



NEWS, LATEST, CURRENT TOPICS

PATERNITY INVESTIGATION

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In the Portuguese legal system, the existence of children of an incognito father/mother has not been allowed for more than two decades!

Thus, whenever a child is registered and the birth certificate does not show the identity of the father or mother, the Civil Registrar must inform the Public Prosecutor's Office, which opens a process to investigate paternity or maternity.

In this article, we will focus on the judicial recognition of paternity, namely the **formal proceedings to investigate paternity**, as these are the **proceedings** that have the highest incidence in our courts.

In this specific case, and as has been pointed out, whenever a child's birth registration is filed with only the maternity established or whenever the mention of paternity in it is removed, it is up to the Registrar to send the competent court a full certificate of the birth registration in order to initiate the investigation of paternity, a process that precedes the legal court proceedings per se.

Once the certificate has been received, the Public Prosecutor's Office, the body with competence for this type of legal proceedings, begins the investigation into paternity. Within the scope of its powers, the Public Prosecutor's Office must take the necessary steps to identify the alleged father, starting its investigation, whenever possible, by hearing the mother's opinion on the paternity she attributes to her child. If the mother indicates who the (alleged) father is, or if this knowledge reaches the court by any other means, the father will be notified to be heard.

If the intended parent confirms paternity, a certificate of paternity will be drawn up and sent to the birth registry.

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If the alleged father denies or refuses to confirm paternity, the court will take the necessary steps to ascertain the viability of the paternity investigation action. In situations where the court concludes that there is reliable evidence of paternity, it will order the case to be referred to the Public Prosecutor's Officer at the competent court, so that the **formal proceedings to investigate** paternity can be started.

Our jurisprudence has considered the situations in which paternity is considered presumed to be reliable evidence of paternity:

- The situation in which the child has been recognised and treated as such by the alleged father and third parties;
- The unequivocal declaration of paternity by the alleged father;
- The de facto union and long-term concubinage between the mother and the alleged father;
- The seduction of the mother by the would-be father;
- The existence of sexual relations between the alleged father and mother during the legal period of conception, i.e. within the first 120 (one hundred and twenty) days of the 300 (three hundred) preceding the birth of the child.

In these terms, and whenever there is reliable evidence, the Public Prosecutor's Office will file the **formal proceedings to investigate paternity** against the alleged father, granting him a deadline to oppose the facts, if he so wishes, and requesting, in order to prove paternity, that a hematological test - known as a DNA test - be carried out in order to ascertain the degree of probability of his biological paternity in relation to the child.

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However, in view of the ever-increasing free movement of people, especially between European Union member states, the alleged father is not always on national territory, which could lead one to think that it would be quite difficult, or even impossible, to take biological samples for the hematological test.

However, this situation was improved by the Hague Convention of 18/03/1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, to which Portugal is a signatory. In this way, and by notifying the competent body in the signatory country of the Convention where the alleged parent is residing, it is always possible to take a sample of the biological material, thus ensuring that the most reliable proof of paternity is obtained.

By analysing the documentary and testimonial evidence that may exist in the case, and the result of the hematological test - which is considered full proof - the judge will order, if he considers the paternity of the alleged parent to be proven, the registration of the paternity and paternal ancestors in the child's register.

