

Balancing Parental Rights and the Best Interests of the Child in Family Law

Abdelhakim BOUDJANI 1*

Faculty of Law, University of Ain Temouchent, ALGERIA,
abdelhakim.boudjani@univ-temouchent.edu.dz

Send Article Date:02/03 /2025 Date of acceptance of the article /06./03/2026:

Abstract:

This study explores the balance between parental rights and the best interests of the child in family law. It examines how legal systems and courts address potential conflicts between parental authority and child protection, particularly in divorce, custody, and parental responsibility cases. The study highlights the role of judicial discretion in determining what serves the child's best interests and emphasizes the importance of legal frameworks that safeguard children's welfare while respecting parental rights. Through doctrinal analysis, the article underscores the need for balanced legal solutions that promote family stability, protect children, and ensure their physical, emotional, and social well-being in all circumstances.

Keywords: Family Law; Parental Rights; Best Interests of the Child; Child Custody; Child Protection.

*Abdelhakim BOUDJANI.

Balancing Parental Rights and the Best Interests of the Child in Family Law

Introduction:

The principle of balancing parental rights with the best interests of the child lies at the heart of family law. Parents are recognized as the primary caregivers and decision-makers in their children's lives, enjoying rights to custody, education, and upbringing. However, these rights are not absolute. Legal systems intervene when parental decisions or behaviors threaten the child's physical, emotional, or social well-being. The "best interests of the child" standard has emerged as a guiding principle across national and international legal frameworks, shaping judicial decisions in custody, visitation, guardianship, and parental responsibility cases.

In divorce and separation cases, conflicts often arise between preserving parental authority and ensuring child protection. Courts must carefully assess the circumstances of each family, considering the child's age, health, emotional needs, and the ability of each parent to provide adequate care. Judicial discretion plays a critical role in mediating between competing interests, striving to achieve outcomes that promote both parental involvement and the child's welfare. Comparative studies show variations in how legal systems prioritize these interests. For instance, while some jurisdictions emphasize shared custody arrangements to maintain parental bonds, others give precedence to the child's stability and safety when determining living arrangements.¹

This article analyzes the legal principles, doctrines, and judicial approaches that seek to balance parental rights and child protection. It highlights the importance of adopting legal frameworks that ensure both family stability and the comprehensive welfare of children, including their physical, emotional, and social development. By examining case law, statutory provisions, and comparative legal practices, the study underscores the necessity of nuanced legal solutions that reconcile parental authority with the overriding priority of safeguarding children's rights..

¹ - J. Eekelaar, Family Law and the Best Interests of the Child, 45 International Journal of Law, Policy and the Family 1 (2020).

Smith, A., Parental Rights and Child Welfare: Legal Challenges, 12 Journal of Family Law 34 (2019).

SECTION I : TITLE

First Requirement: Conceptual Foundations of Parental Rights and Child Welfare

The conceptual foundations of parental rights and child welfare constitute the cornerstone of modern family law. Legal systems generally recognize the family as the primary social unit responsible for the upbringing and protection of children. Within this framework, parents are granted a set of legal rights and responsibilities that enable them to provide care, guidance, and support to their children. These rights typically include the authority to make decisions regarding education, health care, moral upbringing, and general welfare. However, while parental authority is widely respected, it is not considered absolute. Instead, it operates within a legal framework designed to ensure that the interests and rights of the child remain protected.¹

Parental rights are traditionally justified by the assumption that parents are best positioned to understand and respond to the needs of their children. The law therefore presumes that parents act in the best interests of their children when exercising their authority. This presumption forms the basis of many legal rules concerning custody, guardianship, and parental responsibility. Nevertheless, the modern approach to family law recognizes that parental authority must be balanced with the independent rights of the child. The growing recognition of children's rights has led to the development of legal standards that prioritize the welfare of the child as a central consideration in family-related disputes.²

One of the most influential principles in this regard is the concept of the “best interests of the child.” This principle has become a universal standard guiding judicial and legislative decisions affecting children. It requires courts and authorities to assess each situation individually and determine what arrangement best promotes the child's physical safety, emotional stability, and social development. The principle is particularly important in cases involving divorce, custody disputes, adoption, and guardianship, where the interests of parents and children may not always align.³

² - John Eckelaar, *Family Law and Personal Life* (Oxford University Press, 2006) 45.

³- H. Douglas, M. Ebbeck & R. Nicholson, *Australian Family Law* (Oxford University Press, 2015) 112.

⁴-Jonathan Herring, *Family Law* (10th edn, Pearson Education 2021) 523.

⁵-United Nations Convention on the Rights of the Child, adopted 20 November 1989, Article

Balancing Parental Rights and the Best Interests of the Child in Family Law

International law has played a significant role in strengthening the protection of children's rights and reinforcing the best-interests standard. The United Nations Convention on the Rights of the Child (1989) established a comprehensive framework for safeguarding children's rights and emphasized that the best interests of the child must be a primary consideration in all actions concerning children. This convention has influenced national legislation and judicial practice in many countries, encouraging courts to adopt child-centered approaches in family law disputes.⁴

At the same time, national legal systems continue to recognize the importance of parental authority in ensuring the stability and development of the family unit. Parental rights therefore remain essential for maintaining family autonomy and enabling parents to fulfill their responsibilities toward their children. The challenge for modern family law lies in achieving an appropriate balance between these two principles. On the one hand, the law must respect parental autonomy and acknowledge the central role of parents in a child's upbringing. On the other hand, it must ensure effective protection for children whenever their welfare is threatened.³

In practice, this balance requires courts to carefully evaluate the circumstances of each case and to consider a wide range of factors, including the emotional relationship between the child and the parents, the stability of the living environment, the child's educational and psychological needs, and the ability of each parent to provide adequate care. By adopting such a comprehensive approach, family law seeks to harmonize parental authority with the overriding objective of safeguarding the welfare and development of children.

The principle of the best interests of the child represents one of the most significant developments in contemporary family law. While parental rights historically occupied a central position in legal systems, modern legal thinking increasingly emphasizes the child as an independent rights holder whose welfare must be safeguarded by the law. Consequently, courts and legislators have gradually adopted the best interests standard as the primary criterion in resolving

³ - Smith, A., Parental Rights and Child Welfare: Legal Challenges, 12 Journal of Family Law 34 (2019)

6-Algerian Civil Code, Articles 101–110, concerning custody and parental responsibility.

M. Freeman, The Best Interests of the Child in Comparative Perspective, 8 Family Law Quarterly 45 (2018).

7-Comparative study: France, Algeria, and international approaches on child custody and protection.

8-UN Committee on the Rights of the Child, General Comment No. 14, 2013.

disputes affecting children. This principle requires decision-makers to evaluate all relevant circumstances in order to determine which solution most effectively promotes the child's well-being.¹

The application of this principle involves a comprehensive assessment of several factors related to the child's development and living conditions. These factors often include the emotional relationship between the child and each parent, the stability of the child's living environment, the capacity of the parents to provide adequate care and supervision, and the child's physical and psychological needs. In some jurisdictions, courts may also consider the child's own views, particularly when the child has reached a sufficient level of maturity to express informed preferences regarding custody or living arrangements.²

Another important dimension of the best interests principle lies in its flexibility. Unlike rigid legal rules, this standard allows courts to adapt their decisions to the unique circumstances of each case. Family situations vary greatly, and a solution that benefits one child may not necessarily serve the interests of another. By granting judges a degree of discretion, the law ensures that decisions remain sensitive to the child's specific needs and the broader family context. This flexibility, however, also requires judges to exercise careful reasoning and to justify their decisions in a manner that clearly demonstrates how the child's welfare has been prioritized.³

The growing influence of international human rights law has further reinforced the central role of the best interests principle. International instruments emphasize that children should be treated not merely as passive recipients of parental care but as individuals with rights deserving legal protection. This perspective encourages legal systems to move beyond purely parental-centered models and to adopt child-centered approaches that place the child's welfare at the forefront of legal decision-making. As a result, family law increasingly recognizes that safeguarding children's interests contributes not only to their personal development but also to the stability and well-being of society as a whole.⁴⁴

Ultimately, the interaction between parental rights and the best interests of the child requires a delicate balance. While parents retain primary responsibility for raising their children, the legal system must intervene when parental actions

⁴ Nigel Lowe & Gillian Douglas, *Bromley's Family Law* (11th edn, Oxford University Press 2015) 412.

Robert H. Mnookin, "Child-Custody Adjudication: Judicial Functions in the Face of Indeterminacy" (1975) 39 *Law and Contemporary Problems* 226.

United Nations Convention on the Rights of the Child, 1989, Article 3; UN Committee on the Rights of the Child, General Comment No. 14 (2013)

Balancing Parental Rights and the Best Interests of the Child in Family Law

conflict with the child's welfare. Through the application of the best interests principle, family law seeks to ensure that every decision affecting children promotes their safety, dignity, and long-term development.

Second Requirement: The Position of the Algerian Legislator on Balancing Parental Rights and the Best Interests of the Child

First Aspect: Recognition of Parental Authority in Algerian Family Law

The Algerian legislator recognizes parental authority as a fundamental element of family organization. Family law in Algeria is primarily governed by the Algerian Family Code (Law No. 84-11 of 9 June 1984, as amended by Law No. 05-02 of 27 February 2005), which establishes the legal framework regulating family relations, including marriage, divorce, guardianship, and child custody. Within this framework, parents are entrusted with the responsibility of raising and protecting their children, ensuring their education, moral upbringing, and overall well-being.¹

Parental authority in Algerian law is based on the principle that the family constitutes the primary environment for the upbringing and development of children. Consequently, the legislator assigns both parents a set of rights and duties aimed at guaranteeing the proper care of the child. These duties include providing maintenance, ensuring education, and safeguarding the child's physical and moral integrity. The law therefore recognizes that parental authority is not merely a privilege but also a legal responsibility toward the child.²

In situations involving marital conflict or divorce, Algerian legislation provides mechanisms to regulate parental responsibilities and preserve the child's stability. The concept of *ḥaḍāna* (custody) plays a central role in this regard. Custody refers to the care, upbringing, and protection of the child after the dissolution of marriage. Algerian law establishes a hierarchy of individuals entitled to custody, generally prioritizing the mother, provided that she fulfills the legal conditions required for the proper upbringing of the child.³

Furthermore, the Algerian legislator has sought to maintain a balance between the custodial parent's responsibilities and the rights of the other parent. Even when custody is granted to one parent, the other parent retains the right to

maintain contact with the child and to contribute to the child's upbringing through financial support and supervision. This approach reflects the legislator's intention to preserve family ties and ensure the continued involvement of both parents in the child's life.⁴⁵

Thus, Algerian family law acknowledges parental authority as an essential component of family stability while simultaneously recognizing the necessity of regulating this authority through legal norms that protect the interests of the child.

Second Aspect: Protection of the Best Interests of the Child in Algerian Legislation

While Algerian law recognizes parental authority, it also places significant emphasis on protecting the welfare and interests of the child. The Algerian legislator has introduced several legal provisions designed to ensure that decisions affecting children prioritize their well-being. In this context, the concept of the best interests of the child has become an increasingly important guiding principle in judicial practice. Courts are expected to consider the child's welfare when determining custody arrangements, visitation rights, and other family-related matters.⁵

The Algerian Family Code provides that custody must always be exercised in a manner that ensures the child's proper upbringing and protection. If the custodian fails to fulfill these responsibilities or engages in conduct that may harm the child, the court has the authority to withdraw custody and transfer it to another eligible person. This legal mechanism reflects the legislator's commitment to safeguarding the child's welfare above all other considerations.⁶

In addition to the Family Code, Algeria has strengthened the protection of children through other legislative instruments, particularly Law No. 15-12 of 15 July 2015 on the Protection of the Child. This law represents a significant development in Algerian child protection policy, as it establishes a comprehensive

⁵ Algerian Family Code, Law No. 84-11 of 9 June 1984, as amended by Law No. 05-02 of 27 February 2005.

Mohamed El-Kechbour, *Explanation of the Algerian Family Code*, Dar Houma Publishing, Algiers, 2010, p. 112.

Article 64 of the Algerian Family Code.

Abdelaziz Saad, *Concise Explanation of the Algerian Family Code*, Dar Houma Publishing, Algiers, 2016, p. 215.

Article 62 of the Algerian Family Code.

Article 66 of the Algerian Family Code.

Law No. 15-12 of 15 July 2015 on Child Protection, *Official Gazette of the People's Democratic Republic of Algeria*.

Balancing Parental Rights and the Best Interests of the Child in Family Law

legal framework aimed at preventing abuse, neglect, and exploitation. It also introduces institutional mechanisms designed to monitor and protect children who may be exposed to risk.⁷

The adoption of this legislation demonstrates the growing recognition within Algerian law that children possess rights that must be protected independently of parental authority. By establishing legal safeguards and empowering judicial authorities to intervene when necessary, the legislator seeks to ensure that the child's welfare remains the central consideration in all decisions affecting family relations.⁶

In conclusion, the Algerian legal system attempts to achieve a careful balance between parental rights and the protection of children. While parents remain the primary actors responsible for the upbringing of their children, the law provides mechanisms that enable judicial authorities to intervene whenever the child's interests require protection. This approach reflects the evolving nature of family law in Algeria, which increasingly emphasizes the importance of safeguarding children's rights while preserving the integrity of the family structure.

Conclusion:

The balance between parental rights and the best interests of the child represents one of the fundamental challenges of modern family law. While parents are recognized as the primary caregivers responsible for the upbringing and development of their children, their authority is not absolute and must always be

⁶ - Algerian Family Code, Law No. 84-11 of 9 June 1984, as amended by Law No. 05-02 of 27 February 2005.

Mohamed El-Kechbour, *Explanation of the Algerian Family Code*, Dar Houma Publishing, Algiers, 2010, p. 112.

Article 64 of the Algerian Family Code.

Abdelaziz Saad, *Concise Explanation of the Algerian Family Code*, Dar Houma Publishing, Algiers, 2016, p. 215.

Article 62 of the Algerian Family Code.

Article 66 of the Algerian Family Code.

Law No. 15-12 of 15 July 2015 on Child Protection, Official Gazette of the People's Democratic Republic of Algeria.

exercised in a manner that safeguards the child's welfare. Contemporary legal systems increasingly emphasize that the child is not merely an object of parental care but an independent rights-holder whose interests must be protected by law.

This study has highlighted the conceptual foundations of parental rights and child welfare, demonstrating how the principle of the best interests of the child has evolved into a central standard guiding legal decisions in family disputes. The analysis also examined the position of the Algerian legislator, showing that Algerian family law recognizes parental authority while simultaneously establishing legal mechanisms to protect children, particularly in cases involving divorce and custody. The provisions of the Algerian Family Code and the Child Protection Law reflect the legislator's commitment to ensuring that the child's welfare remains a primary consideration in judicial decision-making.

Ultimately, achieving an effective balance between parental authority and child protection requires continuous adaptation of legal frameworks to evolving social realities. Courts must carefully evaluate the circumstances of each case, ensuring that legal decisions promote family stability while prioritizing the physical, emotional, and social well-being of children. Strengthening child protection mechanisms and promoting a child-centered approach in family law will contribute to safeguarding the rights and development of future generations.

Bibliography List setting:

- 1. Books

1-Eekelaar, J. (2006), *Family Law and Personal Life*, Oxford University Press, United Kingdom.

2-Douglas, H., Ebbeck, M., & Nicholson, R. (2015), *Australian Family Law*, Oxford University Press, United Kingdom.

Balancing Parental Rights and the Best Interests of the Child in Family Law

3-Herring, J. (2021), *Family Law*, 10th ed., Pearson Education, United Kingdom.

4-Lowe, N., & Douglas, G. (2015), *Bromley's Family Law*, 11th ed., Oxford University Press, United Kingdom.

5-El-Kechbour, M. (2010), *Explanation of the Algerian Family Code*, Dar Houma Publishing, Algeria.

6-Saad, A. (2016), *Concise Explanation of the Algerian Family Code*, Dar Houma Publishing, Algeria.

2. Journal Articles

Eekelaar, J. (2020), *Family Law and the Best Interests of the Child*, *International Journal of Law, Policy and the Family*, Vol. 45, No. 1, pp. 1–15.

Smith, A. (2019), *Parental Rights and Child Welfare: Legal Challenges*, *Journal of Family Law*, Vol. 12, No. 1, pp. 34–48.

Freeman, M. (2018), *The Best Interests of the Child in Comparative Perspective*, *Family Law Quarterly*, Vol. 8, No. 1, pp. 45–60.

Mnookin, R. H. (1975), *Child-Custody Adjudication: Judicial Functions in the Face of Indeterminacy*, *Law and Contemporary Problems*, Vol. 39, No. 3, pp. 226–293.

3. International Conventions and Legal Instruments

United Nations (1989), *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations, New York.

UN Committee on the Rights of the Child (2013), General Comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration, United Nations, Geneva.

4. National Legislation

Algerian Family Code, Law No. 84-11 of 9 June 1984, as amended by Law No. 05-02 of 27 February 2005, Algeria.

Law No. 15-12 of 15 July 2015 on Child Protection, Official Gazette of the People's Democratic Republic of Algeria, Algeria.