

The Concept of Lineage, Types of Lineage and a General Evaluation of the Establishment of Lineage



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ABSTRACT: The aim of this study is to examine the legal and bioethical problems that arise in the field of lineage in our Civil Law. While these problems were examined, the concept of lineage, its types, the establishment of paternity and its provisions were discussed theoretically. Comparisons were made to better understand the development of the problems. With the entry into force of the new Turkish Civil Code(TCC) No. 4721 on January 1, 2002, very important changes were made. One of the most important changes among these changes is the changes made in the field of "lineage Law". With our new Civil Code, the concepts of valid lineage and non-authentic lineage have been abolished and only the concept of "lineage" has been included. An attempt has been made to envisage common provisions between the child born within marriage and the child born outside of marriage and to minimize privileges. In order for the provisions of lineage regulated in Articles(art.) 321-334 of the Turkish Civil Code to be implemented, lineage must be established between the child and the mother and father. In order to establish lineage in the Turkish Civil Code, a blood bond or an adoption relationship is required between the child and his/her parents. Family lineage based on blood ties; birth from the mother's side, paternal lineage between the child and the father; It can be established through marriage with the mother, recognition, judgement, and adoption. Paternity case; It is filed by the mother and/or the child against the man who is claimed to be the biological father of the child. If the child has a lineage relationship with another man, a lineage relationship cannot be established between the biological father and the child by recognition. In terms of the provisions of paternity in the Turkish Civil Code, no distinction is made according to the way in which the filiation based on blood ties was established between a person and his parents, and whether the person was born within or outside of marriage. Children born within marriage and children born outside of marriage are considered equal in rights and duties in terms of their relations with their parents and are subject to the same provisions. These provisions of the Turkish Civil Code regarding paternity are also applied to the adopted child in cases where there is no special provision regarding adoption. In the study, although it is not very detailed, it has been tried to clarify the solution of the problems related to the determination of lineage by making use of the new Civil Code and the views in the doctrine.

KEYWORDS: Lineage, Determination of Lineage, Adoption, Paternity Law, Recognition.

1. INTRODUCTION

Throughout history, marriage has been considered sacred in all societies and has been protected by being built on solid foundations. Accordingly, determining the lineage between the individual, who is considered the cornerstone of society, and his parents is a problem that has not been fully resolved to this day.¹ A healthy society consists of healthy individuals. The ability of individuals to be healthy since their childhood depends on their social conditions as well as their genetic conditions. While the first social structure that children are in is the family institution, the first people they communicate with are family members. Among these people, the family members that children need and communicate with most are their mothers and fathers.² Lineage constitutes the most important and deep-rooted legal bond of an individual. The child's right to learn about his or her lineage is protected within the scope of the "right to protect and develop material and spiritual existence" regulated in Article³ 17 of the Constitution.⁴ However, article 7 of the Convention on the Rights of the Child states that the child has "the right to know his or her parents and to be cared for by them, as far as possible".⁵ Lineage means commitment to a certain lineage. In other words, lineage is the name of the connection that connects a person to the person from whom he is descended. In this respect, lineage answers the question of whose lineage a person is descended from. In all societies and legal systems, great importance has been attached to lineage relations, and

¹ Tokar Zühal "Paternity case" Ankara University Social Sciences. E. Private Law, Master's Degree, 2004 p.1

² Kutoğlu Tuba "Paternity Clause in Turkish Legislation and Law" Dokuz Eylül University Faculty of Law Journal Volume: 12, Özel S., 2010, p.945-984 (Publication Year: 2012)

³ O.N. Date: 9/11/1982 Number: 17863 (Repeated).

⁴ Constitutional Court, 2013/62 B., 2013/115 L., 10.10.2013 D.

⁵ O.N. Date: 27.01.1995, Number: 22184.

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various measures have been taken to ensure that the lineage established is realistic. Lineage; Its establishment, detection and rejection are important in terms of both securing the interests of the child and creating a healthy family and social structure. The Turkish Civil Code (TCC) regulates how to establish and terminate the child's lineage with his/her parents. Regardless of all these, it is accepted in the doctrine that a person has the right to learn his origins and that this right can be asserted through case. The European Court of Human Rights, the Swiss Federal Court and the German Constitutional Court have recognized the right to learn one's origins in many of their decisions.¹ The Civil Code, which was taken from Switzerland and came into force on 4.10.1926, played a major role in this issue and provided an important guarantee for both women and their future children by stipulating a civil marriage. However, requiring civil marriage has not been able to prevent the increase day by day of unions without official marriage and the children who are the product of such unions outside of marriage. There is no doubt that such relationships victimize children who have no role in their birth within or outside the marriage union. The most important reason why children become victims stems from the establishment of lineage relationship between them and their parents. It is easy to determine the mother of a child born within or outside the marriage union. The woman who gives birth to the child is the mother. However, determining the father is not that easy.² The term lineage is a term introduced into the legal language with the Turkish Civil Code No. 4721, instead of the term "lineage" used in the Civil Code No. 743. While lineage in a broad sense refers to the connection between a person and his ancestors, the term lineage included in the Turkish Civil Code only refers to the connection between the child and his parents. In the Turkish Civil Code, in order to establish this connection, that is, lineage, a blood relationship between the child and his parents or the establishment of an adoption relationship between them is required. The provisions that will be applicable when lineage based on blood ties or adoption is established between the child and the parents are regulated by articles 321-334 of the Turkish Civil Code. With these provisions, the issue in question between the child and his/her parents with whom there is a lineage, However, personal and financial mutual rights and obligations, which are not necessarily dependent on custody, are regulated. In the Civil Code No. 743, a distinction is made between children born within marriage and children born outside marriage in terms of lineage and are subject to different provisions. The difference in status between children born within marriage and children born out of marriage has made this inequality-creating regulation one of the most discussed issues in family law.³ With the entry into force of the New Turkish Civil Code No. 4721 dated 22.11.2001 on January 1, 2002, many radical changes have occurred in the field of lineage law. By leaving behind the distinction between illegitimate and genuine lineages in the Old Civil Code No. 743, it is aimed for children to be legally bound to their parents without discrimination. According to our Civil Code, the lineage between the child and the mother is established through "birth" and "adoption", while the lineage between the child and the father is ensured through "marriage with the mother", "recognition", "judge's decision" and "adoption". With the regulations in the New Civil Code, the lineage between a child born within marriage and his father is no different from the lineage established between a child born out of marriage and his father.⁴

2. LINEAGE IN GENERAL

2.1. Concept of Lineage

Lineage refers to the bond between a child and its parents.⁵ Therefore, lineage is the bond that shows who a person is descended from and means loyalty to a certain lineage.⁶ Although the term lineage is a new term introduced into the legal language by using it in our New Civil Code dated⁷ 22.11.2001 and numbered 4721, instead of "lineage" in our Old Civil Code⁸ dated 17.2.1926 and numbered 743, it is used in two different senses, one broad and the other narrow. Lineage in a broad sense; It refers to the blood bond, that is, biological affiliation, with one's lineage. Lineage in a broad sense; It refers to the blood bond, that is, biological affiliation, with one's lineage. In this sense, lineage; It is a term that expresses and includes one's attachment to one's parents and grandparents.⁹ In the narrow sense, lineage is; It refers only to the bond between a person and his parents.¹⁰ Lineage means a group of people descended from an ancestor, lineage. In addition, it also includes the meanings of kinship, patriline, ancestral chain. Lineage means commitment to a certain lineage. In other words, lineage is the name of the connection that connects a person to the

¹ Dönmez Zeynep "An Assessment on the Basis of the Relationship Between a Case Regarding the Detection of Origin" TAAD, Year:9, Issue:36 (October 2018) p.172

² Tokar Zühal "Paternity case" Ankara University Social Sciences. E. Private Law, Master's Degree, 2004 p.1

³ Saribaş Azime "Establishment And Provisions Of Paternity" Akdeniz University Social Sciences. E. Private Law, Master's Degree, 2019 p.1

⁴ Başpınar, Veysel: "Changes Made in the Turkish Civil Code and Family Law and Some of Our Suggestions on This Subject" AULFJ, V.52, issue.3, 2003, pp.79-101

⁵ Oğuzman and Dural, 2001: 197

⁶ Kılıçoğlu, 2015: 511; Baygı, 2010: 1.

⁷ O.N. D. 8.12.2001, No. 24607; Effective Date: 1.1.2002. In our future explanations, it will be expressed as "Civil Code (CC)".

⁸ O.N. T. 4.4. 1926, P. 339; Published: issue 3. Vol. 7, p. 237. In our future explanations, it will be expressed as "Old Civil Code (OCC)".

⁹ Velidedeoğlu, Hıfzı Veldet: Turkish Civil Law, Vol. 2, Family Law, B.5, Istanbul 1956 p.312; Feyzioğlu Necmettin F: Family Law, B.3, Istanbul 1996, p.147; Saymen Ferit H-Elbir Halit: Turkish Civil Law, V.3, Family Law, 1957, B.2 p. 290.

¹⁰ Öztan Bilge: Family Law, Ankara 1983, B.2 p. 301; Acabey, p.5; Velidedeoğlu, p.312; Kaneti Selim: Family Law, B.2, Istanbul 1989, p.206

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person from whom he is descended. In this respect, lineage answers the question of whose lineage a person is descended from.¹ In the Old Civil Code, the word "lineage" was used in a narrow sense and was regulated in articles 241 and following under the title of "relatives". Provisions regarding lineage in the New Civil Code are regulated in Articles 282 and the following, in the first chapter of the 2nd part of the Family Law, titled "Relationship".² The concept of kinship refers to the relationship between a person and certain individuals due to blood ties or as a result of adoption or marriage, which has certain legal consequences. In other words, kinship includes blood kinship established between people through blood ties, artificial kinship established through adoption, and in-law kinship established through marriage. Relatives established through blood kinship and adoption are included in the concept of lineage in a broad sense. However, the legal bond established between one spouse and the blood relatives of the other spouse as a result of marriage, that is, in-law kinship, remains outside the concept of paternity. Therefore, the concept of lineage in both broad and narrow senses constitutes the narrower sub-concept of the concept of kinship.³

3. TYPES OF LINEAGE

The concept of lineage, defined in various ways, differs in terms of its types. We can divide lineage into two: natural lineage and legal lineage. The genetic blood bond that occurs biologically between the child's mother and father after the child is born is called natural lineage. A natural lineage relationship is established even with children whose mothers and fathers are unknown. Legal lineage, on the other hand, is the connection of the child to the mother and/or father, provided that the legally required conditions are present, and it does not have to be based on a genetic relationship; It can be established by the court's determination of the blood relationship between the child and his parents, or it can be established by adoption.⁴ Establishing paternity on the basis of genetics and blood ties is called real lineage, while establishing paternity through adoption as a result of a court decision without any blood ties is called artificial lineage.⁵ It is subject to various distinctions, including valid and illegitimate lineage, depending on whether the parents of the child are married to each other, which was also taken as basis in the Old Civil Code.

3.1. Natural Lineage-Legal Lineage

It is possible to diversify the narrow sense of Lineage, which means the natural and legal connection between the child and the mother and father, according to the way this connection occurs. In this regard, lineage can be divided into two categories: natural lineage and legal (artificial) lineage.⁶ Natural lineage; It refers to the bond between the child and the parents at birth.⁷ This bond is formed directly as a biological bond and emerges as a blood connection between the child and the parents. It refers to the bond based on biological and genetic foundations and is formed directly at birth between the child and the mother and father. In other words, the lineage that occurs between the woman who gives birth to the child and the man who fertilizes the egg cells of this woman and the child, and that emerges as a pure blood and genetic connection, is called natural lineage.⁸ Since natural lineage is a bond between the child and the parents that occurs spontaneously at birth; This bond is based on biological and genetic foundations between the child and his parents.⁹ The natural bond between a person (child) and the people from whom they are biologically-genetically derived is called natural lineage.¹⁰ Natural lineage arises spontaneously at birth. In other words, as a rule in our law, the lineage between the child and his parents is based on genetic origin and biological descent. However, the term parents only refers to those from whom the child is biologically derived; In other words, it is not used to refer to people with whom there is a natural (biological and genetic) lineage. For example, there is not a natural (biological and genetic) lineage, but a legal lineage, between the husband who does not reject the paternity of the child from another man and the people who adopt other people's children and the child.¹¹ In such cases, it becomes necessary to decide which of these two types of parenthood the legal order will give priority to, namely natural (biological-genetic) parenthood and legal parenthood. Legal lineage is; It means that biological lineage is recognized by the legal order and results are attached to it. In other words, legal lineage; In addition to blood ties, lineage gains legal value when the conditions required by law are met. Although natural lineage and legal lineage often overlap, this is not always the case. Legal filiation does not always have to be based on blood relations; This bond can also be established based on social and spiritual bonds, as in adoption. In this context, legal lineage can be divided into two: lineage based on blood ties and (artificial) lineage based

¹ Uyumaz Murat "Procedural Provisions of Lineage Suits" Erzincan University, Social Sciences Institute, Private Law Department Master's Thesis, October 2014, p.3

² Acabey, p.5

³ Baygın, 2010:3

⁴ Demirbaş, p.4; Sagiri, p.59.

⁵ Egilmezgil Sena Gözde, "Paternity Case" Selçuk University Vocational School of Justice Journal, Vol.3, P.1, 2020, p.136-175 p.140

⁶ Uyumaz Murat "Procedural Provisions of Lineage Suits" Erzincan University, Social Sciences Institute, Private Law Department Master's Thesis, October 2014, p.3

⁷ Akıntürk, Turgut: Turkish Civil Law, Vol. 2, Family Law, B.6. Ankara 2002, p.314

⁸ Baygın, "Soybağı", p. 5.

⁹ Velidedeoğlu, Hıfzı Veldet: Turkish Civil Law, Vol.II, Family Law, 5th Edition, Istanbul 1965.p.249

¹⁰ Akıntürk, Turgut Turkish Civil Law - Family Law Adapted According to the New Civil Code, 9. ed., V.2, Beta Kitabevi, Istanbul, 2004. p.314

¹¹ Serozan, the concept of "social-spiritual lineage" is also used in the doctrine to express legal lineage. See SEROZAN; Children's Law-2005, p. 169

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on adoption. Lineage based on blood bond is the legal lineage based on the blood tie between the mother, father and child.¹ This lineage is established by birth from the mother's side (Turkish Civil Code art. 282. clause(c). 1). Accordingly, the establishment of maternal lineage is not tied to a legal transaction, but directly to a legal event, that is, the event of birth. Whether the mother was married at the time of conception or at the time of birth does not change this result.² As a rule, the mother of a child is always certain and unique according to the fact of birth. But this is not always the case. As a result of the developments in the field of medicine and gene technology, this rule has become open to discussion. Especially in cases where the mother's eggs are fertilized with the husband's sperm outside the uterus and transferred to the uterus of a hired mother and this woman gives birth, or in cases where egg donation is made to married couples, the question of who the child's mother is, in other words, which mother the child will be related to, comes to the fore.³ Although this issue is controversial in doctrine, in our opinion, the mother should be determined according to birth, even if the child is born from another woman's egg. In other words, the mother of the child is the woman who gave birth to him. It is also possible to reach this conclusion from the text of the law. Because, according to the Law, lineage between mother and child is established at birth (TCC art. 282, c. 1). According to the "presumption of paternity" in the Turkish Civil Code (art. 285, c. 1), the father of the child born while the marriage is ongoing or within three hundred days starting from the end of the marriage is the husband. Accordingly, the Turkish Civil Code accepts not only children born during the marriage, but also children born within three hundred days, which is the maximum gestation period after the end of the marriage, as originating from marriage and considers them to have lineage towards the husband. The lineage based on blood ties on the father's side is also established by marriage with the mother, recognition and paternity decree. Additionally, legal lineage ties can be established between the child and the mother and father through adoption.⁴ Adoption is a legal institution that serves to establish an artificial lineage. The bond between the adopted child and the adoptee is not a natural lineage such as blood bond, but a legal lineage established by the court. For this reason, the bond between the adopted child and the adoptee is an artificial lineage established by the decision to adopt.⁵ As a result of the principle of dependence on genetic origin, in our law, as a rule, genetic mother and father are accepted as mother and father in legal terms. As a result, natural lineage and legal lineage often overlap with each other.⁶ In cases where natural lineage does not coincide with the lineage recognized by law, the legal order allows the removal of lineage that is legally established but does not comply with material reality. In order for the child to be legally bound to his real parents by law; Cases for rejection of lineage, objection to lineage established through marriage and cancellation of recognition are foreseen.⁷

3.2. Real Lineage - Artificial Lineage

If the lineage is based on the blood bond between the child and his biological parents, the bond here is "real lineage".⁸ On the other hand, the filiation, which is basically a legal transaction between the child and the parents without a blood bond and is established based on this transaction (adoption contract), is artificial (contractual) lineage.⁹ The system of establishing lineage through adoption has been preserved in our New Civil Code. According to the third paragraph of Article 282 of our New Civil Code; "Lineage is also established through adoption".¹⁰

3.3. Intra Marriage (Regular) Lineage - Out of Marriage (Illegal/Irregular) Lineage

In our old Civil Code, a distinction was made between children intra and out of marriage in terms of lineage, and while children born intra marriage were considered to be of valid descent, some children born out of marriage were considered to be of illegitimate descent and were subject to different provisions.¹¹ The fact that the bond between the child and the parents were not formed as prescribed by law from birth, but was later established through law, was referred to as improper lineage (improper lineage - out of marriage lineage). Accordingly, children who were born out of marriage and could not become legitimate children through the correction of lineage, but were officially recognized by their fathers or obtained a paternity judgment resulting from personal status against their natural fathers, were called children with illegitimate lineages.¹² With the Turkish Civil Code No. 4721, the distinction between valid lineage and non-valid lineage was found to be outdated and this distinction was ended.¹³ Thus, there is no difference in terms of the provisions and consequences of paternity between a child born intra marriage and a child born out of marriage, but whose paternity is established through legal means after birth.

¹ Baygın, Cem; Paternity Law, Istanbul 2010 p.4

² Baygın, Cem "Kan Bağına Dayalı Soy", AÜLFJ, V. VI, s. 1- 4, Erzincan 2002

³ Hüseyin Hatemi-Burcu Kalkan Oğuztürk, Family Law, 4th ed., Istanbul 2014, p. 141- 142

⁴ Acabe, Beşir; Consequences of Establishing Paternity in General, Particularly the Inheritance of Children Born Outside of Marriage, İzmir 2003.

⁵ Oğuzoğlu, p. 231; Feyzioğlu-Doğanay-Aybay, p. 276

⁶ Hatemi-Serozan, p. 277; Serozan "Child", p. 144; Faint "The Lineage", p. 4; Kırkbeşoğlu, p. 10.

⁷ Baygın: 2010: 5.

⁸ Özdemir, Gözde Canan "The Case of Denial of Paternity in Turkish Law" İstanbul Aydın Univ. Institute of Social Sciences 2018 p.9

⁹ Öztan, Bilge; Family Law, B.2, Ankara 1983, p. 303; Oğuzoğlu H.Cahit: Civil Law, V.2 (Family Law), B.3, Ankara 1956, p.206.

¹⁰ Oğuzman DURAL; s. 197, Akınturk; , s. 314

¹¹ Old Civil Code(OCC). a. 241, Civil Law(CL). a. 290 et seq.

¹² Ahmet Kılıçoğlu, Innovations Our Civil Code Brings to Family-Inheritance-Property Law, Ankara 2003, p. 89; Serozan "Child" p. 140- 141; Baygın, "Lineage", p. 5.

¹³ Serozan "Child", p. 123, 142

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4. ESTABLISHMENT OF LINEAGE

4.1. Establishing Paternity Between Child and Mother

Since the distinction between child within marriage and child outside marriage has been abolished with the Turkish Civil Code, according to Article 282, the child's lineage with his/her mother will be established at birth, whether the child is outside of marriage or within marriage. Paternity can be established between the child and the mother in two ways. These ways are to establish lineage between mother and child through birth and to establish lineage between mother and child through adoption. Regulations regarding paternity are included in Article 282 of the Turkish Civil Code No. 4721 and in Article 282/1, "The lineage bond between the child and the mother is established at birth". Therefore, the family bond between the child and its mother is established automatically, through the fact of birth.¹ Whether the birth takes place within or outside of marriage does not affect the lineage between mother and child.² The establishment of the child's lineage through birth is based on the presumption that pregnancy and birth are observable phenomena and that "the woman who gives birth to the child is the mother".³ The mother is always obvious and this is a definite presumption that cannot be proven otherwise. Since the lineage between the mother and the child is established automatically at birth and no court decision is required for this, it is not the establishment of a lineage relationship between the child and the mother; However, the identity of the woman who gave birth to the child may be subject to litigation.⁴ While talking about the family bond established between mother and child, the concept of surrogacy should also be mentioned. Surrogacy is when a woman carries the baby after birth in order to give it to another couple or woman, in accordance with the contract she made.⁵ In Turkish Law, surrogacy is prohibited in the Regulation on Assisted Reproductive Treatment Practices and Assisted Reproductive Treatment Centers. In surrogacy, since the mother of the child will be the woman who gave birth to her, there will be no lineage relationship between the woman whose egg is removed and the child. Again, in surrogacy, since there is no marital union between the woman who is the mother of the child and the husband of the woman whose genes the child carries; Even if the husband is the owner of the gene carried by the child, there is no lineage between the husband and the child born as a result of surrogacy. If the woman who gave birth to the child is known, but the mother of the child is shown as another woman in the civil registry, this issue can be corrected by filing a lawsuit for correction of the civil registry. Lineage can also be established through adoption as a result of a court decision for both mother and father.⁶

4.1.1. Establishing Lineage through Birth

Article 282 of the Turkish Civil Code is as follows; "The family bond between the child and the mother is established at birth".⁷ According to this provision in our law, the birth of the child is sufficient for the establishment of lineage between the mother and the child. This situation is also stated in the Supreme Court of Appeals Jurisprudence: "The lineage between the mother and the child is established at birth" It is stated as. ^{8,9} However, the most important and only criterion to be determined here is the mother from which the child was born. As a result, in order to establish lineage with the child from the mother's side; The woman must have given birth to a child. The lineage relationship between mother and child is determined by public pregnancy and birth. The mother is always clear. It is a "conclusive presumption" that cannot be proven otherwise. If the egg of a foreign woman is fertilized with the sperm of her husband or another man, the embryo formed during fertilization can be transferred directly to the mother who will give birth to the child.¹⁰

4.1.2. Establishing Lineage through Adoption

In the provision of TCC. article 282/3; It has been said that "Lineage bonds can also be established through adoption". In other words, in addition to birth, lineage can be established between the adopter (mother) and the adopted child (adoptive-child) through adoption. The lineage established between mother and child in this way is artificial lineage. Therefore, if a woman, whether single or married, adopts someone in accordance with all the conditions and forms required by our Turkish Civil Law, a lineage relationship is established between her and her adopted child-child from that moment on. However, since the lineage established in this way is not based on blood ties, it is not natural but artificial lineage.¹¹

4.2. Establishing Lineage Between Child and Father

¹ Hatemi Hüseyin-Kalkan Oğuztürk Burcu, "Family Law", 6th Edition, Istanbul, 2018, p.140; Tokar, p.10.

² Akın, Adnan, "Paternity Case", Anadolu University Institute of Social Sciences, Master's Thesis, Eskişehir, 2006, p.4.

³ Kılıçoğlu, p.408; Serozan, p.165.

⁴ Supreme Court 8th HD. 15.02.2018, E.2018/1045, K.2018/2258 ; Kazancı Jurisprudence Information Bank, E.T.01.12.2019.

⁵ Erol, Yasemin, Artificial Insemination Methods and Surrogacy, Selçuk University Institute of Social Sciences, Master's Thesis, Konya, 2011, p.42.

⁶ Law No. 4721, article 282/3: "Lineage is also established through adoption."

⁷ According to Article 282 of the (TCC), it is as follows; "The Lineage bond between the child and the mother is established at birth."

⁸ S.C..2.L.O.:11.04.2005T.:3250E.:5766K

⁹ Özüğür, Ali İhsan: Annotated with the New Amended Regulations of the Turkish Civil Code - Personal Law with Case Law – Custody - Guardianship - Lineage, Adoption Law, Transactions Based on the Consent and Approval of the Other Spouse, 5th Edition, 2016.

¹⁰ Feyzioğlu:1986:412-413

¹¹ Akıntürk, Turgut - Ateş, Derya: Turkish Civil Law, Volume 2, Family Law, 19th Edition, Istanbul 2016.

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Establishing a lineage relationship between the child and the father is not as easy as establishing a family relationship with the mother. While the lineage relationship between mother and child is realized publicly at birth, as stated in Article 282 of the Turkish Civil Code, as we mentioned above; Since the lineage between the child and the father occurs through fertilization, that is, in a non-public way, it is not easy to determine which man the child is from.¹ Not every birth event that occurs may be the result of insemination by the husband. According to Article 286 of the Turkish Civil Code, the husband, who believes that the fertilization was not carried out by him, is given the right to refute the presumption of lineage by filing a lawsuit to deny paternity. The lineage between the child and the father is established in four situations. These; Marriage with mother, The father getting to know the child, Judge's verdict (paternity verdict) and It is established through contractual means (adoption).²

4.2.1. Establishing Lineage through Marriage with the Mother

The New Civil Code has accepted as a presumption that the father of children born or conceived within marriage is the husband in that marriage. According to this presumption, called "presumption of paternity", legal lineage will be established between the child born during the marriage or within three hundred days after the marriage ends and the husband in that marriage.³ If the child is born after 300 days from the end of the marriage, as a rule, he cannot benefit from the presumption of paternity. However, the provision of Article 285/c 2 of the Civil Code allows the child to benefit from the presumption of paternity and to establish lineage between the husband and the child, if it is proven that the mother was pregnant during the marriage. With the development of artificial insemination techniques, a problem that needs to be discussed in the field of lineage is whether the born child will benefit from the presumption of paternity if the embryo fertilized externally is placed in the womb after the death of the husband.

4.2.2. Establishing Lineage through Recognition

Recognition occurs as a result of a unilateral declaration of will by the genetic father of a child born out of wedlock, stating that the child is his own, with one of the validity conditions stipulated in the law; It is a legal procedure that ensures the establishment of a family relationship between the child and the father.⁴ By knowing the child, the father admits that he had a relationship with the mother at the time of conception, and makes a statement about the fact that the mother did not have a relationship with a third party during this period between this relationship and the birth of the child.⁵ According to the provision of TCC article 295; Recognition is achieved by the father's written application to the civil registry officer or the court, or by a statement made in his official deed or will. It becomes valid if the recognizer expresses his/her will in this regard in accordance with one of the forms prescribed by law. This statement does not need to be directed to any addressee. If there is a mistake or deception in the declaration of will to recognize, this mistake can be corrected by canceling the recognition.⁶ However, it is possible to revoke the recognition made through a will in accordance with the procedure. Since recognition is a right that gives rise to innovation, it cannot be used conditionally. Conditional recognition has no validity. There is no time limit in the Turkish Civil Code for the recognition of the child. The child can be recognized before or after birth, provided that the child is born alive.⁷ In order for recognition to occur, the mother must be known. It is not possible to recognize a found child because its mother is not known. Likewise, the embryo that has not yet been placed in the mother's womb cannot be recognized because it is not clear when and from whom the child will be born.⁸ Since recognition is a legal process to connect children born outside of marriage to the genetic father, the child to be recognized must be born outside of marriage. Since recognition was a unilateral legal transaction during the period of the Old Law, it was accepted that the principle of death-related disposition in the old Law should be understood as a will, considering that only a will could be used, and considering the legal nature of recognition, it was not possible to recognize it through an inheritance contract.⁹

4.2.3. Establishing Lineage Through Paternity Case

One of the ways to establish lineage between the child and the father is the judge's decision, and the lawsuit filed is called a paternity lawsuit. In general, the regulations regarding the establishment of the lineage between the father and the child by the judge's decision are included in the second article of the Turkish Civil Code, which regulates kinship, in the first part regarding the establishment of lineage, and in the third paragraph regarding recognition and paternity provision, and are regulated between Articles 301 and 304. The Turkish Civil Code No. 743 (TCC) had a distinction between paternity suits with personal consequences (TCC. art. 310) and paternity cases with financial consequences (TCC. art. 297). In a paternity case with personal consequences, an improper paternity relationship is established between the father and the child; In a paternity case with financial consequences, no lineage relationship was established and it was decided that the father would make financial payments to the mother and the child.¹⁰ Since the distinction between "authentic lineage and illegitimate lineage" in the New Turkish Civil Code and the Old Civil Code has been abolished, the distinction between paternity cases with financial and personal consequences is no longer important. Because, when the paternity

¹ Serozan, Rona: Juvenile Law, 2nd Edition, Istanbul 2017.

² TCC. art. 282/2, 3

³ Dural M.; Turkish Private Law - Family Law, Vol.3, Filiz Kitabevi, Istanbul, 2005, p. 438.

⁴ Tekinay, 1990: 520; Öztan, 2015: 910; Akıntürk ve Ateş Karaman, 2012: 346

⁵ Öztan, 2015: 909.

⁶ Feyzioğlu, 1979: 603

⁷ Tekinay, 1990: 521; Köseoğlu ve Kocaağa, 2011: 536; Öztan, 2015: 916; Süleyman ve İşleten, 2018: 117.

⁸ Öztan, 2015: 910; Kırkbeşoğlu, 2006: 23

⁹ Kılıçoğlu, 2015: 544.

¹⁰ Akıntürk- Ateş Karaman, p.358.

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relationship between the illegitimate child and the father is established as a result of the paternity case, no difference is made between the child whose paternity relationship is established with the father and the child born within marriage.¹

4.2.4. Establishing Lineage through Adoption

The adoption process establishes a family relationship between the adopter and the adopted person (CC. Art. 282/c.3). The difference between this process and other ways of establishing lineage (recognition, paternity provision) is that the lineage established in this way is often not based on blood ties. However, while the lineage based on blood ties is determined in other ways, a lineage line is created in the adoption process. Because of this feature, the lineage resulting from adoption is also called "artificial lineage".² Our new Civil Code has made a number of changes regarding adoption. First of all, adoption is no longer a formal family law contract. Because from now on, the adoption relationship will be established with an innovative decision given by the court (CC. Art. 315/c. 1). With the establishment of the adoption relationship, the adopted child and his/her descendants will inherit from the adopter, but the adopted child's inheritance to his/her own parents and relatives will continue (CC. art. 314/c.5). There is a kind of "double inheritance" here. Since this situation will lead to the continuation of the adopted child's relations with his relatives; We think that adoption will hinder the integration of the adopter and her family. Another change regarding adoption is the change in the nature of the marriage ban provision. In the previous Civil Code period, the obstacle to marriage "between the adopted child and the adoptive child and the spouse of one of them and the spouse of the other" was stated, but this obstacle was not regulated as a definitive marriage obstacle (OCC. art. 92/c.3). In other words, if a marriage occurred between these people, the marriage was valid, but the filial relationship would end (OCC. Art. 121). However, it is currently stated that the existence of a relationship between the adopted child and the adoptee and each of them and the descendants and spouses of the other will constitute a definitive obstacle and absolute reason for marriage (CC. art. 129/c. 3). According to Hatemi, here, as in the past, it should be accepted that the basis of the transaction of marriage and adoption relationship has collapsed, and the adoption relationship should be terminated and the marriage should be considered valid.³ The author states that the adopted child and the adoptee can live as if they were married under the adopted relationship, thinking that they will be subject to the absolute sanction of marrying in this situation, and that this situation will actually cause immorality. On the other hand, he states that the acceptance of marriage obstacle as a definitive marriage obstacle is a natural consequence of the adoption relationship being regulated as a way of establishing lineage in our New Civil Code.⁴

5. CONCLUSION

Determining lineage, which shows a person's lineage and reveals his/her relationship and closeness with family members, especially his/her parents, is important in many respects. Applying the provisions of the Turkish Civil Code regarding the mutual rights and obligations between the child and the mother and father and the absolute prohibition of marriage between relatives of a certain degree, and determining the people who will inherit a person in the event of his death, is possible by determining the lineage. The concept of lineage is the link that connects a person to the person from whom he is descended. One of the biggest changes in our new Civil Code has taken place in the field of lineage law. Provisions regarding lineage in our New Civil Code, in which the distinction between Authentic and Unauthentic lineage has been abolished, are regulated in Articles 282 and following. Our New Civil Code; As in many other matters, he made important changes and introduced innovations in the law of lineage. Provisions regarding lineage in the current Civil Code, which abolishes the distinction between children intra and out of wedlock, states that the lineage between a child born intra marriage and its mother and father is established at birth. Whether the child is born within or outside of marriage, the principle that the woman who gives birth to the child is the mother has been accepted. However, the lineage between the child born out of wedlock and the father is established through marriage with the mother, recognition or a paternity judgment obtained through a paternity lawsuit. Children born within marriage and children born outside of marriage, but whose legal lineage has been established, have equal status in terms of lineage and are connected to their parents with the same lineage. The lineage established between the child and the parents is not subject to the distinction between valid and non-authentic lineage, and is a single lineage that produces the same results as the valid lineage. In Turkish Law, lineage is not based solely on blood ties, but it is also accepted that lineage will be established between the adopter and the adopted child through adoption. Once the adoption relationship is established, no distinction is made between the adopted child and the child who is related to his parents by blood. In cases where there is no special provision regarding adoption as a result of the establishment of artificial lineage between the adopter and the adopted, the provisions of the Turkish Civil Code regarding lineage are also applied to the adopted child. In this context, the adopted person acquires the rights to bear the surname of the adopter, to request that the adopter take care of him/her, and to inherit from the adopter in case of death. According to the TCC, the lineage between the child and the mother is established in two ways. These; While "birth" and "adoption" are the ways, the lineage between the child and the father is ensured in four ways. They are "marriage with the mother", "recognition", "judge's decision" and "adoption". As we mentioned above, since the concept of children

¹ Kılıçoğlu, p.438-439; Tokar, p.20

² Herdem Belen; Adoption According to the Provisions of the New Civil Code, 1st edition., Beta Publishing House, Istanbul, 2005, p.2

³ Hatemi; Hüseyin Hatemi; Family Law (Marriage Law), Vedat Publishing, Istanbul, 2005, p.52-53

⁴ Dural-Oğuz-Gümüş; p. 503

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within marriage and outside marriage has been abolished; With the regulations made in the New Civil Code, there is no difference between the lineage relationship between the child born within marriage and his father and the lineage relationship between the child born outside of marriage and his father. The concept of lineage varies in terms of its types. According to the fact that the lineage between the child and the father is recognized and valued by the legal order; "natural lineage-legal lineage"; "real lineage-artificial lineage", depending on whether the bond between mother and child is based on blood ties or not; It is divided into differences as "lineage intra marriage and lineage out of marriage", depending on whether the parents of the child are married to each other or not, which is also taken as basis in OCC. According to Article 282 of the Turkish Civil Code, the lineage between the child and the mother is established "at birth". According to TCC Article 285; The father of the child born during the marriage or within three hundred days after the marriage ends is the husband. If a child is born after this period, the bonding of the child to the husband is possible by proving that the mother was pregnant during the marriage. This situation is defined as "presumption of paternity" in our Civil Code. Lineage is the name given to the link that connects a person to the person from whom he is descended. Turkish Civil Code has adopted the principle of loyalty to genetic origin in lineage law. As an extension of this principle, it has provided various legal opportunities to those concerned in order to ensure that the lineage is corrected in accordance with genetic reality. In this context, in order to request the court to determine the lineage in accordance with genetic reality, the case for rejection of lineage, the case for objection to the lineage established by subsequent marriage, the case for cancellation of recognition, the case for paternity and the case for annulment of the filial relationship have been regulated. According to Article 4 of the Law No. 4787 on the Establishment, Duties and Trial Procedures of Family Courts, lineage cases are heard in family courts. In places where a family court is not established, the case must be heard and decided by the civil court of first instance determined by the High Council of Judges and Prosecutors, as a family court. In Turkish Civil Code, in lineage law, the principle of loyalty to genetic origin is in question. So much so that a lawsuit can be filed to reject the lineage by requesting the court to determine the lineage in accordance with genetic validity. The competent court in lineage cases is determined in Article 283 of the Turkish Civil Code. Accordingly, cases regarding lineage are filed in the place of residence of one of the parties at the time of the case or birth. The jurisdiction rule regulated in Article 283 of the Turkish Civil Code regarding cases such as denial of lineage, appeal to lineage established through subsequent marriage, lawsuit for cancellation of recognition, lineage suit is related to public order and has the nature of absolute authority. Since the jurisdiction of the general courts specified in the Code of Civil Procedure has been abolished, the case can only be filed in the court specified in Article 283 of the Turkish Civil Code. With the establishment of lineage between the child and its parents, the provisions of the Turkish Civil Code regulating the child's surname, the mutual obligations of the child and the mother and father, the relations between the child and the mother and father, and the covering of children's care and education expenses come into effect. Although the distinction and inequality between children born within marriage and those born outside of marriage has been eliminated by the New Turkish Civil Code, for children born outside marriage whose fathers are completely unknown because their fathers are not known, or even if their fathers are known, no action has been taken to determine them legally; Since children whose parents are unknown will continue to exist, the issue of "child out of wedlock" has not been fully resolved. In this context, even after the New Civil Code comes into force, the problem of illegitimate children who miss the application period for any reason and therefore cannot be legally connected to their father and therefore cannot become heirs continues to persist. Innovations made in favor of the child will only result if a family bond is established between the child and the father. In addition, during the previous Civil Code period, those who had neither valid nor illegal kinship ties with their father; At the same time, the current Civil Code has not made a regulation regarding the situation of children who cannot obtain the paternity provision with financial consequences, that is, they are considered to be without lineage. We can describe this issue as an important deficiency.

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