

PROOF OF FILIATION BY RECOGNITION OF PARENTAGE IN ALGERIAN FAMILY LAW

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Abstract - The primary objective of the regulated provisions for proving filiation in family law, is to preserve it by adopting several methods to establish legitimate paternity. However, the search for this truth remains relative, as the legislator has preserved a role for will in proving filiation through the means of recognition of parentage and the testimony of witnesses, which are based on honesty and truthfulness. Recognition of parentage is considered one of the most important methods of proving filiation, although its application may raise various practical issues. These issues revolve around the conditions for its acceptance and reliance in proving filiation, especially if the legal marriage is absent in the person who acknowledges paternity or maternity. This article examines the conditions for proving filiation through recognition of parentage and the effect of the lack of marriage on proving paternity through recognition, in the light of jurisprudence and judicial reasoning of the Supreme Court.

Keywords: filiation Proof, recognition of parentage, marriage, acknowledge, lineage.

INTRODUCTION

Islamic law has given utmost **attention** to filiation, considering its importance and the necessity of preserving it from mixing, The Algerian legislator has defined how to prove filiation to protect it and prevent its mixing. The legislator has established conditions to safeguard lineages so that a child is not disowned from their origin except with a legitimate justification, and a person is not attributed to a person except through a legitimate method.

Algerian law has regulated the proof of filiation in Article 40 and subsequent articles of the Family Law, recognizing valid marriage as a reason for establishing lineage. This includes both valid and invalid marriages, cases involving suspicion, acknowledgment, and clear evidence.

recognition of parentage is considered one of the methods of proving filiation, correcting certain situations that may lead to the status of individuals with unknown lineage, making it difficult to prove their true parentage unless they are officially recognized.


However, the issue of proving filiation through recognition of parentage raises numerous legal and practical challenges. The most important of these challenges are related to its elements and conditions, the necessity of proving the legality of marriage in establishing lineage, or whether it is a prerequisite. Additionally, the research delves into its potential conflicts with other methods of proving lineage, especially given the conciseness of the legal texts regulating the matter and the judicial interpretations they have encountered.

Therefore, the research on this topic begins with the following question: To what extent is proving filiation through recognition of parentage justified in the light of family law and decisions from the Supreme Court?

To address this topic, we will follow the analytical approach to legal texts and judicial decisions related to the subject, and sometimes the comparative method, according to the following plan:

Section One: Concept of recognition of filiation.

Section Two: Challenges in Defining the Elements and Conditions of recognition of filiation.



Section Three: Challenges of Conflict between recognition of filiation and Other Established Methods.

1. Section One: Concept of recognition of filiation.

First Topic: Definition of recognition of filiation:

Linguistically, "acknowledgment" means proof, and its source is from confirming something, establishing a decision when it becomes settled and proven.¹

In terminology, scholars, especially those of the Hanafi school, defined recognition of filiation as "informing a person of the established right of another on oneself"². Since acknowledgment involves a potential oscillation between truth and falsehood, a reasonable argument was presented: that the prevalence of truth over falsehood is evident. This is because a person is not accused in what they acknowledge about themselves. Money is inherently beloved, so one does not falsely acknowledge it to others. Therefore, acknowledgment does not carry the burden of suspicion. This is supported by the Quranic verse: "He said, 'Have you acknowledged and taken upon that my curse?' They said, 'We have acknowledged.'" (Quran, Aal-E-Imran: 81).

Acknowledgment is also defined as "confessing what obliges the claimant under specific conditions."³

Professor al-Sanhouri defined acknowledgment as: (The acknowledgment by a person of a right on him to another, whether intended to incur this right in his liability or not).⁴

The Algerian legislator defined acknowledgment in Article 341 of the Civil Law as: "The confession of the adversary before the judiciary of a legal incident claimed against him while proceeding in the related lawsuit."⁵

Second Topic: Types of recognition of filiation

recognition of filiation has two types: the first is when the acknowledgee attaches lineage to himself, and the second is when he attaches it to someone else.

First: Direct Acknowledgment (No Attribution of Lineage to Others)

This concerns acknowledgment of paternity, maternity, or filiation. In the case of direct acknowledgment, lineage is not attributed to others. It occurs through direct acknowledgment of paternity or direct acknowledgment of filiation, such as acknowledging a child as one's own or a person acknowledging someone as their father. The Algerian legislator addressed direct acknowledgment in Article 44 of the Family Law.⁶

Second: Indirect Acknowledgment (Attribution of Lineage to Others)

Indirect acknowledgment involves acknowledging lineage attributed to others. It occurs between two individuals, neither of whom is originally related to the other but shares a common ancestor, usually a shared father. This type of acknowledgment includes indirect acknowledgment of kinship, such as acknowledging siblings or stating that someone is an uncle. Here, lineage is attributed indirectly, and the acknowledgment may involve relationships like saying, "This is the son of my father and mother" or "This is my uncle," where the lineage is indirectly attributed to the grandfather.

2. Section Two: Challenges in Defining the Elements and Conditions of recognition of filiation

¹ - Muhammad bin Bakr bin Manzur, *Lisan al-Arab*, vol. 5, Beirut edition, 1956, p. 84; Ahmed bin Muhammad bin Ali Al-Fayoumi, *Al-Misbah Al-Munir fi Qarib Al-Sharh Al-Kabir*, vol. 2, Al-Bayan Library Press, Beirut, D.S., p. 764.

² - Muhammad bin Mahmoud Al-Babarti, *Guidance, Care and Completion of Fath*, vol. 2, printed with the margin of *Fath Al-Qadeer*, Dar Ihya' al-Turath al-Arabi, Beirut, p. 282; See: Ibn Abidin Muhammad Amin, *Radd al-Muhtarala al-Durr al-Mukhtar*, vol. 8, Dar Alam al-Kutub, Riyadh, 2003, p. 350.

³ - Ahmed Al-Dardir, *Al-Sharh Al-Saghir*, Part Three, Al-Asr Foundation for Islamic Publications, Algeria, 1992, p. 218.

⁴ - Al-Sanhouri, *Al-Wasit*, vol. 2, Judges Club Edition, Egypt, 1983, p. 471.

⁵ - Article 341 of the Algerian Civil Code.

⁶ - Article 44 of the Family Law stipulates: "Plineage is proven by acknowledgment of filiation, paternity, or motherhood, for a person of unknown parentage, even in the event of death, when reason or habit confirms it."

In the context of the brevity of legal texts regulating recognition of filiation –unlike some comparative legislations– an issue arises regarding the definition of the elements and conditions of recognition of filiation. This will be addressed as follows.

Topic One: Elements of recognition of filiation

recognition of filiation involves several elements: the acknowledgee, the acknowledged lineage, and the formula. These will be discussed in detail below.

Subsection One: The Acknowledgee

The acknowledgee is the person claiming lineage, such as a father asserting paternity over a person with unknown lineage. It is a prerequisite that the acknowledgee be an adult of sound mind, not prone to falsehood due to mental incapacity or habitual lying. masculinity is not a requirement, given that the legislator recognizes maternal acknowledgment.⁷

Subsection Two: The person whose lineage is recognized:

This refers to the child with unknown lineage who has been acknowledged. It is imperative that the acknowledged individual has unknown lineage because proven lineage from one person cannot be transferred to another. The acknowledged individual must be born similarly to the acknowledgee, and the acknowledgment must not suggest that the acknowledged individual is born out of wedlock. Additionally, the acknowledgee must be believed in their acknowledgment.

Subsection Three: The Formula :

The formula entails openly declaring recognition of filiation, revealing a relationship between the acknowledgee and the acknowledged. It is a personal act that can only be carried out by the person with a personal affiliation, not by someone else. For instance, it could be an act performed by one of the heirs.

In summary, recognition of filiation comprises the acknowledgee (claiming lineage), the acknowledged lineage (a child with unknown lineage), and the formula (an open declaration of acknowledgment). These elements are crucial for the validity of the acknowledgment process.

Here, the issue arises due to the lack of legislation regulating the method of expressing lineage acknowledgment. While explicit acknowledgment poses no ambiguity, questions arise concerning implicit acknowledgment.

Explicit acknowledgment, whether verbal (e.g., stating "this child is my son") or through symbolic gestures or in writing free from forgery suspicion, is clear in establishing lineage. This explicit acknowledgment has legal consequences, including rights and responsibilities towards the acknowledged child.

However, the concern arises when it comes to implicit acknowledgment. Does it hold any weight in proving lineage? Despite the critical nature of this matter, the Algerian legislator has not provided clarity. This lack of clarification may pose practical challenges in cases where a lawsuit is filed to establish lineage based on implicit acknowledgment.

Implicit acknowledgment can take various forms, such as a husband agreeing to a lawsuit brought against him by his wife seeking child support. His agreement to the lawsuit may be considered implicit acknowledgment that the child is his. Other examples include a man's silence regarding people congratulating him on the birth of a child, a father's silence about not objecting to his child's birth certificate⁸, or a divorced man's silence about denying paternity when his ex-wife gives birth. These are all indications that may implicitly establish lineage.

⁷ - Anas Hassan Muhammad Naji, Genetic fingerprinting and the extent of its legitimacy in proving and denying lineage in light of Islamic jurisprudence and positive law, New University House, Egypt, 2010, p. 64.

⁸ - Ahmed Ali Jaradat, The Mediator in Explanation of the New Personal Status Law, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2016, p. 328.

Given the significance of this issue and the challenges it raises, the Algerian legislator should clarify the expression of recognition of filiation, following the example of some comparative legislations that have addressed this matter.⁹

Topic Two: Conditions of recognition of filiation :

Let's first examine the conditions set by Islamic jurisprudence for recognition of filiation, followed by those adopted by family law.

Subsection One: Conditions for Proving Lineage by Acknowledgment in Islamic Jurisprudence:

1. The Acknowledger Should Be of Unknown Lineage:

- For self-acknowledgment to be valid, the acknowledger must be of unknown lineage, meaning that the lineage is not known from someone else. If the lineage is known from someone other than the acknowledger, the self-acknowledgment is not valid. This is because established lineage from another person does not transfer or apply to someone else, and the acknowledger's acknowledgment cuts off the established lineage from another. The Prophet Muhammad, peace be upon him, cursed those who falsely claimed lineage to someone other than their real fathers.¹⁰

2. The confessed person must be able to prove his lineage:

- The acknowledger should be potentially provable in the lineage of the acknowledged. The senses should not overtly deny or contradict the acknowledgment. The acknowledger should be in an age range where it is conceivable for them to be the parent, capable of giving birth or fathering a child similar to themselves. If the acknowledger is in an age where it is inconceivable for them to be the parent or has physical characteristics that contradict parenthood, the acknowledgment is not valid. Similarly, if another person disputes the acknowledgment, claiming a conflicting lineage, the acknowledgment is not valid.¹¹

3. The Acknowledger Should Believe in Their Acknowledgment:

- The acknowledger should sincerely believe in their acknowledgment. If the acknowledger is capable of understanding and expressing themselves, such as being an adult with sound mind according to the majority, or capable of distinguishing themselves from others according to the Hanafischool, then their belief in the acknowledgment is required. However, if the acknowledger is a minor, there is a difference of opinion among scholars. According to the Hanafischool, a minor's acknowledgment may not require belief since they are not legally responsible. According to the Maliki school, belief is not a condition for proving lineage through acknowledgment, as lineage is a right of the child on the parent and is established by the parent's acknowledgment without necessarily requiring the child's belief.¹²

Subsection Two: Conditions for Proving Lineage through Acknowledgment in Algerian Family Law:

The Algerian Family Law touches upon the conditions for acknowledgment of lineage, kind of abbreviated, which has led to a lack of clarity in certain aspects compared to some other Arab legislations. Article 40 of the Family Law states: "Lineage is proven by valid marriage, acknowledgment, evidence, or consummated suspected marriage, or any marriage annulled after consummation according to Articles 32, 33, and 34." It specifies the conditions for acknowledgment in Articles 44 and 45.

⁹ - See Article 161 of the Jordanian Personal Status Law (Law No. 36 of 2010): "The acknowledgment of parentage may be explicit or implicit."

¹⁰ - It was narrated by Abu Dawud on the authority of Anas bin Malik, may God be pleased with him, with the wording: (Whoever claims to belong to someone other than his father or belongs to someone other than his loyalists, upon him will be the continuous curse of God until the Day of Resurrection). It was narrated by Al-Tabarani on the authority of Kharijah bin Amr Al-Jumahi, and it is weak, and the two sheikhs also included it. See: Al-Suyuti, Al-Jami' Al-Saghir, vol. 2, Dar Al-Fikr, Beirut, 1994, p. 162; Al-Haythami, Majma' al-Zawa'id, Part 4, Dar al-Ma'mun for Heritage, Damascus, 2009, p. 214.

¹¹ - Wahba Al-Zuhayli, Islamic jurisprudence and its evidence, vol. 7, Dar Al-Fikr, Damascus, 2nd edition, 1985, p. 691.

¹² - Ibid., p. 691.



- Article 44: Lineage is established through acknowledgment of paternity, maternity, or filiation even in cases of terminal illness, provided the acknowledgment is deemed truthful by reason or custom.

- Article 45: Acknowledgment of lineage other than paternity, maternity, or filiation is not binding on the acknowledged unless validated by the acknowledger.

Therefore, we conclude the legal conditions that must be met in the declaration of paternity, which are:

- The acknowledger should be of unknown lineage.
- The acknowledgment should be sincere and recognized by reason or custom.
- The acknowledger should validate the acknowledgment concerning the acknowledged.

Through the foregoing, it becomes clear that the Algerian Family Law attempts to incorporate the conditions stipulated by Islamic jurisprudence on this matter. However, these legal texts did not clarify many important issues.

The question arises in the case where an unknown parent claims the paternity of a specific person, whether it is sufficient to require that he be of unknown parentage and acceptable to reason and custom only. Or should the acknowledged father also believe in that acknowledgment? ¹³The latter, the father's affirmation, is more likely, although it is not explicitly mentioned.

Most Arab legislations have explicitly stipulated that an acknowledgment stating "this is my child" requires the father's affirmation to be valid. Examples of these legislations include the Tunisian Personal Status Code in Article 70 ¹⁴, Article 135 of the Syrian Personal Status Law ¹⁵, Article 94 of the UAE Personal Status Law¹⁶, Article 173 of the Kuwaiti Personal Status Law, And other comparative laws.¹⁷

Algerian Family Law did not address the extent of the necessity for the acknowledged father to affirm the acknowledgment of an unknown parent if they are an adult. This aspect is addressed in Moroccan Law in Article 160 and in UAE Law in Article 92.

Algerian Family Law also did not specify the condition that the child of unknown parentage should not be born out of wedlock¹⁸, unlike some other Arab legislations. For instance, the UAE legislation in Article 92 of the Personal Status Law states: "Acknowledgment of paternity is a statement issued by a father acknowledged by a legal father who is not born out of wedlock. Paternity acknowledgment by a grandparent is not valid." Similarly, the Kuwaiti Personal Status Law states: "... unless it is said that it is from adultery."

The Algerian legislator did not address this important issue, leaving it to the discretion of judges, some of whom may deny the establishment of paternity if it is proven to be from adultery, while

¹³- Triki Dalila, Establishing paternity by acknowledgment in the Algerian family law, Academic Journal of Legal Research, University of Bejaia, Volume 11, Issue 1- 2015, p. 201.

¹⁴ - Chapter 70 of the Tunisian Personal Status Code: "...if a child of unknown parentage acknowledges paternity to a man or motherhood to a woman and a similar child is born of the same acknowledgment and honesty, then their paternity is established for him and he has the same rights over them as the parents have, and he has over them what the children have."

¹⁵ - The Article 135 of the Syrian Personal Status Law states: "Acknowledgment of a child of unknown parentage by paternity or maternity is established by the acknowledgment of the person claiming to be the parent, provided that the acknowledged parent accepts it, and the age difference between them allows for such acknowledgment."

¹⁶ - Which stipulates that: "The acknowledgment of paternity or motherhood by someone of unknown parentage proves parentage if the person to whom it is acknowledged confirms it or there is evidence to that effect, if the age difference makes it possible."

¹⁷- It states: "The acknowledgment of a man's paternity of unknown parentage, even when he is terminally ill, proves paternity if reason or habit does not disbelieve him, and he does not say that it is adultery, and it is not required that the acknowledgment confirm him unless he is obligated, and the acknowledgment of an unknown parentage of the paternity of a man is proven by it if it is available." The conditions mentioned in the previous paragraph."

¹⁸ - Abdel Aziz Saad, Algerian Family Law in its New Dress, 2nd edition, Dar Houma, Algeria, 2009, p. 104.

others may establish it without conditions, relying on the conditions mentioned in the law ¹⁹, which we will discuss in the following section.

3. Section Three: Problems of conflict between acknowledging paternity and other means of proving it:

It may happen that acknowledgment conflicts with other established means of proving paternity, including marital cohabitation (bed), medical expertise, and in the absence of legal solutions provided by Algerian law for this issue, the importance of the judiciary exercising its discretionary power to address these challenges becomes evident. This involves interpreting general legal provisions regulating paternity or referring to specific legal provisions concerning its establishment and denial. Therefore, we will discuss the conflict between acknowledgment and marital cohabitation, and the conflict between acknowledgment and medical expertise

First Topic: Conflict between recognition of filiation and the Conjugal Bed (al-Firash)

We refer to the position of jurisprudence, then the Supreme Court's ruling on the necessity of proving a legitimate marriage concerning recognition of filiation, as follows.

First branch: Jurisprudential Position on the Necessity of Proving a Legitimate Marriage in recognition of filiation :

In accordance with the principle of preserving the child's rights, there is an inclination to expand the proof of lineage and tolerate it as much as possible. Lineage can be proven even in doubtful circumstances, within void marriages, or under the shadow of suspicion to revive the child's rights ²⁰. As long as the acknowledger does not explicitly state that the acknowledged is a result of illegitimate relations, lineage can be proven. Otherwise recognition of filiation is invalid. Illegitimate relations cannot be a basis for proving lineage.

Therefore, the acknowledgment of paternity should result from a valid, void, or suspicious marriage. Illegitimate cohabitation between a man and a woman renders acknowledgment void of legality and effect, and it is not legally attributed to the man. It is not sufficient for the existence of a functional relationship between a man and a woman; it must be proven to be legitimate.²¹

The jurists also consider that acknowledgment does not confirm lineage if there is stronger evidence contradicting it. For instance, if a man acknowledges a child as his own and his lineage is proven through another claimant providing clear evidence, the acknowledged lineage from the first acknowledger is invalidated.²²

The majority of Islamic jurists have unanimously agreed that adultery does not establish lineage, based on the saying of the Prophet (peace be upon him): "The child belongs to the bed, and the fornicator gets the stone (i.e., the punishment)" ²³. They concur that cases of adultery fall into two categories:

1. If the woman is married, every child she bears during that marriage is attributed to her husband and not to anyone else. Even if she insists that the child is from someone else due to adultery, it is not attributed to that person. However, if the husband disowns the child explicitly, the child's lineage is severed from the husband and is attributed to the mother, not the adulterer.²⁴
2. If the woman is unmarried, and she bears a child from adultery, scholars differ on whether the child is attributed to the adulterer or the mother. The prevailing opinion is that lineage is not established

¹⁹ - Tricky Dalila, *op. cit.*, p. 203.

²⁰ - This was confirmed by the Supreme Court in its decision No. 202430 dated 12/15/1998, *Judicial Journal*, No. 1, 1999, p. 122.

²¹ - Bin Shuwaikh Al-Rashid, *Explanation of the Algerian Family Law*, Dar Al-Khaldounia for Publishing and Distribution, Algeria, 2008, p. 33.

²² - Shamsal-Din al-Sarkhasi, *al-Mabsut*, vol. 16, Dar al-Ma'rifa, Beirut, Lebanon, 1989, p. 115; Al-Bahuti, *Kashshaf al-Qinaa' min Matn al-Iqnaa'*, vol. 6, Dar Alam al-Kutub, Beirut, Lebanon, 1983, p. 434.

²³ - This hadith is narrated by Al-Bukhari in his *Sahih* under the chapter: "The punishment for the adulterer is stoning," Hadith number 6463.

²⁴ - See: Supreme Court Decision, No. 1233783, dated 12/05/2018, *Judicial Journal*, Third Issue, 1994, p. 54.



from the adulterer. Instead, the child is attributed to the mother unless it is definitively proven otherwise.

It is also argued that lineage is not established for the child born out of adultery unless the act is based on a valid or void marriage, or a suspicious marriage, or ownership under oath, or a dubious form of ownership under oath. In such cases, the lineage is established to the adulterer, and inheritance rights apply. However, if the act is purely adulterous, the child is not attributed to the adulterer, and the lineage is not established. The child cannot inherit in such cases.

These rulings are grounded in the Prophet's (peace be upon him) judgments regarding the entitlement of a child born out of adultery: "Every child that rightfully belongs to someone is connected to his lineage after the person who claims him and his heirs. If someone possesses a slave and impregnates her, he has a right to the child, but he does not get a share of the inheritance allocated before him. Whatever he attains from the inheritance, he has a share in it. If the acknowledged father denies him, especially if he was a slave or a free woman engaged in fornication, he does not get connected to him or inherit from him. If the acknowledged father is the one who claims him, he is considered the child of fornication born to a free woman, whether she was a slave or free."²⁵

The jurists have established that the lineage of a child born out of adultery is affirmed concerning the mother because she is the one who carried, delivered, and nursed the child, while severing the lineage from the adulterer.²⁶

The majority of jurists agree that, for an acknowledgment of lineage to be valid, the acknowledger must not explicitly state that the child is his from adultery. This is in accordance with the saying of the Prophet (peace be upon him): "The child belongs to the bed, and the fornicator gets the stone," and his saying: "Whoever claims a child without a valid marriage, he neither inherits nor is inherited from."²⁷

Ibn Rushd mentioned ²⁸ : " The majority of scholars have agreed that the children of adultery are not attributed to their fathers except in Jahiliyyah (pre-Islamic ignorance). However, some deviated by asserting that the child of adultery can be attributed to the father in Islam, meaning if the act was committed out of adultery in Islam. Ibn Al-Qayyim argues that the correct analogy supports this view because the father is one of the adulterers, and the child is born from the shared act. The child is acknowledged by both parents, who agree that the child is theirs. In this case, why should the child not be attributed to the father if no one else denies it? This is a straightforward analogy."²⁹

The predominant view is what the majority has agreed upon. The saying of the Prophet (peace be upon him): "Whoever claims a child without a valid marriage, he neither inherits nor is inherited from" explicitly denies the lineage of the child. The term 'valid marriage' implies a legitimate lineage, while 'invalid marriage' implies lineage resulting from adultery. Thus, the child is not attributed to the adulterer and does not inherit from him.

This position is supported by another hadith narrated by Abu Dawood and An-Nasa'i from Amr ibn Shu'ayb, from his father, from his grandfather. The Prophet (peace be upon him) ruled concerning someone claimed by heirs after the death of the inheritor: If the child was from a slave owned by the inheritor at the time of conception, the child would be attributed to the inheritor from the moment of acknowledgment, provided the inheritor did not deny the child before his death. If the child was from an unmarried woman or from a free woman who committed adultery with him, the child would not be attributed to him, even if he was the one who claimed him during his lifetime.³⁰

Second Branch: The Requirement of Valid Marriage in recognition of filiation in Light of Supreme Court Decisions:

²⁵ - Ibn al-Qayyim, previous reference, 382.

²⁶ - Muhammad Abu Zahra, *Personal Status*, Dar Al-Fikr Al-Arabi, Egypt, 1957, p. 389.

²⁷ - Narrated by Abu Dawud on the authority of Ibn Abbas - *may God be pleased with him* - Sunan Abi Dawud, vol. 2, p. 279 (Hadith 2264).

²⁸ - Ibn Rushd, *The Beginning of Al-Mujtahid*, vol. 4, Ibn Taymiyyah Library, Cairo, 1415 AH, p. 215.

²⁹ - Ibn Qayyim al-Jawziyyah, *Zad al-Ma'ad*, vol. 5, Al-Resala Foundation, Beirut, Lebanon, 1998, p. 382.

³⁰ - Ibn al-Qayyim, previous reference, 382.

In the absence of explicit legal provisions on this matter, the significant role of judicial discretion in cases of proving lineage through acknowledgment becomes evident.

In this regard, the Supreme Court, in its decision dated 12-03-2015, file number 0860240³¹, concerning a dispute about proving lineage and acknowledgment of paternity, established the principle that "valid marriage is not a precondition for proving lineage through acknowledgment."

The Supreme Court, in this decision, asserted that the proof of lineage through acknowledgment does not necessitate proving the marital relationship. It did not delve into the nature or legality of the relationship but endorsed the principle that acknowledgment alone is sufficient to prove lineage, even in the absence of a formal or religious marital relationship. The Algerian legislator, in Article 40 of the Family Code, affirmed that lineage can be proven through valid or void marriages, acknowledgment, clear evidence, or any marriage dissolved after consummation. Therefore, the legislator emphasizes four methods of proving lineage: valid and void marriages, consummation with suspicion, acknowledgment, and clear evidence.

On the other hand, Article 41 of the Family Code states that a child is attributed to his father when the marriage is legitimate, and contact is possible, without being denied through legal means.

This raises the question of whether a child born out of adultery, or a child resulting from an illegitimate relationship, can be attributed to the father through acknowledgment. The Supreme Court decision implicitly contradicted the majority opinion of jurists by not addressing the nature of the relationship that led to the child's birth. It explicitly affirmed that acknowledgment can establish lineage without the need for a marital relationship. In other words, a father can acknowledge paternity even if the child is born out of an illegitimate relationship.

In a previous decision, the Supreme Court emphasized that combining acknowledgment of pregnancy with the provisions of Article 41 of the Family Code, which defines the duration of pregnancy, is not permissible. The court reasoned that acknowledgment, once proven, obviates the need for any other evidence. The one who acknowledges paternity is not allowed to introduce any evidence to nullify this acknowledgment.³²

Another decision highlighted that an acknowledgment of paternity, even if it is merely verbal without attributing lineage to others, is legally and religiously binding for proving lineage. Such acknowledgment stands as evidence against the one who acknowledges, even if alternative evidence is presented. It cannot be refuted, whether by witness testimony, scientific expertise, or claims of adoption or otherwise, whether from the acknowledger himself or his heirs after his death. This is because it entails the child's right to lineage.³³

Second Topic: Conflict Between recognition of filiation and Medical Expertise:

In line with rapid developments in the medical and biological fields, Algerian legislation, through Law 05-02, introduced scientific methods as a means of proving lineage. This was done to preserve it from loss and protect the rights of children, mothers, and fathers³⁴.

However, conflicts may arise between the results of scientific methods used to prove lineage and acknowledgment. This raises the question of whether it is possible to reconcile the findings of both methods to establish or negate lineage.

Regarding the use of scientific methods to establish lineage, Algerian legislation, while acknowledging acknowledgment as a means of proving lineage, has not addressed situations where there is a conflict between acknowledgment and medical expertise or other scientific methods. This presents a challenge that the legislator must regulate, especially since the use of scientific methods in proving lineage is currently limited. While these methods are allowed, they are not obligatory.³⁵

³¹ - Supreme Court Journal, First Issue, 2015, p. 239.

³² - Supreme Court, Decision No. 355180 dated 03/05/2006, Supreme Court Journal, First Issue, 2006, p. 474.

³³ - Supreme Court, Decision No. 0761943 dated 11/14/2012, Supreme Court Journal, Issue Two, 2013, p. 286.

³⁴ - Idris Al-Fakhouri, denying and proving lineage through medical tests, a legislative, judicial and jurisprudential approach, Defense Message Magazine, No. 3, Morocco, 2002, p. 89.

³⁵ - Article 40/2 of the Algerian Family Code.

In cases where scientific methods conflict with acknowledgment, it is crucial to give weight to scientifically proven results, especially if these methods were used under secure conditions without any manipulation. However, a previous decision by the Supreme Court stated that acknowledgment, even if not explicitly attributing lineage to others, stands as evidence for proving lineage. According to the court, once acknowledgment is established, it cannot be refuted either by witness testimony or scientific expertise.³⁶

Concerning the use of scientific methods for the mother, who is appointed by the inheritor, she has the right to deny the child's lineage (acknowledged by another) by relying on medical expertise or blood analysis. This solution arises due to the lack of regulation in Algerian legislation regarding the important issue of the possibility of rejecting acknowledgment by providing evidence that disputes the validity of inheritance, especially when the child is born from her womb, and she is aware of the true lineage.³⁷

Another issue arises concerning the absence of a legal provision allowing the acknowledger to retract his acknowledgment if it is proven beyond doubt that there is no biological link between him and the acknowledged child. This is akin to what Islamic jurisprudence states about the possibility of retracting acknowledgment if it is proven, beyond a doubt, that the claimed lineage does not exist, whether due to error, ignorance, or deception. The absence of a legal framework on this matter presents a challenge that needs to be addressed.

The legal discourse maintains that if paternity is established through acknowledgment, subsequent denial by the acknowledging party is not accepted. This is because paternity is proven by a legitimate claim, and denial does not invalidate it, similar to cases where paternity is established through evidence or marital relationship. The Shafi'i and Hanbalischools argue that if a sane adult acknowledges paternity and later retracts, affirmed by the acknowledging party's sincerity, the paternity is annulled. However, the consensus is that once paternity is established, unanimous agreement is required to annul it, similar to the established paternity through marital relations. This is distinct from financial matters, as paternity requires specific evidence.³⁸

In light of the advancements in scientific methods for proving paternity, there is a diminishing justification for adhering to the previous legal rule, especially considering it is a product of pure juristic reasoning without reaching the level of established legal rulings. Scientific methods, particularly DNA testing, are increasingly accepted for correcting paternity disputes, especially in cases involving unknown parentage and conflicting acknowledgments.

Therefore, there is a pressing need to prioritize the results of genetic fingerprinting in paternity disputes over acknowledgment and self-claiming, as both acknowledgment and witness testimony are subjective and susceptible to error, doubt, deception, imagination, and forgetfulness. Genetic fingerprinting results, on the other hand, provide almost absolute certainty. Jurists unanimously agree that acknowledgment, if the conditions are met, does not confirm the established paternity. If a man acknowledges a child as his and the affiliation is proven, and another man challenges it with clear evidence, the established paternity is affirmed by the evidence presented, and the acknowledgment is nullified³⁹. There is no doubt that resorting to DNA testing resolves this issue by confirming the true paternity of the child.

In conclusion, as legal and scientific landscapes evolve, embracing the results of genetic fingerprinting becomes crucial in paternity disputes. DNA testing provides a level of certainty and accuracy that surpasses acknowledgment and witness testimony, ensuring a more just determination of paternity.

CONCLUSION

Through the exploration of this search, several key points emerge:

³⁶ - Supreme Court, Decision No. 0761943 dated 11/14/2012, Supreme Court Journal, Issue Two, 2013, p. 286.

³⁷ - Nadia Sharoud, acknowledgment of parentage and its relationship to the Civil Status Law and some means of proving parentage, *Al-Mandarah Magazine*, No. 14, 2010, p. 113.

³⁸ - Ibn Qudamah, *Al-Mughni*, op. cit., p. 206.

³⁹ - Al-Sarkhasi, *Al-Mabsoot*, previous reference, p. 115.



- Paternity is a Fundamental Right: Recognized as one of the most important rights established by Islamic law, paternity is crucial for preserving family ties. The legal system has sought to safeguard and expand the methods for proving paternity, aligning with the principle of preserving lineage.

- Diverse Methods for Paternity Proof : The legislator has acknowledged various methods for proving paternity, including acknowledgment (iqrar).

- Incontestable Nature of Acknowledgment: Acknowledgment, once established, holds a similar incontestable status to paternity established through marital relations.

- Unaddressed Issue of Illegitimate Offspring: The Algerian legislator has not explicitly addressed the matter of acknowledging offspring born out of wedlock. This is a contentious issue among jurists, with prevailing opinion disallowing acknowledgment of illegitimate offspring by the adulterer.

- Court Decisions Focus on Acknowledgment Conditions: The majority of decisions by the Supreme Court in paternity acknowledgment cases focus on the fulfillment of acknowledgment conditions, without delving into the legitimacy of the marital relationship.

Based on the above findings, the following recommendations are proposed for improving the legal framework around paternity acknowledgment:

- Precise Conditions for Acknowledgment: Clearly define conditions for proving paternity through acknowledgment, especially regarding the form of acknowledgment.

- Mention of Legitimate Relationship in Paternity Acknowledgment: Explicitly state the necessity of a legitimate marital relationship in acknowledging paternity. The acknowledger should not confess to an illegitimate relationship, or else the acknowledgment claim by the alleged father should be rejected.

- Consent of Acknowledger of Unknown Lineage: Emphasize the need for the acknowledger to consent if of unknown lineage, provided they are an adult.

- Enhanced Role of Scientific Methods: Activate and prioritize the role of scientific methods in paternity proof, favoring them over acknowledgment in case of conflict.

In conclusion, refining the conditions for paternity acknowledgment, addressing the legitimacy of the marital relationship, and giving due consideration to scientific methods are imperative steps for a more comprehensive and just legal framework regarding paternity acknowledgment.

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