeal, after which a paternity claim can be filed.

So now, can a woman's ex-husband object to paternity in this situation? In this case, the woman's ex-husband cannot object to paternity in this case because the subjects objecting to paternity and motherhood are clearly defined by law, i.e. they are the legal mother and legal father of the child. If the mother of the child and the woman's husband at the time of the child's birth do not agree, it is practically impossible to determine the paternity of the ex-husband.

At this point, we will try to analyze this situation in terms of the legislation of other countries. For example, Articles 128-129 of the third section of the Family Code of Ukraine, entitled "Rights and obligations of mother, father and child", deals with the recognition of paternity, in which a person who considers himself the child's father (biological father) is the father of the child. (legally the father), i.e. he can sue for paternity. In this case, the statute of limitations is one year, starting from the day he knew or should have known his paternity. Recognition of paternity is carried out in court in accordance with Article 128 of the Family Code of Ukraine[9].

In Germany, the situation is slightly different. If we look at the fourth book of the Civil Code of the Federal Republic of Germany, called Family Law (the Civil Code of the Federal Republic of Germany is divided into books), this issue is resolved in a slightly different way [10]. 2.2 of this book is called "Ancestor". It regulates issues related to the origin of the child, the definition of his ancestors. In particular, this section covers motherhood, paternity, paternity of the child born after the death of the husband and the dissolution of the marriage, recognition of paternity, confirmation of paternity, as well as deadlines for objections to paternity, objections to paternity and other issues. Analyzing these norms, according to German law: de jure father, de jure mother, a person who considers the child to be the father, the child himself, the child's representative has the right to appeal against paternity [11].

Under Turkish law, paternity can be appealed by the child's legal mother and legal father, the child and his representative, as well as a person who considers himself the child's father, with the consent of the woman [12].

These analyzes show that under foreign law, an objection to paternity can also be filed by a person who assumes that he or she is the father of the child. In our national legislation, only a legal mother or a legal father can enter. Assessing the expediency of a person claiming to be the father of a child not to file a claim for paternity, we have analyzed in several cases where a person who is not the biological father of the child is recognized as the legal father of the child by the will of the mother and the will of the person acknowledging paternity. In particular, if a person who is not the father of the child together with the child's mother applies to the civil registry office to acknowledge paternity, the

civil registry office determines the paternity of the person without any biological tests. Also, if the paternity of the child is recognized by the court when the defendant acknowledges the paternity, his biological paternity will not be examined and the court will decide on the establishment of paternity.

In these cases, we believe that the rights and legitimate interests of those who recognize that the child is the father and consequently care for the child are violated if the right to file a claim for paternity is granted to the child and the biological father. That is, we believe that this procedure in our legislation is correct in order to guarantee the rights and legitimate interests of those who recognize the father of the child and, as a result, care for the child.

REFERENCES:

1. Ўзбекистон Республикаси адлия вазирининг 2016 йил 26 декабрдаги 306-мх-сонли буйруғи (рўйхат рақами 2547-1, 26.12.2016 й.) таҳририда — ЎР ҚХТ, 2016 й., 52-сон, 608-модда.
2. Bürgerliches Gesetzbuch (BGB). 1593 Vaterschaft bei Auflösung der Ehe durch Tod // https://www.gesetze-im-internet.de/bgb/_1592.html
3. Ўзбекистон Республикаси Оила кодекси 60-модда // Ўзбекистон Республикаси Олий Мажлисининг Ахборотномаси, 1998 й., 5-6-сонга илова.
4. Codice Civile Italia // <http://extwprlegs1.fao.org/docs/pdf/ita197336.pdf>
5. Spanish_Civil_Code_(Codigo_Civil_Espanol). // [https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Spanish_Civil_Code_\(Codigo_Civil_Espanol\).PDF](https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Spanish_Civil_Code_(Codigo_Civil_Espanol).PDF)
6. Bürgerliches Gesetzbuch (BGB). 1593 Vaterschaft bei Auflösung der Ehe durch Tod // https://www.gesetze-im-internet.de/bgb/_1593.html
7. The Presumption of Legitimacy // Michael H. and Victoria D., Appellants v. Gerald D. 491 U.S. 110 (1989) // <https://biotech.law.lsu.edu/Books/lbb/x650.htm>
8. Ахмад Лутфий Қозончи. Саодат асри. 4-китоб. – Тошкент, MUNIR, 2021. – Б. 79.
9. Сімейний кодекс України. (Відомості Верховної Ради України (ВВР), 2002, № 21-22, ст.135) // <https://zakon.rada.gov.ua/laws/show/2947-14#Text>
10. Bürgerliches Gesetzbuch (BGB). // <https://www.gesetze-im-internet.de/bgb>
11. Bürgerliches Gesetzbuch (BGB). // <https://www.gesetze-im-internet.de/bgb>
12. Türk Medeni kanunu. İkinci kitap aile hukuku. İkinci kısım hisimlik birinci bölüm soybağının kurulması. İkinci ayırım kocanın babalığı // <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.4721.pdf>;
13. Mamaraimova G. INHERITANCE ISSUES OF NON-PROPERTY (MORAL) RIGHTS OF INTELLECTUAL PROPERTY // Norwegian Journal of Development of the International Science. – 2021. – №. 65-1. – С. 20-23.

14. Мамараимова Г. М. Проблемы наследования интеллектуальных прав доменных имен по законодательству Республики Узбекистан //Журнал правовых исследований. – 2020. – Т. 5. – №. 2.
15. Мамараимова Гулрух ПРАВОВЫЕ ПРОБЛЕМЫ ТРАНСГРАНИЧНОГО НАСЛЕДОВАНИЯ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ // Review of law sciences. 2020. № Спецвыпуск. URL: <https://cyberleninka.ru/article/n/pravovye-problemy-transgranichnogo-nasledovaniya-intellektualnoy-sobstvennosti>.
16. Makhmudovna M. G. LEGAL PROBLEMS RELATED TO THE IMPLEMENTATION OF THE SPOUSE'S INHERITANCE RIGHT //European Journal of Research volume. – 2020. – Т. 5. – №. 9. – С. 52-56.
17. Makhmudovna, Mamaraimova Gulrukh. "LEGAL PROBLEMS RELATED TO THE IMPLEMENTATION OF THE SPOUSE'S INHERITANCE RIGHT." *European Journal of Research volume 5.9* (2020): 52-56.
18. Makhmudovna M. G. LEGAL PROBLEMS RELATED TO THE IMPLEMENTATION OF THE SPOUSE'S INHERITANCE RIGHT //European Journal of Research volume. – 2020. – Т. 5. – №. 9. – С. 52-56.
19. Makhmudovna G. LEGAL PROBLEMS RELATED TO THE IMPLEMENTATION OF THE SPOUSE'S INHERITANCE RIGHT.
20. Мамараимова Г. М. ХИЗМАТ КЎРСАТИШ БЕЛГИСИГА НИСБАТАН МУТЛАҚ ХУҚУҚЛАРНИНГ МЕРОС БЎЛИБ ЎТИШИ МАСАЛАЛАРИ //ЖУРНАЛ ПРАВОВЫХ ИССЛЕДОВАНИЙ. – 2019. – №. SPECIAL.
21. Мамараимова, Гулрух Махмудовна. "ХИЗМАТ КЎРСАТИШ БЕЛГИСИГА НИСБАТАН МУТЛАҚ ХУҚУҚЛАРНИНГ МЕРОС БЎЛИБ ЎТИШИ МАСАЛАЛАРИ." *ЖУРНАЛ ПРАВОВЫХ ИССЛЕДОВАНИЙ SPECIAL* (2019).
22. Mamaraimova G. INHERITANCE ISSUES OF NON-PROPERTY (MORAL) RIGHTS OF INTELLECTUAL PROPERTY //Norwegian Journal of Development of the International Science. – 2021. – №. 65-1. – С. 20-23.
23. Mamaraimova G. INHERITANCE ISSUES OF NON-PROPERTY (MORAL) RIGHTS OF INTELLECTUAL PROPERTY //Norwegian Journal of Development of the International Science. – 2021. – №. 65-1. – С. 20-23.
24. Guljazira A., Asal X. Formation and Development of ADR in Some Foreign Countries and in Uzbekistan //Middle European Scientific Bulletin. – 2021. – Т. 15.
25. Асаль Хайрулина, Давлат Хабибуллаев Медиация как новый вид альтернативных способов разрешения споров в Узбекистане // ОИИ. 2021. №3/С. URL: <https://cyberleninka.ru/article/n/mediatsiya-kak-novyy-vid-alternativnyh-sposobov-razresheniya-sporov-v-uzbekistane> (дата обращения: 27.07.2021).
26. Xayrulina A. B. International law: legal aspects of the protection of women's rights in UN system //Review of law sciences. – 2018. – Т. 3. – №. 1. – С. 14.
27. Khayrulina A. Legal aspects of the protection of women's rights within UN system //TSUL Legal Report International electronic scientific journal. – 2020. – Т. 1. – №. 1.
28. Хайрулина А. Б. Международно-правовые аспекты защиты прав женщин в системе ООН //ЖУРНАЛ ПРАВОВЫХ ИССЛЕДОВАНИЙ. – 2019. – №. SPECIAL.
29. Батирова К. ПРАВОВЫЕ ОСОБЕННОСТИ ИСЛАМСКИХ ЦЕННЫХ БУМАГ (СУКУК) //Review of law sciences. – 2020. – Т. 2. – №. Спецвыпуск.

THE ESSENCE OF THE INSTITUTION OF PRO BONO AND ITS IMPORTANCE IN CIVIL COURTS

Bebutova Z.

Tashkent State University of law

Department of Civil Procedural and Economic Procedural Law teacher

DOI: [10.24412/3453-9875-2021-77-3-46-50](https://doi.org/10.24412/3453-9875-2021-77-3-46-50)

Abstract

This article discusses the specifics of the institution of pro bono, its origin and history of development, the importance of pro bono in civil courts, the use and implementation of pro bono, the popularity of pro bono in international law, the role of pro bono in our national legal system and its improvement. In the process of studying this topic, the experience of many foreign countries has been studied.

Keywords: pro bono, civil procedure, lawyer, free legal services, voluntary activity, international pro bono.

The term "pro bono", which is widely used today, is an institution that has already been formed in the field of law in many developed countries. In particular, in countries such as the United Kingdom, the United States, South Korea, Australia, France "pro bono" has its own stages of development and its own special struc-

ture and today, based on the experience of these countries, a new term "international pro bono" is used in the field of law.

The term "pro bono", which is short for pro bono publico, is a Latin term that means "for the public good"[1]. The term usually refers to the provision of free legal services by lawyers to people who are unable