



## DISPUTED CASES REGARDING THE DETERMINATION OF CHILDREN'S LINEAGE: IN DEFENSE OF THE INTERESTS OF THE VICTIMIZED CHILDREN

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### Abstract

This article discusses procedural rules related to the protection of children's rights and interests, particularly focusing on the types of disputes concerning the determination of children's lineage, the grounds, conditions, and procedures for establishing paternity. It provides insights into the issue of procedural subjectivity in such civil cases, as well as considerations on the status of a minor child as a victim.

**Keywords:** civil case, child, rights, interests, lineage, paternity, maternity, subjectivity, plaintiff, defendant, victim, procedural requirement, procedural rule, decision, ruling.

### Introduction

In the legislation of the Republic of Uzbekistan regarding family matters, particularly in the judicial practice of resolving disputes arising from family legal relations, a child (or children) is almost always depicted and protected as a victimized subject.

According to the analysis of judicial practice and numerous debates in academic research, in cases involving the dissolution of marriage, the upbringing and support of children, the cancellation of adoption, the termination of foster care, and other related disputes, children participate in the court process as a victimized subject, plaintiff, co-plaintiff, or co-defendant. However, they cannot directly act as a plaintiff or defendant because their procedural capacity does not allow it. Their rights and interests are protected by legal representatives.

However, in certain categories of civil cases, a child may independently apply to the court as a plaintiff. For example, in cases related to alimony recovery, paternity establishment, and others.

However, the question of "What role does a child play in the court process?" is a matter of debate.

Do all court rulings truly serve the protection of a child's interests? Although the legislation stipulates that the "priority of the child's interests must be ensured" in the cases under review, there are certain limitations within the legal norms.





According to procedural rules, in almost all family-related civil cases, the child's parents participate as plaintiffs and defendants. However, one issue remains contentious and full of academic debate: What is the role of the child in these proceedings? Is the child a plaintiff, a defendant, an additional defendant, a third party, or a co-participant? Procedural capacity grants the right to initiate legal proceedings only to those who have reached adulthood. Nevertheless, depending on the nature of the process in which the child is involved or whose interests are being protected, the child may hold different procedural statuses. For example, the status differs in cases related to custody, paternity establishment, or adoption. Various perspectives on this matter have been presented in academic research.

Civil cases related to the protection of children's interests are mainly resolved through claim procedures, order procedures, and special proceedings.

According to family law legislation and scientific-practical research, disputes (cases) concerning the determination of children's lineage are categorized as follows:

- Establishment of paternity
- Establishment of maternity
- Challenging paternity
- Challenging maternity
- Establishing the fact of paternity
- Establishing the fact of maternity

Among the norms related to family legal relations, issues concerning the establishment of paternity are considered one of the main institutions of family law. In family legislation, the issue of establishing paternity arises when a child is born to individuals who are not legally married, leading to the need to determine the child's lineage. Typically, the concept of paternity is based on both biological and legal grounds, which together form the basis for paternity determination. According to the norms of the Family Code, the establishment of paternity refers to the determination of a child's lineage, born to individuals who are not married, in accordance with the procedure established by law through the Civil Registry Office (ZAGS) or the courts. However, in some cases, disputes regarding the establishment of paternity or challenging paternity can also arise even when a child is born to parents who are legally married.

When establishing paternity through the courts, the judge, during the initiation of proceedings, must first determine whether the claim aligns with the relevant norms of family legislation, whether the claim falls under the jurisdiction of the court, and under which procedural category the claim should be considered.





The categories of establishing paternity through the courts, whether through claim procedures or special proceedings, differ in their unique procedural and substantive legal consequences.

These differences are most evident in the conditions for filing a claim with the court, the subject matter and means of proof, and the content of the judgment issued in the case.

Based on the general rules of court jurisdiction over claims, the court's jurisdiction over cases related to establishing paternity can be determined under the following conditions:

- The absence of a registered marriage between the child's mother and the presumed father in the Civil Registry Office (ZAGS);
- The absence of a joint application submitted by the child's mother and the presumed father to the Civil Registry Office;
- The absence of an application by the presumed father acknowledging paternity, approved by the guardianship and trusteeship authorities;
- The child being born after the applicable legal grounds came into force, specifically after October 1, 1968;
- The presumed father being alive.

Taking into account that cases concerning the establishment of paternity fall under the category of claim cases, as a general rule, such cases are filed with the court at the place of the defendant's permanent residence or place of permanent employment.

If the defendant's place of residence is unknown, the claim can be filed with the court where the defendant's property is located or at their last known place of residence. Additionally, to ensure the protection of citizens' rights and interests, the plaintiff may also submit claims related to the recovery of alimony, the establishment of paternity, compensation for harm caused by injury or other damage to health, or loss due to the death of a breadwinner to the court at their own place of residence. This type of jurisdiction is referred to as alternative jurisdiction.

Cases related to the establishment of paternity in court are handled either through claim proceedings or special proceedings.

To adjudicate cases regarding the establishment of paternity through claim proceedings in court, the following special conditions must be met:

1. There is no registered marriage between the child's mother and the presumed father in the Civil Registry Office (ZAGS);
2. There is no joint application by the child's mother and the presumed father for the establishment of paternity;





3. The presumed father is still alive;
4. In the event of the mother's death, if the mother is declared legally incapacitated, if it is impossible to locate the mother, or if the mother has been deprived of her parental rights, there is no application submitted by the person recognizing himself as the child's father, approved by the guardianship and trusteeship authorities;
5. If the child's father has been declared legally incapacitated by the court, there is no application from the father's guardian, approved by the guardianship and trusteeship authorities.

In addition to the specific conditions mentioned above for filing cases regarding the establishment of paternity, the following general conditions for filing a claim with the court must also be observed:

- The plaintiff must have civil procedural rights and legal capacity;
- The case must fall under the jurisdiction of the courts and be subject to judicial review;
- There should be no existing legal decision or ruling that has already been made by the court regarding the same dispute between the same parties, over the same subject matter, and on the same grounds that has entered into legal force.

In our view, the mother who files a claim for the establishment of paternity through the courts can be recognized as the plaintiff in a procedural sense. However, in reality, the mother is not the true plaintiff in the case; the child remains the plaintiff in all circumstances.

When establishing paternity through the courts, the judge must first resolve the following issues during the initiation of the case:

- Whether the claim aligns with the relevant norms of family legislation;
- Whether the claim falls within the jurisdiction of the court;
- Under which category of proceedings the claim should be resolved.

Typically, during the process of filing a claim to establish paternity, there are no legal relations between the child and the presumed father, as the relationship between only the mother and the child does not constitute a complete family relationship.

In claim proceedings, the basis for establishing paternity is the existence of a dispute between the parties regarding the paternity of a child born out of wedlock.

The law does not specify a statute of limitations for this category of cases, meaning that paternity can be established at any time after the child is born.

In addition to the specific conditions mentioned above for filing cases regarding the establishment of paternity, the following general conditions for filing a claim with the court must also be observed:

- The plaintiff must have civil procedural rights and legal capacity;





- The case must fall within the jurisdiction of the courts;
- There should be no existing legal decision or ruling made by the court regarding the same dispute between the same parties, over the same subject matter, and on the same grounds, which has entered into legal force.

Establishing paternity through special proceedings and recognizing the fact of paternity.

In addition to handling civil cases related to the establishment of paternity through claim procedures, such cases can also be resolved through special proceedings.

This is because Article 62, Part 4 of the current Family Code states that if a person who was not married to the child's mother but recognized himself as the child's father passes away, the fact of paternity can be established by the court. Such cases are typically resolved under the norms of civil procedural law as facts of legal significance. Special proceedings are a distinct type of judicial process, considered a special method of legal regulation based on the general rules of civil procedure. They involve the adjudication of non-contentious cases within the jurisdiction of the courts.

According to Article 295 of the Civil Procedural Code of the Republic of Uzbekistan, the fact of establishing paternity is categorized as a fact of legal significance and can be resolved through special proceedings, provided the following conditions are met:

- The applicant needs to establish this fact to create specific legal consequences;
- The applicant cannot obtain or restore the necessary documents to confirm this fact by other means (without involving the court);
- Establishing this fact directly influences, modifies, or terminates the personal or property rights of the individuals involved.
- Based on the conditions mentioned above, the recognition of paternity or the establishment of the fact of paternity allows the applicant to establish other important facts, such as kinship, dependency, the right to inheritance, and eligibility for benefits due to the loss of a breadwinner.
- In special proceedings, just like in claim proceedings, the civil process involves stages such as initiating the case, preparing the case for trial, conducting the court hearing, and issuing a judgment. However, special proceedings have certain distinctive features, including the absence of a dispute, the lack of disputing parties or third parties, and the participation of interested persons in the case.
- Additionally, due to the non-contentious nature of the proceedings, certain elements typical of claim proceedings, such as the acknowledgment of the claim, withdrawal of the claim, the formation of a settlement agreement, filing a counterclaim, and securing the claim, do not apply in special proceedings.





When adjudicating cases related to the establishment of paternity in court, the following procedural requirements must be observed:

- The protection of motherhood and childhood, as well as the priority of their interests, must be ensured.
- Paternity can be established for a child regardless of the origin or citizenship of the parents.
- The circumstances of a father who independently recognizes himself as the child's father and files an individual application with the court must be clarified, especially in cases where the child's mother has passed away, has been declared legally incapacitated, cannot be located, or has been deprived of her parental rights.
- To protect the privacy of the individuals involved, upon request, the case regarding the establishment of paternity may be heard in a closed court session to prevent the disclosure of information related to the personal lives of the participants.
- Given that the conditions, procedures, and legal consequences of establishing paternity are prescribed by law, the court is not authorized to approve a settlement agreement in such cases.
- If, during the preparation of the case for trial, the defendant acknowledges being the child's father, the court must explain to the parties the option of voluntarily formalizing the paternity by submitting a joint application to the Civil Registry Office and may grant them a specific period to do so.

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