



The Right of Visitation in Algerian Family Law



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Abstract

"The right of visitation is inherently connected to the granting of custody to one of the parents. It serves as a mechanism to monitor the child's living conditions, educational progress, moral development, and overall well-being. Childcare is not confined to the provision of financial support alone; it extends to encompass emotional and moral responsibilities. A critical component of such moral care is ensuring the continuity of the child's relationship with the non-custodial parent. This parental responsibility can only be effectively fulfilled through regular visitation, which allows for appropriate supervision and engagement by both parents in the child's life.

Keywords

Law ;
Alegria ;
Visitation;
Custody;
Family.

الكلمات المفتاحية

قانون؛
جزائري؛
زيارة؛
حضانة؛
أسرة.

ترتبط زيارة المحضون بإسناد الحضانة لأحد الأبوين والإطلاع على أحواله المعيشية والتربوية والتعليمية والصحية والخلقية، ففلاهتمام بالمحضون لا تعنى إلا القيام بدفع النفقة اللازمة بل تشمل حتى الرعاية المعنوية ومن أولى المعنويات إستمرار إتصاله بوالده البعيد عن الحضانة، و ان هذه المسؤولية لا تصل إلا بالحد المقبول من مشاهدة وإشراف الوالدين بالمحضون عن طري زيارته.

ملخص

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Introduction

It is well known that, following the divorce of a child's parents, the child is required to live with one of them due to the dissolution of the marital bond that once united them. This leads to the child being separated from the other parent. Consequently, the assignment of custody to one parent does not nullify the other parent's right to visit their child and to stay informed about their living, educational, health, and moral conditions. Custody does not only entail financial support, but also includes emotional and psychological care, which is primarily fulfilled through continued contact with the non-custodial parent. True care is only achieved when both parents can supervise and see the child to a reasonable extent.

Courts frequently face disputes related to organizing visitation rights, raising multiple legal questions, such as: Is the right of visitation granted to everyone with custody? Does the custodial parent have the right to visit the child anytime and anywhere, or are there legal regulations that govern this right?

Moreover, disputes often arise from the custodial parent's refusal to hand the child over for visitation, or the non-custodial parent taking the child and failing to return them. Another issue is the question of responsibility: Who is liable for harm committed by or inflicted upon the child? Is it the father, who retains the right of visitation, or the mother, who has custody, especially after the law granted her legal guardianship? These issues will be addressed in two sections:

First, organizing visitation rights;

Second, parental responsibility regarding the child.

I. Organizing Visitation Rights

The Algerian legislator stipulates visitation rights in Article 64 of the Family Code and mandates that the judge include it when assigning custody. Additionally, Article 57 bis of the same code designates visitation as a provisional measure to be urgently decided upon by the judge. Even though the judge is required to grant visitation rights—even if the concerned party fails to request it—the legislator's regulation of visitation is quite brief. It does not clarify the meaning, purpose, or conditions of exercising this right, nor its duration, leaving it to the judge's discretion, based on the child's best interest and in line with Islamic principles.

1. Beneficiaries of Visitation Rights

A. Parental Visitation Rights:

According to Islamic law, both parents are entitled to visit their child. Each has the right to see the child under the custody of the other, to ensure their wellbeing and state of life. Neither parent may prevent the other from seeing the child or use the child as a tool for revenge or retaliation. As stated in the Quran: *"No mother shall be harmed through her child, nor shall a father be harmed through his child."*

A mother's right to see her child stems from her motherhood, compassion, and emotional connection. The father also holds the right to see his child to provide care, supervision, and discipline. If one parent has custody, they are not obliged to bring the child to the other parent, but must not prevent the visitation. If a third party (not the parents) has custody, both parents retain the right to visitation. Any judgment that denies a parent this right is legally flawed. The Supreme Court emphasized this in a ruling that declared awarding custody to a grandmother without granting the father visitation rights to his daughter as a violation of the law.

The primary condition for visitation is always the best interest of the child. If the child's welfare conflicts with the interests of either parent, the child's welfare must prevail.

B. Relatives' Right to Visitation:

While parental visitation rights are well-established, questions arise concerning the rights of other relatives, such as grandparents, uncles, or aunts, depending on which parent has custody. Article 64 of the Family Code mandates visitation rights but does not limit them to just the parents. It may extend to anyone who has a legitimate interest in the child's wellbeing, provided the child's interest is safeguarded.

The Supreme Court ruled that a maternal aunt has the right to visit her nephew because she is ranked third in the custody hierarchy. Likewise, the court granted a grandfather visitation rights after his son's death, as he also bears financial responsibility for the grandchild. The same principle applies to paternal grandmothers, who also have the right to visit their grandchildren to preserve familial ties.

The child should not be prevented from visiting a parent if they wish to do so, and the custodian must allow it, especially in cases where a parent is ill and cannot travel to see the child.

If the child falls ill, the mother is considered the most suitable person to care for the child, regardless of gender, due to her endurance and nurturing capacity.

2. Time and Place of Visitation

The legislator did not specify the time and place for visitation, instead leaving it to the judge's discretion, based on Islamic teachings and the child's best interest. Thus, the custodial and non-custodial parties can agree on suitable times and places. However, courts usually determine these details due to recurring disputes—even when visitation is court-ordered.

A. Place of Visitation:

The custodial parent is not required to bring the child to the non-custodial parent's residence. It is sufficient for the visitation to occur in a suitable, safe location. The courts generally allow the non-custodial parent to take the child and return them after visitation. The place must not harm the child emotionally or inconvenience the custodian—for example, ordering visitation at the ex-wife's house is deemed improper. The Supreme Court ruled that such arrangements are unlawful since the ex-wife is now legally a stranger to the father, and visitation must allow the father to spend meaningful time with the child.

B. Duration of Visitation:

Visitation duration refers to both the frequency and the length of each visit. Scholars differ on this:

- One group suggests visits be weekly or monthly, with weekly visits reserved for mothers due to their emotional bond with the child.
- Another group argues both parents should have equal visitation frequency, referencing the Quranic verse: “*No mother shall be harmed through her child, nor shall a father be harmed through his child.*”

Courts do not adhere strictly to either opinion. They try to maximize the child's contact with both parents, sometimes allowing overnight stays with the non-custodial parent, provided it doesn't infringe upon the custodian's rights or harm the child.

The Supreme Court confirmed that visitation rights go beyond mere meetings, and can include overnight stays for educational and emotional development. It rejected an appeal claiming such rights infringed upon the custodian's authority.

Common disputes arise from the custodian wanting to reduce visitation time, while the other parent seeks more access. The court has ruled that as long as the child's interests are not compromised, extended visitation—such as during school holidays—is justified. In one case, the court annulled a ruling that reduced a father's visitation during school breaks, affirming his right to share holidays with his child unless specific risks are identified.

Judges are not bound by the parents' proposals regarding visitation schedules. While they may adopt them if appropriate, the child's best interest remains the primary consideration.

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