

# Legal presumption of paternity determination vs. the material truth

## Abstract

This work discusses the relationship between paternity determined by one of the legal presumptions of paternity determination, as defined by the Civil Code, and the material truth, or the possible contradiction between them, which the nature of the legal regulation allows. In the Czech Republic, the paternity determination is governed by a total of five legal presumptions, which are based on the probability of paternity determined by them – a *first* presumption testifying to the mother's husband *ex lege*, its *conversion* in favor of the second presumption in the case of divorcing marriage, a *one-and-a-half* presumption consisting of the father's consent to the mother's artificial insemination, a *second* presumption based on the parent's consent statement before the relevant public authority, and finally, a *third* presumption based on the fact of the intercourse between the father and the mother at a decisive time, when paternity is determined by a court decision based on the proposal of some of the concerned persons. However, it follows from the nature of the matter, that paternity determined in this way does not have to be in conformity with biological paternity. The legal presumptions can be a means of quick and effective resolving situations, in which there is no dispute regarding paternity, a legal instrument enabling the concerned persons to adjust their family arrangement due to their own ideas, but also the cause of many paternity disputes, if the paternity determined by them is contrary to the material truth. In the ideal case of paternity determination by legal presumptions, there is a conformity of biological, legal and social paternity. In non-ideal cases, there is a conflict among them. This conflict is resolved by judicial practice, depending on the sensitive balancing of the rights and legal interests of the concerned persons in each specific case, while the child's interest in a quick and effective adjustment of his relationship with his father, the development of social relations and an impeccable upbringing, is the leading viewpoint in the decision making of public authorities.

## Key words:

Paternity determination

Material truth

Conformity of legal and biological paternity