

MORAL RIGHTS OF THE CHILD IN INTERNATIONAL CONVENTIONS AND ALGERIAN LEGISLATION

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Abstract:

Children are the future of society and the most vulnerable group within it. For this reason, it is essential to give them special attention and care by protecting their rights, not only financially but also morally, given the importance of the latter for the child's psychological well-being and its significant impact on their healthy personal development. Therefore, the Algerian legislator has sought to protect the rights of the child through a legal framework by ratifying the relevant international conventions and enacting specific legal provisions, in particular Law 15-12 on the Protection of the Child.

Keywords: Moral rights, child, international conventions, Algerian legislation.

1- INTRODUCTION:

The protection of children and their moral rights is an important issue because it concerns a vulnerable segment of society due to their weakness and inability to protect themselves from harm. Allah Almighty states in the Holy Quran, in verse 67 of Surah Ghafir (The Forgiver): "It is He Who created you from clay, then from a drop of sperm, then from a clot, then He brings you forth as a child". Thus, children, as the weakest link in the social fabric, require special protection in order to safeguard their rights, their existence and their humanity.

Considering that childhood is the fundamental and crucial stage in the formation and prosperity of societies, when this stage is healthy, balanced and natural, societies are more stable. Therefore, international conventions have worked to protect the rights of the child as an integral part of human rights. In this context, the Convention on the Rights of the Child was adopted by the United Nations General Assembly on 20 November 1989 and ratified by Algeria by Presidential Decree No. 92-461 of 19 December 1992¹. In addition, the Algerian legislature has endeavoured to enshrine the legal protection of children at the highest legal level by incorporating it into the Constitution.

This has led to research and studies on the aspects of legal protection of children's moral rights and their effectiveness. Therefore, the aim of this study is to analyse the legal texts that regulate children's rights, to assess the level of protection provided and to evaluate their effectiveness. Consequently, the problem of this study is to identify the forms of protection provided by legal texts for the moral rights of children and to assess their sufficiency and effectiveness in achieving protection.

Our study focuses on the United Nations Convention on the Rights of the Child², Law 15-12 on the Protection of the Child and Algerian family law. Although Algerian family law does not devote a specific chapter or section to the rights and protection of the child, it does address important rights such as custody, descent and financial rights³.

¹ Presidential Decree no. 92-461 of 19 December 1992 approving the interpretative declarations on the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, Official Journal no. 91 of 23 December 1992.

² Law 15-12 of 15 July 2015 on the protection of the child, Official Journal No. 39 of 19 July 2015, as amended by Law 23-04 of 7 July 2023 on the prevention and suppression of trafficking in human beings.

³ See, for example, Articles 28, 63 and 75 of the Family Code, Law No. 84-11 of 9 June 1984, as amended by Order No. 05-02 of 27 February 2005, Official Journal No. 24 of 1984.

The moral rights of the child are those inherent in his or her personality as a human being, as well as other rights guaranteed by law as a member of the family. These rights are established for the child from birth. The law recognises a series of rights for the child aimed at distinguishing and defining his or her individuality, such as the right to identity, which includes his or her name, descent and nationality. The legislator has made considerable efforts to establish a protective framework to accompany the child throughout the early stages of life, including the necessary health and social care⁴. The study is therefore divided into two sections. The first section deals with the child's right to identity, while the second section focuses on the child's right to care.

Chapter 1: The child's right to identity

Given the importance of childhood as the foundation of life, the child's right to life is an inherent right from which other rights flow. These rights protect and secure the child until he or she reaches an age when he or she is physically, mentally and intellectually capable of taking control of his or her life, understanding his or her responsibilities and actively participating in society⁵. Therefore, one of the most important rights to be granted to every child is the right to identity, to have a distinct existence that distinguishes them from others. In addition, their right to belong is essential.

In this regard, Article 8 of the Convention on the Rights of the Child states that States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations, as recognised by law, without unlawful interference. In addition, where a child has been unlawfully deprived of any element of his or her identity, States Parties shall provide appropriate assistance and protection to expedite the restoration of his or her identity. The legal identity of a person is determined on the basis of several elements which together constitute his or her legal personality, the most important of which are name, status and parentage.

The first demand: The child's right to a name

One of the most important characteristics of a human being is to have a name that identifies him or her and distinguishes him or her from others. The name is the fundamental identifier of an individual's personality, through which each person enjoys a name by which they are known. The term "name" refers to a specific attribute that applies to each individual and has two meanings: a narrow meaning, which is the personal name of each individual, and a broader meaning, which includes both the given name and the surname. The surname represents the person's lineage, i.e. their family name. It should be noted that the distinction between the first name and the surname is a European tradition, with the French legal system distinguishing between the surname and the first name. This distinction has also been adopted by the Algerian legal system, which uses the broad concept of the name, combining the surname and the first name.

In this regard, Article 28 of the Civil Code states that "every person must have a surname and a given name, and the person's surname is inherited by his children".

According to this text, the Algerian legislator has defined the surname as the name borne by a person and inherited by his children. The surname is the name chosen to be added to the name of the person in order to indicate that the person belongs to a certain group of relatives from the same origin⁶. This means that the surname serves as a marker to confirm the child's descent from the legal father. It also means that the intended surname is the father's surname, not the mother's. Only the father's surname is passed on to the children. On the other hand, the legislator has defined the first name as a personal designation for each individual, which may consist of one or more names⁷.

⁴ Abdullah Najjar, *Legal protection of the child in Algerian legislation*, Doctoral thesis, Yahya Fares University, Medea, 2020, p. 87.

⁵ Raja Al-Jubouri, *Study on the Legal Protection of the Child*, Baghdad University Library, Iraq, September 1991, p. 06.

⁶ AbdelazizSaad, *Crimes against the Family System*, National Office for University Publications, Algeria, 2002, p. 144.

⁷ Aja Al-Jilali, *Introduction to Legal Sciences, Part 2*, Dar Berti Publishing, Algeria, 2009, p. 95.

The Convention on the Rights of the Child emphasises the right of the child to enjoy this right. Article 7, paragraph 1, states: "The child shall be registered immediately after birth and shall have the right to a name from birth". Article 3 of Law 15-12 on the Protection of the Child states that every child, without distinction as to colour, sex, language, opinion, disability or any other form of discrimination, shall enjoy all the rights set forth in the Convention on the Rights of the Child and other relevant international treaties ratified by the country. These rights are enshrined in national legislation, in particular the right to life, name, nationality, family, health, equality, education, culture, entertainment and respect for private life.

Here we see that the Algerian legislator has regulated the child's right to a name in such a way as to ensure its distinction and preserve its identity. This is done by regulating the rules relating to the family name and the first name⁸. Article 29 of the Civil Code refers matters relating to the acquisition and modification of titles to the Personal Status Code. It states that "the law on civil status, Law No. 70-20 of 19 February 1970, as amended and supplemented, shall apply to the acquisition and modification of titles". According to this law, a child acquires a surname in three cases:⁹

The first is when the child is legitimate and its descent is established in accordance with the conditions laid down in the Family Code. Article 40 states that descent may be established by a valid marriage, recognition, proof, suspicion of marriage or a marriage dissolved after consummation in accordance with Articles 32, 33 and 34 of this law. The judge may use scientific methods to establish descent.

- Article 41 states that a child shall be attributed to its father if the marriage is valid, if it is possible to establish a link and if it has not been denied by legitimate means.

- Article 42 sets the minimum duration of pregnancy at six months and the maximum at ten months. Article 43 states that a child shall be attributed to its father if the pregnancy occurs within ten months of separation or death. Article 44 states that parentage may be established by acknowledgment of paternity or maternity, even in cases of imminent death, if this is justified by reason or custom. Article 45 stipulates that recognition of descent in cases other than paternity or maternity is valid only if certified by the competent authority.

The second case is that of the abandoned child. Article 64 of the Civil Status Code stipulates that the civil status officer in charge of assigning names to abandoned children or children born of unknown parents to whom no name has been assigned shall assign a set of names to the child, with the last name being assigned as the family name.

The third case is that of a godchild. According to the second paragraph of article 1 of decree 71-157, which concerns the modification and completion of surnames¹⁰, a person who is legally sponsoring a minor of unknown parentage may request that the child's surname be changed in his or her name and for his or her benefit. This is done in order to align the surname of the sponsored child with that of the guardian. If the mother of the minor is known and alive, her consent, in the form of a legal contract, should be attached to the application.

With regard to the personal name, it is the name given to the child at birth in order to establish his or her individual identity within the family, in accordance with legal and religious guidelines. It is recorded in the civil status registers as the official and permanent name of the child, as stated in Article 63 of the Civil Status Code, which reads as follows "The birth certificate shall state the date, time and place of birth, the sex of the child, the names given to the child, as well as the names, titles, ages, occupations and places of residence of the father and mother". Islamic law

⁸- AbdellatifWali, The Child's Right to Name: A Comparative Study of Algeria, Morocco, Tunisia, Algerian Journal of Legal, Economic and Political Sciences, Faculty of Law, University of Algiers, Vol. 51, Issue 01, p. 264.

⁹- Article 70-20 related to the amended and complementary civil status, dated February 19, 1970, Official Gazette number 21, dated February 27, 1970.

¹⁰- Decree No. 70-20 on civil status, as amended and supplemented by Decree No. 92-24 of 13 January 1992 amending Decree No. 71-157 of 3 June 1971 on the change of surname, Official Journal No. 05 of 22 January 1992.

emphasises the importance of giving good names that are in accordance with religious teachings and do not contradict any legal provisions¹¹.

The choice of names must comply with the guidelines and conditions laid down by the Algerian legislator, as set out in the second paragraph of Article 28 of the Civil Code. It stipulates that names must be Algerian, although exceptions can be made for children born to non-Muslim parents. In addition, the legislator added another condition in Article 64(3) of the Personal Status Code: "All names that are not intended for use and customary use are prohibited". This shows that the legislator attaches great importance to the right of the child, as well as the right of the parents or guardians, to name the child in a way that enhances his or her identity and avoids derogatory or inappropriate names. Islamic law also emphasises giving the child a good name to avoid any possible ridicule, as confirmed by the Prophet Muhammad (peace be upon him) in the noble hadith: "Verily, on the Day of Resurrection you will be called by your names and the names of your fathers, so give yourselves good names"¹².

There is no doubt that a good name has a positive effect on an individual's psyche, as it becomes a means of boosting their self-esteem and a source of happiness in their lives. Conversely, if a name is unattractive, it can affect their self-image and make them feel withdrawn¹³.

On the second point, a child's right to a nationality is of great importance. Nationality is a legal and political bond that binds a person to a particular country. It is a legal bond because it entails rights and mutual obligations, and it is a political bond because it serves as a means of geographically distributing individuals among nations and making the person a member of the population of the State¹⁴. Nationality is therefore of immense importance to the child, as it is one of the internationally recognised components of his or her identity¹⁵.

According to Article 7 of the Convention on the Rights of the Child, a child should be registered immediately after birth and has the right to a name and the right to acquire a nationality from birth. This is reflected in Article 03 of Law 15-12 on the protection of children. Nationality is the legal and political relationship that binds the child to a specific country on the basis of specific legal conditions. Through the acquisition of nationality, the child enjoys a set of rights and guarantees that the State guarantees to its citizens, especially children. The importance of nationality for a child is greater than for an adult because children, due to their physical and mental immaturity, need special protection and care¹⁶. Therefore, nationality contributes significantly to providing them with the necessary legal and social protection at this critical stage of their lives.

The different laws of the countries grant a child original nationality on the basis of two main criteria: *jus sanguinis* (right of blood) and *jus soli* (right of soil)¹⁷. The Algerian legislator has established the principle of acquiring original nationality by *jus sanguinis*, with exceptions for *jus soli*.

Granting Algerian nationality to a child: Authentic nationality is a fundamental component of a person's political status. It is granted either by *jus sanguinis* as a general principle or by *jus soli* as an exception, according to specific rules and conditions.

¹¹- Ali Filali, Protection of the Child in Algerian Family Law, Algerian Journal of Legal, Economic and Political Sciences, Faculty of Law, University of Algiers, 2001, p. 47.

¹²- Book of Sunan Abu Dawood, Hadith No. 4948.

¹³- Abdullah Alwan, Education of Children in Islam, Dar Al-Salam for Publishing and Distribution, Beirut, 1978, p. 82.

¹⁴- Zainab Wahid Dhaham, Mohammed Wahid Dhaham, Right to Nationality and Deprivation thereof, National Centre for Legal Publications, Cairo, 2013, p. 12.

¹⁵- Mohamed Tayeb, New in the Algerian Nationality Law and the Legal Centre for Multiple Nationalities, Dar Huma, Algeria, 2001, p. 34.

¹⁶- Abdullah Najjar, *ibid*, p. 95.

¹⁷- Jamal Boushnafa, The Child's Right to Nationality in Algerian Legislation, Journal of Studies and Research, University of ZianeAhour, Djelfa, Volume 10, Issue 4, December 2018, p. 927.

Algerian birthright nationality based on jus sanguinis: The legislator has recognised the right of the child to enjoy original nationality from birth on the basis of jus sanguinis. This is provided for in Article 6 of the 2005 amended law under Order 05-01, which includes the Nationality Code¹⁸. The article states: "The child born to an Algerian father or mother shall be considered Algerian". Thus, descent remains the basis for the enjoyment of this right, regardless of the child's place of birth or the nationality of the father or mother, whether natural or acquired. The legislator has thus established the principle of gender equality in the transmission of nationality by descent. Previously, the same article, before the amendment, deprived a child born to a father who had the nationality of another country of this right, even if the mother had Algerian nationality. Furthermore, the original nationality of a child born to an Algerian mother, provided that she holds Algerian nationality at the time of the child's birth, is established regardless of the place of birth and the mother's nationality (whether original or acquired), even if the child initially holds the nationality of another country in accordance with its internal law, even if this leads to dual nationality.

Granting Algerian nationality of origin by jus soli: If the legislator grants nationality of origin to a child on the basis of jus sanguinis as a general principle, by establishing his or her descent from an Algerian father or mother, this would exclude several persons whose descent has not been established. In order to protect this group, the legislator has recognised the right of a child born on Algerian territory to enjoy Algerian nationality, whether actual or presumed, regardless of his or her parentage. Article 7 of the Nationality Code specifies the cases in which Algerian nationality may be granted to a child born in Algeria¹⁹. It states: "The following shall be considered Algerian by birth in Algeria: a child born in Algeria to unknown parents". However, a child born in Algeria of unknown parents is considered never to have been Algerian if, during his minority, it is proved that he was related to a foreigner and had the nationality of one of them.

A newborn child found in Algeria is presumed to have been born in Algeria unless proven otherwise. A child born in Algeria to an unknown father and a mother named in the birth certificate, with no other information to establish her nationality, is also considered to have been born in Algeria.

The wisdom of the Algerian legislator in including these provisions is to avoid the existence of persons without nationality, as statelessness is considered a dangerous phenomenon for both the individual and the State. In addition, the principles of private international law in matters of nationality aim to eliminate statelessness, and this is what the Algerian legislator is trying to do. However, the legislator has laid down a condition for the acquisition of Algerian nationality, namely the absence of proof of the child's affiliation to a foreign father or mother during his or her minority. If this is proven, the person is considered to have never been Algerian. On the other hand, if the affiliation is proven after the age of majority, Algerian nationality is not revoked²⁰.

The second issue is the child's right to care:

One of the fundamental rights of the child is to grow up in a healthy environment that guarantees his or her natural and balanced development and provides him or her with comfort, psychological well-being and social stability. The rights of the child are not limited to name, descent and nationality, but also include living in an environment that prevents them from falling into deviance and social harm. Therefore, the child must be treated with care to ensure that he or she is not neglected or abandoned. They should receive attention from the moment of birth, including care, protection, financial support and, where appropriate, protection of their financial rights.

The first requirement: The child's right to custody

The Algerian legislator has dealt with the provisions on custody in articles 62 to 72 of the Family Code. Article 62 defines custody as follows: "Custody is the care, education and upbringing of the

¹⁸- Order No. 05-01 of 27 February 2005 amending and supplementing Order No. 70-86 of 15 December 1970 on the Algerian Nationality Code, Official Journal No. 15 of 27 February 2005.

¹⁹- TaibZerouti, Protection of the child from the perspective of international private law, Algerian Journal of Legal, Economic and Political Sciences, Part 41, Issue 01, 2000, p. 156.

²⁰- Dr. TaibZerouti, The Mediator in Algerian Nationality Law, Al-Kahina Printing House, Algeria, 2002, p. 304.

child according to the religion of the father, as well as ensuring his protection, health and well-being".

It is clear from the articles dealing with custody that the legislator has laid down conditions to be met by the person to whom custody may be granted. These conditions, as set out in the Family Code, must be met by the custodian, and failure to meet any of these conditions would result in the loss of custody, even if the custodian meets the other requirements. The conditions are as follows:

1. The custodian must not be married to a prohibited relative of the child. This condition is laid down in article 66 of the Family Code, which reads as follows "The right of custody shall be terminated if the custodian marries a prohibited relative".

2. The custodian may not reside abroad with the child. Article 69 of the Family Code states: "If the person entrusted with custody intends to reside abroad, the matter is subject to the judge's decision on the establishment or termination of custody". The legislator has not provided for automatic termination of custody if the custodian travels abroad with the child, but it is conditional on the intention to reside there.

3. Age and mental capacity: The custodian must be an adult, i.e. he or she must have reached the age of majority, which, according to Article 40 of the Algerian Civil Code, is nineteen years. This is because a child, even an exceptional one, needs someone to take care of him or her and ensure his or her well-being, as he or she cannot take care of himself or herself or make decisions for others.

4. Capacity and trustworthiness: Capacity refers to the ability to manage the child's affairs. Therefore, custody will not be granted to an incapacitated person, to a person with a contagious or debilitating illness that prevents them from caring for the child, to an elderly person who requires the care of others, or to a neglectful person who frequently leaves their home, thereby endangering the welfare and potential harm of the child. In addition, custody will not be granted to a person living with an infectious or hostile person²¹, even if he or she is a close relative, if the child cannot receive sufficient care and a suitable environment. As for trustworthiness, it means that the custodian should be morally upright, both in character and in behaviour towards the child, showing care and safeguarding the child's interests. A guardian who is absent from the child for most of the day and part of the night, or who neglects the child's care and allows the child to associate with bad influences, cannot be considered trustworthy or fit to be a guardian.

5. Religious unity: Article 62 of the Family Code states that the child should be brought up according to the religion of the father.

- The order of priority for custody: Article 64 establishes the following order of priority for those entitled to custody: first the mother, then the father, followed by the maternal grandmother, the paternal grandmother, the aunt and then the paternal aunt. However, the judge has the power to grant custody to the aunt even if both parents are present, as long as the best interests of the child are taken into consideration. The judge also has the power to determine visitation rights when awarding custody.

Specialised studies have confirmed that the separation of a child from its mother exposes it to various developmental and nutritional disorders and increases the risk of neglect and abandonment. It is worth noting that the law does not strictly bind the judge to the order set out in Article 64. The judge has the flexibility to award custody to the aunt, for example, even if both parents are available, as long as the best interests of the child are paramount. This approach reflects the legislature's commitment to broadening the scope of child protection.

A. Duration of custody: According to Article 65 of the Family Code, custody of a male child ends at the age of 10 and that of a female child at the age of marriage. However, the judge may extend custody of a male child until the age of 16 if the custodian remains unmarried. The judge should have regard to the best interests of the child when deciding on the termination of custody.

The second provision: The child's right to protection

²¹- Reference to the Supreme Court, decision no. 33921 of 9 July 1984, Journal of Justice, year 1989, issue 04, p. 76.



The Preamble to the Convention on the Rights of the Child states that States Parties to the present Convention recognize that, in accordance with the principles proclaimed in the Charter of the United Nations, the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Considering that in the Charter the peoples of the United Nations have reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have resolved to promote social progress and better standards of life in larger freedom

Recognizing that the United Nations has proclaimed in the Universal Declaration of Human Rights and in the International Covenants on Human Rights that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

Recognizing that the United Nations, in the Universal Declaration of Human Rights, has proclaimed that childhood is entitled to special care and attention.

Convinced that the family, as the basic unit of society and the natural environment for the growth and well-being of all its members, especially children, should be afforded the necessary protection and assistance to enable it to fulfil its responsibilities within the community

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.

And whereas it is considered necessary to prepare the child fully for an individual life in society and to educate him in the spirit of the highest ideals proclaimed in the Charter of the United Nations, in particular the spirit of peace, dignity, tolerance, freedom, equality and brotherhood.

And considering that the need for special care for the child has been mentioned in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights (in particular articles 23 and 24), in the International Covenant on Civil and Political Rights (in particular article 10) and in the International Covenant on Economic, Social and Cultural Rights (in particular article 10), as well as in the relevant statutes and instruments of specialized agencies and international organizations concerned with the welfare of the child.

And as it takes into account that "the child, by reason of his or her physical and mental immaturity, is in need of special protection and care, including appropriate legal protection, both before and after birth", as stated in the Declaration of the Rights of the Child.

And as it refers to the provisions of the Declaration on Social and Legal Principles Relating to the Protection and Care of Children, with special attention to custody and adoption at the national and international levels, and to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict.

It also recognises that in all countries of the world there are children living in extremely difficult conditions and that these children require special attention.

Similarly, the Algerian legislator stipulates in article 71 of the Constitution that "the rights of the child shall be protected by the State and the family, taking into account the best interests of the child. The State protects and guarantees abandoned and illegitimate children, under penalty of criminal prosecution. Parents are obliged to provide for the upbringing of their children. The law punishes all forms of violence against children, their exploitation and abandonment, in addition to the protective measures provided for in Law 15-12 on the Protection of Children".

Conclusion:

In conclusion, the realisation of children's rights requires a sense of responsibility and commitment to their care and well-being. Therefore, children's rights are an integral part of the human rights system, starting before their birth as foetuses and extending beyond their birth until they reach the stage of independence. The Algerian legislature, in fulfilment of its international obligations, has ensured the recognition of various rights of children by approving international conventions on the protection of children's rights and by enacting legal provisions on children's rights in the Family Code and in Law 15-12 on the protection of children. This reflects the evolving concept of the child

in international law, which transforms the child from a subject of protection to a person with an independent legal status, with full rights and inherent human dignity that must be respected, without undermining the rules governing family relations, considering the family as the natural environment for their growth and well-being. The State has a duty to protect and support the family so that it may fulfil its role in society. In order to achieve this objective, the legislator has established social, judicial and institutional mechanisms for the protection of children, including the National Authority for the Protection and Promotion of Childhood, established at the level of the Prime Minister's Office. In addition, local protection is provided by open mediation services in coordination with various public bodies, institutions and individuals responsible for child welfare at provincial level.

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