

General requirements for relationship testing

Based on the Federal Act on Human Genomic Testing (HGTA), Art. 51, it is our duty to inform you that relationship testing may not only have legal but also social consequences for all participants. The psychological effects that relationship testing may have on the participants are difficult to predict and should not be underestimated. Furthermore, we are obliged to inform you about the terms of the Swiss Civil Code (ZGB) concerning the formation of the parent-child relationship.

We hereby inform you that your samples and data will only be used for relationship testing and will be processed by authorized personnel only.

DNA profiling to determine Filiation or Identity

Excerpt from the Federal Act on Human Genetic Testing (HGTA), SR 810.12

Article 49 Civil proceedings

¹In civil proceedings, DNA profiling of a party or of third parties may only be performed by order of the court or with the written consent of the person concerned. Further regulations apply to the Swiss Civil Procedure Code (SR 272).

Article 50 Administrative proceedings

¹If in administrative proceedings there are justified doubts about the filiation or the identity of a person that cannot be dispelled in any other way, the competent authority may make the granting of authorization or benefits conditional to DNA profiling.

²DNA profiling may only be performed with the written consent of the person concerned.

Article 51 General regulations for DNA profiling outside administrative proceedings

¹Outside the context of administrative proceedings, DNA profiling to determine filiation may be performed only with the written consent of the persons concerned.

² A child incapable of judgment and whose filiation with a certain person must be determined, may not be represented by that person.

Formation of the Parent-child Relationship

Excerpt from the Swiss civil code, SR 210

Art. 252

¹ The parent-child relationship is formed between child and mother on the birth of the child.

² It is formed between child and father by virtue of the latter being married to the mother, by recognition or by court declaration.

³ Moreover, the parent-child relationship is formed by adoption.

Art. 255

- ¹ Where a child is born in wedlock, the husband is deemed to be the father.
- ² If the husband dies, he is deemed to be the father provided the child is born within 300 days of his death or, if born thereafter, if it is shown that the child was conceived before the husband's death.
- ³ If the husband has been declared presumed dead, he is deemed to have been the father provided the child is born within 300 days of the life-threatening event or the last sign of life.

Art. 256

- ¹ The presumption of paternity may be challenged in court:
 1. by the husband;
 2. by the child if the spouses cease living together while the child is still a minor.
- ² The husband's challenge is directed against the child and the mother, that of the child against the husband and the mother.
- ³ The husband has no right of challenge if he consented to impregnation by a third party. The child's right to challenge paternity is subject to the Reproductive Medicine Act of 18 December 1998.

Art. 256a

- ¹ If a child was conceived in wedlock, the challenging party must show that the husband is not the father.
- ² The child is presumed to have been conceived in wedlock if it was born no earlier than 180 days after the wedding and no later than 300 days after the marriage was dissolved as a result of death.

Art. 256b

- ¹ If a child was conceived before the marriage was concluded or at a time when the spouses were living apart, no further grounds need be given for the challenge.
- ² However, in such cases the paternity of the husband is still presumed where the court is satisfied that he had sexual intercourse with the mother around the date of the conception.

Art. 256c

- ¹ The husband must file the challenge within one year of learning of the birth and of the fact that he is not the father or that another man had sexual intercourse with the mother around the date of the conception, but in any event not later than five years after the birth.
- ² The child's challenge must be filed at the latest within one year of attaining the age of majority.
- ³ Once these time limits have expired, a challenge of paternity is admissible provided there is good cause for the delay.

Art. 257

- ¹ Where a child was born within 300 days of the dissolution of the marriage as a result of death and the mother has since remarried, the second husband is deemed to be the father.
- ² If this presumption is disproved, the first husband is deemed to be the father.

Art. 258

- ¹ If the husband died or lost capacity of judgement before the time limit expired, his father or his mother may challenge his paternity.
- ² In this case the provisions governing a challenge by the husband apply mutatis mutandis.

³ The one-year time limit for bringing the claim begins at the earliest on the date on which the father or mother learns of the husband's death or loss of capacity of judgement.

Art. 259

¹ If the parents marry each other, the provisions governing children born in wedlock apply mutatis mutandis to a child born prior to the marriage, providing the paternity of the husband is established by recognition or court declaration.

² Recognition may be challenged:

1. by the mother;
2. by the child or, after his or her death, by his or her issue if the spouses ceased living together while the child was still a minor or if recognition did not occur until after the child's twelfth birthday;
3. by the husband's commune of origin or residence;
4. by the husband.

³ The provisions governing challenge of recognition apply mutatis mutandis.

Art. 260

¹ Where the parent-child relationship exists only with the mother, the father may recognise the child.

² Where the recognising person is a minor or subject to a general deputyship or if the adult protection authority has issued a related order, recognition requires the consent of his or her legal representative.

³ Recognition is effected by means of a declaration made before the civil registrar or by testamentary disposition or, if an action to determine paternity is pending, by a declaration made to the court.

Art. 260a

¹ Recognition may be challenged before the courts by any interested party, namely the mother, the child or, after its death, its issue, and by the commune of origin or domicile of the recognising person.

² The recognising person is entitled to file a challenge only if he or she recognised the child under threat of imminent and substantial risk to his or her own life, limb, reputation or property or to those of a person close to him or her, or in the erroneous belief that he was the father.

³ The challenge is directed against the recognising person and the child, insofar as they themselves are not the challenging persons.

Art. 260b

¹ The challenging person must prove that the recognising person is not the child's father.

² However, mother and child are only required to prove this if the recognising person may satisfy the court that he had sexual intercourse with the mother around the time of the child's conception.

Art. 260c

¹ The challenge must be filed within one year of the date on which the claimant learned of the recognition and the fact that the recognizing person is not the father, or that another man had sexual intercourse with the mother around the time of the conception, or on which he or she learned of his or her error or on which the threat ceased, but in any event within five years of the recognition.

² In all cases, the child may file the challenge at any time prior to the elapse of one year after attaining the age of majority.

³ Once these time limits have expired, a challenge of recognition is admissible provided there is good cause for the delay.

Art. 261

- ¹ Both mother and child are entitled to bring an action to establish the existence of the parent-child relationship between the child and the father.
- ² The action is brought against the father or, if he has died, in order of priority against his issue, parents or siblings or, where none exist, against the competent authority of his last domicile.
- ³ If the father has died, the court must inform his wife that the action has been brought so that she may safeguard her interests.

Art. 262

- ¹ If the defendant had sexual intercourse with the mother during the period between the 300th day and the 180th day before the child's birth, his paternity is presumed.
- ² Paternity is also presumed even if the child was conceived prior to the 300th day or after the 180th day prior to birth provided the defendant had sexual intercourse with the mother during the period in which the child was conceived.
- ³ There is no such presumption if the defendant shows that his paternity is either impossible or less probable than that of another man.

Art. 263

- ¹ The action is admissible both before and after the birth but must be brought:
 1. by the mother within one year of the birth;
 2. by the child at any time prior to the elapse of one year after attaining the age of majority.
- ² If a parent-child relationship already exists with another man, the action may in any event be brought within one year of the date on which said relationship is annulled.
- ³ Once these time limits have expired, an action for determination of paternity is admissible provided there is good cause for the delay.

Storage of Samples and Data

In civil proceedings, retention of data and samples is governed by **Art. 49 para. 2 of the Federal Act on Genetic Testing in Humans (HGTA)**: "The laboratory must retain the samples obtained in the course of the proceedings and the resulting data until the judgment becomes final. The court that ordered the test informs the laboratory of the entry into force of the final judgment."

The samples are destroyed after the information of the implementation of the final judgment, unless a person concerned requests in writing that his or her sample be retained. The data (reports, analysis data, etc.) are stored for 10 years after receipt of the mandate and then destroyed.

In administrative proceedings, retention of data and samples is governed by **Art. 50 para. 3 of the Federal Act on Genetic Testing in Humans (HGTA)**: "The laboratory must retain the samples and the resulting data until the corresponding order or court ruling becomes legally binding. The competent authority informs the laboratory of the entry into force of the order or court ruling."

The samples are destroyed after the information of the implementation of the order or court ruling, unless a person concerned requests in writing that his or her sample be retained. The data (reports, analysis data, etc.) are stored for 10 years after receipt of the mandate and then destroyed.

If the authority does not act as a client by directly commissioning a DNA examination from the Institute of Forensic Medicine of the University of Bern, the retention rules for private mandates apply (see below).

In the case of private mandates, the samples are retained for one year, unless otherwise agreed, and then destroyed. The data (reports, analysis data, etc.) are stored at the institute for ten years and then destroyed.