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“LAW, SCIENCE AND INSTITUTIONAL CONTROL OF WOMEN’S SEXUAL AND PROCREATIVE BEHAVIOUR”

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Abstract: The interaction between the judicial practice and the forensic biology existing in the judicial investigation of paternity derives from a complex combination of the official concern to establish legal paternity of a minor and certain normative models of family life and of man/woman relationships, ideologically dominant and that emphasise women’s socially subordinate position. 
Based on a study case on the way the results of the genetic tests of paternity investigations are analysed as evidence by the judicial magistrates, we concluded that this judicial practice clearly demonstrates how a biological structure (the DNA – deoxyribonucleic acid) is transformed into a powerful cultural icon with varied institutional applications.
1. Introduction

In Portugal, alterations introduced by the Civil Code of 1977 on affiliation laws ended the disparity between children born in and outside wedlock and established the admission of results of scientific exams of biological investigation of paternity as evidence. However, we must point out that these profound modifications on the Portuguese Family Law are reflex to a set of conditions that rebounded all over Europe and the United States of America, namely the considerable advances seen during the 70s in the field of Genetics and particularly in the realm of investigation of biological paternity. At par with these scientific advances there were certain ideological changes, translated in a greater concern with the defense of the rights of the children born outside institutional marriage and a growing intervention of the State in areas such as protection of the minor and control of parental authority (Meuldens in Eekelaar, 1993).¹

The institution of the judicial admissibility of scientific exams as evidence in a judicial investigation of paternity in our country by the end of the 70s, led us to study how the judicial system deals with the advances in forensic biology. We consider this a context prone to reflection on the possible scenarios derived from judicial usage of genetic information of which the application of genetic experts’ reports for the investigation of the biological paternity of a minor is but one example. We are specifically interested to know whether the admission of the possibility of ascertaining biological paternity through laboratory techniques was or not a factor of change in the procedure of judicial decision-taking within the scope of lawsuits of paternity investigation.

Based on a set of 988 judicial lawsuits of paternity investigation filed in a court of law in the North of Portugal, between the years of 1968 and 1999, we tried to analyze some aspects of the current judicial practice of using results of genetic tests in investigations of paternity, insofar as this phenomenon reflects two models of practice of knowledge and powers particularly powerful in the Portuguese society – the judicial power and the scientific power.

As a working hypothesis we have considered that notwithstanding the “impartiality” and “neutrality” ideology that shapes both the juridical system and the discourses and scientific practices, a social control over the populations is pursued by the judicial practice of paternity investigation assisted by the Forensic Biology with the
objective of adapting individual demeanour to standards of values and behaviour of the
dominant social groups. Moreover, we perceive that in this particular case the effect of
behaviour regulation has different repercussions for man and woman, mainly affecting
the mother of the minor whose paternity is being investigated. Thus, we will try to
prove that the apparently neutral application of genetic tests in judicial lawsuits of
investigation of paternity has important effects, both ideological and of normalization of
behaviour, namely reproducing gender social distinctions previously existent in society:
on the one hand the genetic experts’ reports reinforced a notion of “paternity” entailed
to a biological determinism already existent in the portuguese law and judicial practice.
On the other hand the genetic tests, by allowing a “safe” ascertaining of the paternity,
gave the courts further power of control over those sexual and procreative female
behaviour that break from the conventional standards of a woman’s fidelity to a sole
sexual partner.

2. Some judicial proceedings within the scope of a investigation of paternity

In the Civil Code of 1966 the portuguese law permitted the “unofficial inquiry of
paternity” which occurs in a court of law and investigates the paternity of any minor
whose birth record does not show the identity of the father. By imposition of the
portuguese law the clerk at the Registry Office is bound to forward to the proper court a
copy of the birth certificate that only indicates the mother’s identity, with exception of
the cases in which the clerk can verify that the registered minor was born of an
incestuous relationship.

The examining stage of this type of judicial lawsuit is set about under the
jurisdiction of the Prosecuting Counsel which has to gather all evidence deemed
necessary for a safe identification of the biological father of a certain minor: holding an
interview with the mother of the minor whose paternity is being judicially investigated,
interrogating the alleged father and witnesses and requesting reports on the “moral and
socio-economic situation” of the minor’s mother which are generally performed by the
GNR (National Guard), PSP (Police Force) or by technicians from the Social Services
at the Social Reinsertion Institute. In paternity the last decade, reports of genetic exams
of paternity investigation have been frequently used as evidence in judicial
investigations of paternity.
As soon as this evidence is gathered, a formal opinion is issued by the Prosecuting Counsel on the viability of an unofficial inquiry of paternity so that an ordinary lawsuit of paternity can be pursued.\textsuperscript{5} This opinion may or not be confirmed by a judge’s ruling. If a judicial magistrate considers an unofficial inquiry of paternity “viable”, an ordinary lawsuit of paternity is initiated in which the evidence gathered in the previous stage is presented once again and other elements eventually included. From here comes a new formal opinion laid down by a magistrate for the Prosecuting Counsel who rules on its “grounds” (the defendant’s, that is, the alleged father’s conviction) or “groundlessness”. The person indicated as being the father can, at any time during the judicial investigation of paternity, voluntarily acknowledge the minor’s paternity, an affiliation tenor being immediately drafted and the case filed.

In the judicial investigation of paternity the present and past history of the mother’s sexual life is of major relevance insofar as it will condition the lawsuit’s results. The minor’s mother is prompted by an agent of the Prosecuting Counsel to answer certain questions about her sexual life such as: number of sexual partners prior to her relationship with the person indicated as being the minor’s father; type of sexual intercourse kept with the alleged father; place and date of those instances of sexual intercourse with the alleged father; reasons for keeping such sexual relationship; usage of birth control methods and the alleged father’s reaction to the news of a pregnancy. With these the answer to two other questions is sought: if during the so-called “legal period for the minor’s conception”\textsuperscript{6} his mother and the alleged father had sexual intercourse of “complete copulation”\textsuperscript{7}; and if in the same legal period of conception the minor’s mother had sexual intercourse solely with the defendant. Basically, the minor’s mother is asked about the practice of heterosexual sexual intercourse of vaginal penetration by the male sex organ and about the number of sexual partners she had before and during the period of time the portuguese law considers susceptible of involving the conception and birth of the minor whose paternity is being investigated.

According to a research previously conducted by us, in which an analysis of a sample of 226 lawsuits of unofficial inquiry of paternity prosecuted in the court in study between the years of 1980 and 1994 was done, the woman with the highest likelihood of seeing her son’s paternity recognised by the court is the one who was a virgin\textsuperscript{8} at the time she had sexual intercourse with the minor’s alleged father; who never had more than one sexual partner; who has a socially acceptable job and who does not repeatedly visit public places at night (Machado, 1996). And as it will be illustrated further on, the
performance of blood tests for the investigation of biologic paternity is only done in those instances when the mother is thought to have “good moral and sexual behaviour”.

3. The juridical usage of the “scientific” evidence in affiliation lawsuits in Portugal

The admission of scientific exams as evidence in lawsuits of investigation of paternity was introduced in Portugal with the decree-law no 496/77 of 25 November, and sanctioned in article no1801 of the Civil Code, where it can be read: “In lawsuits concerning affiliation blood tests and any other scientifically reliable methods are admitted as evidence.” Thus formal conditions for a different type of interaction between the juridical institution and the biological science were created, from which could eventually spring a change in the judicial practice of paternity investigation, so far limited to the minor’s mother’s, the alleged father’s or fathers’ and witnesses’ statements.

There were in our country, in the 70s, several obstacles to the development of the judicial usage of the results of genetic experts’ reports in investigations of paternity which sprang partly from the slow development of the scientific investigation. At that time, the portuguese scientific community faced varied difficulties that still exist today. They are associated with the lack of space, laboratory equipment and specialised technicians and most importantly, with the fact that there was no continuous work on the genetic characteristics of the portuguese population – an absolutely essential aspect to scientifically establish which gene frequencies of genetic markers to use in the exams of investigation of biological paternity, though in 1973 some work had been done in that field in the Anthropology Institute “Dr. Mendes Corrêa”. Ten years later, in 1983, the scientific investigation of biological affiliation knew considerable progress with the presentation of the work “Contribuição para o conhecimento da genética humana – Estudos de genética bioquímica, formal e populacional e de ligação factorial” (Contribution to the knowledge of human genetics – Studies on biochemical genetics) and “Polimorfismos electroforéticos e investigação da filiação biológica” (Electrophoretic polymorphism and research on biological affiliation) by António Amorim dos Santos (Cruz, 1984).
Despite some development in the field of biologic investigation of paternity was noticeable in Portugal during the 80s, only in the beginning of the 90s did judicial institutions begin using the results of genetic exams of paternity investigation in a regular way. In comparison to more developed countries, particularly the U.S.A., it was with considerable tardiness that the portuguese magistrates began accepting the so-called scientific evidence in affiliation lawsuits. The following passage of Entry no 4/83 of the Supreme Court of Justice appears to be a sign of reluctance of the juridical institution in accepting the results of evidence produced by agents foreign to it (in this case, the scientific community):

Abroad, certain scientific methods that allow the verifying of the biological paternity with a very high degree of certainty are already common practice. A while ago there were news about how quickly a north-american judge rules lawsuits of investigation based on a series of 3 HLA (antigen of the human leukocyte). It is not, however, what happens among us yet. (in, Cruz, 1984:7).

As a whole portuguese jurists believe there are three different types of scientifically proven methods that can be used in the verification of biological paternity: the medical experts’ reports, anthropometric and genetic. In Portugal, the study of genetic markers is almost exclusively used in the current judicial practice of using scientific tests as evidence in paternity investigations. This scientific technique is based on the laboratory analysis of blood samples from the trio mother-son-alleged father or fathers with the objective of studying certain genetic maps existing in the blood according to pre-defined models and that form associations of certain characters that show and define themselves through biological reactions determinable in a laboratory. Afterwards, the sero-statistics methodology is used. It concerns the frequency of distribution of the markers studied in the population in which the case in analysis is included, as it is assumed that the genetic maps are distributed variably among the different peoples (Hubbard and Wald, 1997; Pinto, 1995). In the results’ analysis one tries to verify if in view of the genetic maps identified in the blood samples the possibility of the alleged father being the minor’s biological father can be ruled out. In those cases when there is no paternity exclusion, a conclusion is laid down on the probability the named father had of being the biological sire of the investigating minor.

The methods used by the Forensic Biology laboratories in investigations of paternity give rise to theoretical problems, pointed out by the scientific community itself, be it portuguese or foreign. Noteworthy is the frequent criticism concerning the
practice of using a pre-defined formal genetic model to compare the genetic maps present in the blood samples taken and subsequent results’ analysis. As stated by Ruth Hubbard and Elijah Wald, co-authors of Exploding the Gene Myth (1997), “Any model built on the existence of a well-homogenized, randomly mating population is a fiction and bound to fail.” (Hubbard and Wald, 1997: 149-150). These authors emphasise the theoretical fragility of the sero-statistics method bearing in mind the obvious difficulties in preparing a model of distribution of frequencies of genetic markers with reference to a population as diverse as the American one. The truth is that the same doubts arise concerning the application of this method to any population, no matter how “homogeneous” and “similar” it may be.

The same way thinks investigator Jorge Macedo Rocha (1988) whose criticism on the methodology used by the Forensic Biology in Portugal in investigations of paternity still rings true. In this scientist’s opinion, the biggest obstacles placed to an absolute validity of the results obtained from this type of genetic experts’ reports are precisely in the establishment of the formal genetic model used in laboratories to analyse the blood samples take from the trio mother / child / alleged father. This formal model is based on scientific knowledge from a certain time, thus being impossible to frame a totally undisputed and indisputable genetic model, which has eventually brought up false results:

A model will always represent a transitory explanation and may be questioned or readjusted any time that new elements bring about incompatibility between the facts observed and the expectations based on it. (Rocha, 1988: 5)

4. Characterisation of the population involved in the judicial actions studied

From a total of 988 lawsuits of investigation of paternity (783 unofficial inquiries of paternity and 205 proceedings of investigation of paternity), filed in the court under study between the years 1968 and 1999, we have selected the cases in which paternity tests were done as an element of evidence. The oldest lawsuit began in 1974 and the earliest in 1998. In the end we had 72 lawsuits (18 unofficial inquiries of paternity and 54 ordinary lawsuits of investigation of paternity), in which 74 genetic tests were done (in two of the cases blood samples from two alleged fathers were analysed).
First we must point out the fact that the genetic tests of paternity investigation are done mainly within the scope of lawsuits for investigation of paternity, which apparently shows that the portuguese magistrates only resort to the so-called “scientific evidence” when, in the stage of unofficial inquiry of paternity, evidence of the minor’s mother’s “good sexual and moral behaviour” was already gathered.

As can be seen in graph 1, the majority of the lawsuits with scientific reports of investigation of paternity were filed during the 90s, which presents two dissimilar, if interconnected phenomena: on the one hand the growing judicial interest for this kind of evidence shows a change of mentality on the part of the portuguese magistrates, which derives partly from the fact that in the last years the Centre for Judiciary Studies (Centro de Estudos Judiciários – CEJ) has been orienting the future magistrates so that they become receptive to scientific evidence. On the other hand the considerable advances recently seen in the field of forensic biology have reinforced the trust on the safety of the results of the tests of investigation of paternity, within the scientific community itself, something which can be experienced by outsiders.

Graph 1 – Total of blood tests, by decades


Concerning the results of tests of investigation of paternity obtained in laboratory that were ordered by the court being studied (graph 2), forty seven cases disclosed results of “paternity practically proven” (probability of paternity equal or superior to 99.73%); four situations in which an “extremely probable paternity” was considered
(probability of paternity of 99,0% going up to 99,72%); two tests with results of “very probable paternity” (probability of paternity between 95,0% and 98,9%); nineteen exclusions of paternity (probability of paternity equal or inferior to 94,9%) and one “inconclusive” result.

Graph 2 – Laboratory results

When analysing the jobs declared by the respective mothers and alleged fathers (table 1) we are confronted with a population of mostly factory workers, the rest being divided into professional categories of a medium low to medium social standard.
### Table 1 – Jobs of the mother and alleged father

<table>
<thead>
<tr>
<th>Job</th>
<th>Mother</th>
<th>Father</th>
</tr>
</thead>
<tbody>
<tr>
<td>Farmer</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Unemployed</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>Housewife</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Commerce clerk</td>
<td>1</td>
<td>8</td>
</tr>
<tr>
<td>House servant</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td><strong>Administration clerks</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Warehouse employee</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Bank clerk</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Clerical worker</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td><strong>Managers</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial manager</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Industrial manager</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Student</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td><strong>Specialised technicians</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consultant</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Nurse</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>GNR personnel</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Teacher</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Industrial workers and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Craftsmen/women</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plumber</td>
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<td></td>
</tr>
<tr>
<td>Carpenter</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Textile designer</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Electrician</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Civil construction worker</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Factory worker</td>
<td>28</td>
<td>19</td>
</tr>
<tr>
<td>Goldsmith / Jeweller</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Food industry worker</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Locksmith</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Owner</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td><strong>Without indication</strong></td>
<td><strong>19</strong></td>
<td><strong>8</strong></td>
</tr>
</tbody>
</table>
5. Judicial decisions in the presence of scientific reports

Notwithstanding all the objections, either theoretical or practical that may be posed to the methodology used in the field of genetic investigations of paternity aforementioned, it appears clear that the mystique and the power of science can easily influence and persuade both the judicial system and the public in general of its credibility (Hubbard and Wald, 1997). Considering the empirical cases here presented it will not be too much to say that the laboratory results of investigation of biological paternity convince both the magistrates and the people involved in the process, and more specifically the alleged father of the investigating minor.

Graph 3 shows the relationship between the results of the laboratory tests of investigation of paternity and the judicial results of the lawsuits. Thus, we have verified that the “affiliations” (voluntary acknowledgement of paternity) occur when laboratory results show “paternity proven” or “extremely probable paternity”. The same acceptance and credulity as to the results of the genetic experts’ reports of investigation of paternity can be seen on the magistrates’ decisions: the judges considered the lawsuits as having “grounds” to proceed when the biological tests showed results of “very probable paternity”, “extremely probable paternity” and “paternity practically proven”. In the opposite situations, in which genetic tests excluded the alleged paternity, the magistrates classified the lawsuits as “unviable” or “groundless”.

In our perspective the judicial magistrates’ acceptance of the results given by the forensic biology reveals a particular logic, characterised mainly by the fact that the “moral and sexual behaviour” of the minor’s mother still carries considerable weight in what the decision pertaining the legal paternity of the child is considered, which reinforces the predominant idea of institutional control of the sexual and procreative behaviour of women.

Through an analysis of the content of the sentences of the judicial lawsuits of investigation of paternity considered, and for which reports concerning genetic tests done were presented as evidence, we were confronted with two different situations. On the one hand, there are cases in which the judge states that he will take a certain decision concerning the establishment of legal paternity based on the scientific report. On the other hand we have verified that in most lawsuits, even though a direct link between the laboratory results and the judicial decisions is maintained, the judge omits

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the existence of scientific evidence. He argues the juridical facts being appreciated based on the existence of the “traditional” evidence of the exclusiveness of sexual intercourse of the minor’s mother during the so-called conception period. The examples are varied but let us consider the following:

In 1994 in an ordinary lawsuit of paternity in which the genetic tests showed a “paternity practically proven” the judge considered the case had “grounds”, two facts being evident: on the one hand, the realisation of the so-called “scientific evidence” is omitted; on the other hand, the magistrate implicitly believes that the positive result of the investigation of paternity done in a laboratory shows that the minor’s mother only had sexual intercourse with the alleged father during the legal period of conception:

The reason for filing a lawsuit of investigation of paternity is the genetic fact of procreation, which is based on the generating act of pregnancy and consolidates biological affiliation. The biological affiliation will have to be established on the evidence of the exclusiveness of sexual intercourse with the future father during the legal period of conception (...) And, as stated in the records pertaining to this sentence, the minor’s mother, during his legal period of conception, had sexual intercourse with the defendant, which she did exclusively.

In those cases when the judge refers to the results of the genetic tests of the investigation of paternity explicitly, an absolute acceptance of these exams is still verifiable, which can be seen in the following ruling concerning an unofficial investigation of paternity, concluded in 1994:

The minor’s mother states that she has never had sexual intercourse with any other man (...) However, an exam of investigation of paternity was done in the Instituto de Medicina Legal (Forensics Institute) in Porto, from which it could be concluded that the designated father was excluded from the minor’s paternity. Thus there is not, in our view, viability for a lawsuit of investigation of paternity to be filed.

6. Conclusion:

The close relationship between the scientific production and the judicial practice here analysed leads us to a phenomenon that in Boaventura de Sousa’s opinion has been one of the fundamental dimensions of modernity: the relationship of co-operation and circulation of meaning between science and law, under the protection of science, a social process characterised by the fact that in order to be effective, the moral-practical
rationality of the law has been submitting itself to the cognitive-instrumental rationality of science or becoming isomorphic of that science (Santos, 2000).

In the specific case of the interaction between science and the judicial practice of investigation of paternity we could verify that there are “symbolic fusion experiences, configurations of meaning that combine elements of science and law in a complex way” (Santos, 2000:51), which result in the establishment of new parameters in a “reproduction policy” for women.

The recent transformations seen in this field of judicial practice have the centrality of science as guideline. The laboratory tests of investigation of biological paternity have been perceived in the juridical field as the tools that made the introduction of further objectivity and exactness in affiliation law possible. Law’s symbolic subordination to science is clearly shown in the impact the scientific exams have in judicial results when a child’s legal paternity is established. This symbolic fusion of elements of both science and law has been producing normative legitimised by scientific judgements. The results of scientific tests are seen by the judicial magistrates as mirrors of the minor’s mother’s sexual and moral behaviour.

The over valorisation of the genes’ function in the building of an individual’s personal and social identity is also clearly seen in judicial investigations of paternity as the definition of the genetic ancestry of a child whose paternity is not legally determined is understood to be a fundamental trait of an individual’s identity and personality. The judicial stipulation of the biological father is seen as something which guaranties the constitutional right to personal identity, which leads us to consider that the particular phenomenon of the usage of genetic tests in judicial investigations of paternity is also a constituting element of a process of configuration of meaning of a “genetic citizenship” profoundly crystallised in an ambiguous combination of elements of law and science.

1 The European concern over the rights of the children born outside the marriage is self-evident in the orientation professed by the EC of 15 October 1975, titled Convenção Europeia sobre o Estatuto Jurídico das Crianças nascidas Fora do Casamento (European Convention on the Judicial Statute of Children born Outside of Wedlock), that specified the need for the member states of the European Council to adopt common judicial dispositions over this matter.
2 The portuguese law also includes maternity judicial investigation, for the following cases: when there is an omission in the birth certificate concerning maternity due to it not having been given; if the registered person was already adopted by the mother’s sibling or someone else related to her in direct line; or if the registered person is already adopted by someone other than the mother’s husband, that person having been born or conceived, nonetheless, during the marriage. (Pinto, 1995: 69). Notice, though that maternity judicial investigation lawsuits are very rare.
3 The 1864th article of the Civil Code states: “At any time that a minor’s birth register is done in which only the maternity is established, the clerk is bound to forward an unabridged register certificate to the court so that the father’s identity is unofficially investigated.”

4 According to article 121, no 3 of the Registry Office Code “the consignment of the certificate does not take place if, knowing the name of the alleged father, the clerk verifies that he and the mother are blood relations or relatives by marriage.

5 Article 204, no 1 of the Minors Tutelary Organisation (Epifânio et al., 1992) states: “1. the judge will issue a final ruling as to whether file the case or havin it proceed to the magistrate for the prosecuting counsel of the proper court, so that an investigation or impugment are recommended.”

6 According to article 204 of the Minors Tutelary Organisation and articles 1795 and following of the Civil Code, the so-called legal period of conception corresponds to the first 120 days out of the 300 that preceded the minor’s birth.

7 As Teresa Beleza (1993) states the portuguese law and jurisprudence restricts the notion of “copulation” to the penetration of the vagina by the man. Thus “complete” copulation is of such kind but sperm release is included.

8 We have selected the following Sentence among the many about the need to prove the exclusiveness of the minor’s mother’s sexual relationship with the alleged father during the “legal period of conception” in court: “So that there are grounds for an unofficial inquiry of the paternity investigation, it is necessary to present evidence that, though indirectly or circumstantially may convince the judge that the minor’s mother had copulation only with the alleged father.” (Acórdão da Relação de Coimbra, de 26-2-1980, C.J., Ano V-1980, Tomo 1, 131).

9 Clinical and laboratory exams on the alleged father, mother and child. In what the exams on the alleged father are concerned, they are done to determine whether, at the time of the child’s conception, he suffered from organic or psychic impotence. The exams on the mother are done to determine if, during the legal period of the minor’s conception, she could have got pregnant or if she was already pregnant. Finally, the medical exams on the child are most relevant if done immediately after birth, so that his/her degree of maturity can be studied and thus determine the probable duration of the pregnancy and the probable date of conception.

10 The experts’ reports of this type are based on the analysis and comparison of varied morphological characteristics of the minor, the mother and the alleged father. Through this method similarities and differences can be determined that allow for a conclusion on the high or low probability of the named father being the biological father of the minor. Both the scientific community and the jurists consider this to be the most unreliable of the three methods used for the testing of biological paternity. (Pinto, 1995: 343). However, it was curious to notice, during field work, that the magistrates for the Prosecuting Counsel still ask the minor’s mother and the witnesses if they think the minor “looks like” the alleged father.

11 We found proof of the incentive given by the CJS to the future magistrates so that they become receptive to the admissibility of scientific tests of paternity investigation as evidence after consulting a bibliography list given to the students and that was offered to the justice auditors in the years 1996 and 1997.