THE FAMILY CODE: THE PROSPECTION OF AMENDMENT
EL CÓDIGO DE FAMILIA: PERSPECTIVAS DE MODIFICACIÓN

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ABSTRACT

The royal speech on the 23rd anniversary of the Throne Day was an important historical milestone to re-open the discussion about the Family Code, after more than 18 years of its issuance. The royal speech defines the outlines of the upcoming amendments of the Family Code. The Family Law will be amended to grant the Moroccan women the full rights, which are guaranteed by the Moroccan constitution and the Islamic religion. This means that it will be within the framework of Islamic law in accordance with the agreement of Islamic scholars and jurisprudence.

KEYWORDS

Family Code, Morocco, marriage, divorce, minors.

RESUMEN

El discurso del monarca Mohamed VI con motivo del vigesimotercer aniversario de su llegada al Trono, fue un hito importante para reabrir la discusión sobre el Código de familia, algo más de 18 años desde su promulgación. El discurso real define las líneas maestras de las siguientes enmiendas que tendrán lugar en el Código de Familia. Se modificará el Derecho de Familia para conceder a las mujeres marroquíes todos los derechos garantizados por la Constitución marroquí y la religión islámica, esto es, dentro del marco

de la ley islámica y de acuerdo con las opiniones de la doctrina y la jurisprudencia islámicas.

PALABRAS CLAVE

Código de familia, Marruecos, matrimonio, divorcio, menores.

SUMMARY: *1. Introduction. 2. The first section: some provisions of marriage. 3. The second section: amending some articles related to divorce. 4. The third section: amending some articles related to custody.*

1. INTRODUCTION

The royal speech on the 23rd anniversary of the Throne Day defined the outlines of the upcoming amendments of the Family Code. The Family Law was just amended to grant the Moroccan women the full rights, which are guaranteed by the Islamic religion and the Moroccan constitution.

His Majesty the King, the Commander of the Faithful, explained that he will never permit what Allah (God) has forbidden, and vice versa, especially the matters that are organized by conclusive Quranic texts. Therefore, the amendment of the Family Law will be within the framework of Islamic law in accordance with the agreement of Islamic scholars and jurisprudence.

In its recent report, the Economic, Social and Environmental Council notes that «the time has come to amend the Family Code in order to go in line with the requirements of the constitution and the contents of international conventions ratified by Morocco. Furthermore, the amendment should go in line with the aspirations to achieve the empowerment of Moroccan women and to promote gender equality, which are articulated in the New Development Model (NDM).»

According to the royal speech, the practical experience of the Family Code by judiciary, and the empirical analysis of statistics, we believe that the expected amendments will be partial; it will be just a review to some articles, which have practical and realistic problems. The need to

bring up-to-date national mechanisms and legislation dictated these amendments in order to advance the rights of the family in general and the status of women in particular. The aim of this amendment is to make the Family Law in harmony with the constitutional document and international treaties, especially the Optional Protocol attached to the Convention on the Elimination of All Forms of Discrimination against Women, which Morocco completed its procedures of ratification of and went into in July 2022.

In the light of what is mentioned above, there are provisions that, in our opinion, need to be amended, some provisions are related to marriage in the first book, some others are related to the dissolution of the marriage bond and its effects in the second book, some others are related to childbirth and its consequences. In the third book.

In this study, we will discuss some cases which are worthy of amendments, reconsideration, or clarification in a way that achieves family security. Then, we will discuss some issues related to marriage, divorce, divorce, and custody.

2. THE FIRST SECTION: SOME PROVISIONS OF MARRIAGE

Our proposal for amendment is the Article 20 of the Family Code, which is related to the marriage of minors who are under the age of legal capacity, firstly. Secondly, we suggest amending the Article 23 regarding the marriage of a person who has a mental disability.

Thirdly, we propose amending the Article 49, which defines the financial system of the spouses, and fourthly, the polygamy issues. Fifthly, there should be a reconsideration to the Article 65, which is related to administrative documents required to the marriage contract. Sixthly, the role of the Public Prosecution should be strengthened in the family cases.

2.1. **The Marriage of Minors**

Since the entry of the Family Code into force in 2004, the rate of minors' marriage has increased continuously. This is proved by as by the official statistics of the Ministry of Justice. In 2017, the number of minors' ma-

rriages reached 26,298 marriage contracts, and, in 2018, the number increased to 25,514. Then, it decreased to 12,600 contracts in 2020.

However, it jumped to reach 19369 contracts in 2021.

The Moroccan judiciary is sometimes strict in granting permission for the marriage of a minor, and at other times, it easily grants permission for the marriage of a minor. Here, I will cite two cases as examples:

In Berkane City, the Family Judiciary Department granted permission to a 15-year-old minor girl for marriage in 2016. In its justification, the permission decision states «the interest of the minor in this marriage is to immunize her, to protect her, and help her cooperate in the affairs of marital life. Moreover, since natural experience has proven the physical and psychological readiness of the minor for marriage, and since the court examined the minor's signs of puberty and her psychological readiness for marriage... and for all these reasons, the court decided to accept the request of minor for marriage.»[1]

In contrast, weirdly, the same court refused to grant permission to a 17-year-old minor girl for marriage. The refusal decision was appealed to the Court of Appeal in Oujda because the decision of the trial court did not take into account the interest of the minor girl as eligible for marriage and able to bear his marital responsibility... The Appeal Court ordered a medical examination, which concluded that the minor is capable of marriage and childbearing. In addition, it was proven to the court through the research it conducted with the minor and her parents that she is qualified for marriage and its responsibilities, and she dropped out of school... due to the fact that the decision of the trial court did not take into account the aforementioned interest of the minor, which is proven by the medical examination, the Court of Appeal cancelled the that decision, and grant permission to the minor girl for marriage.»[2]

[1] Minor Marriage File No, 19/2016, Decision No. 18 on 2 May 2016 (Unpublished Court Rulings).

[2] Unpublished Decision of the Appeal Court in Oujda, file No. 734/1616/2022, issued on 19 October 2022.

In Berkane City, the Family Judiciary Department refused the request of a 17-year-old minor girl for marriage who is 16 weeks pregnant. The court refusal decision justified that «the guardian of the minor did not provide any objective justification for which the court can justify its permission, and the legal principle is that the wife has to be 18 years, which is the age of legal (legal capacity). The court did not find any objective justification or realized interest for granting permission. In addition, the medical report proved that the minor is 16 weeks pregnant; under the legal age of marriage[3].

It is clear that the court was strict for not granting permission to this minor marriage although she was only six months far from reaching the legal age of marriage. Since the medical report confirms that she is pregnant, the court has to implement the Articles 16 and 156 of the Family Code, which are related to the pregnancy during the period of engagement in order to protect the minor and her pregnancy, instead of saying that there is no objective justification for granting permission.

Therefore, it is necessary to specify the minimum age for marriage of minors, and to makes both the medical examination and social research obliged for granting permission. This was confirmed by the Circular No. 12/22, which issued on 2 March 2022 by the Supreme Council of the Judicial Authority. It stipulating the requirements related to the marriage of a minor must be implemented within a narrow exception. Moreover, it must be ensured that the necessary research and medical and psychological examination have to be conducted by specialized physicians. The qualification in marriage must be taken into account in order to avoid the age difference between the spouses, which affects the marital relationship due to the difference in mentalities between generations.

From a practical point of view, it is noted that most of the minors who are authorized by the court to marry under the legal age of majority are those who dropped out of school and do not any job; most of these minors descend from needy families in the rural regions.

[3] Minor Marriage File No, 12/2016, Decision No. 13 on 26 January 2016 (unpublished Court Rulings).

Sometimes the permission of marriage is granted by the court is to protect the minor herself in some cases as she gets sexual relationship with the one wanted her for marriage, or she gets pregnant…

In this regard, it should be noted that the General Assembly of United Nations issued a resolution on 1 September 1965 calling the states members to set the minimum age for marriage, which should not be under 15 years. At that time, some comparative laws allowed marriage below the legal age for marriage. For instance:

– The Article 148 of the French Civil Code stipulated that the Public Prosecutor may conclude a marriage contract, exempting the minors from the legal ages of majority if there are serious reasons. Minors may not contract marriage without the consent of their father and mother.
– The Articles 45, 46 and 49 of the Spanish Civil Code permitted the marriage of a minor who is under14 years old, the permission must be based on good reasons and the consent of the family in addition to the authorization of the judge.
– The Article 145 of the Belgian Civil Code authorized the Juvenile Court to marry off minors under the age of 18 years of age when there are serious reasons.
– In Switzerland, the Article 94 of the Civil Code gave the right to minor girl for marriage on the condition of the legal representative approval; if he refuses that, the minor girl can get marriage permission from the court.
– The Article 5 of the Tunisian Personal Status Code stipulated that concluding a marriage contract under the prescribed age 20 years for a man and 17 years for a woman depends on special permission from the courts, and this permission is given under certain conditions, which are the serious reasons and the clear interest of the spouses.
– The Article 7 of the Algerian Family Code set the marriage age at 21 years for the husband and 18 years for the wife. However, and judge may authorize marriage before that if there is an interest or necessity for spouses.
– The Article 10 of the Omani Personal Status Law stipulated that a person who is under the age of 18 years cannot married without the permission of the judge, who validates the interest of the person.

– The Article 6 of the Libyan Personal Status Law allowed the marriage of minors if there is an interest or necessity, which is assessed by the court after the consent of the guardian.

In sum, the marriage under the legal age was a common exception in several Western and Arab countries. However, this exception must be implemented within narrow limits. Therefore, we support the law proposal that was discussed by the Moroccan parliament in 2012; this proposal suggested amending the Article 20 of the Family Code, which sets to the minimum age for marriage, ordered the medical expertise, social research, the closeness of age between the spouses. The proposed Article 20 states:

The family judge in charge of marriage may authorize the marriage of a boy and girl under the age of majority, which is stipulates in the Article 19, provided that the s/he should not be less than 16 years old. In addition, there must be a reasoned decision, which explains the interest and the reasons justifying that marriage, after the consent of parents of the minor or his legal representative, and the assistance of medical experience and social research.

In all cases, the judge must take into account the closeness of age between the two parties who will get married. The judge decision, which grants the marriage permission of a minor, is not subject to any appeal.

2.2. **The Marriage of a Mentally Handicapped Person**

The Article 23 of Family Code in allows the marriage of a male or female person, who has a mental disability, on condition of the judge permission. The judge takes the decision about permission after submitting a report about the state of disability, which diagnosed by one or more expert doctors. In addition, the other party must see this report, and the other party must be an adult and express his or her consent deliberately. In solemn pledge, s/he explicitly accepts to conclude the marriage contract with the person with the disability.

It is noted that Article 23 neglects to express the possibility of appealing the permission to marry a person with a mental disability. Therefore, we believe that it is necessary to stipulate the possibility of appea-

ling this permission, especially by the Public Prosecution if the decision of permission is inappropriately granted due to certain considerations.

2.3. **Reconsidering the Wording of Article 49 of the Family Code: The Financial System of the Spouses**

In our view, the legal text must be re-drafted in a way that obliges those who are about to get married to set the financial system. This system must be obliged to the spouses during the marital bond: the system of participation in the funds of the marital relationship, or the system of financial independence of spouses... All this is to avoid disputes, which are brought to the courts. Most housewife are not able to prove their contribution to the development of family wealth.

It should also be stipulated that the domestic work done by the housewife during the marriage is considered as «productive work» for which she is entitled to compensation, in order to clarify the issue and all unify judicial rulings in this regard.

2.4. **Polygamy Issues**

From a practical point of view, the court controls the statement of claim whether it includes the proven reason and adequate financial resources for polygamy, or not. In addition, it should it has to include the necessary documents and forms which prove the exceptional objective justification for polygamy.

However, there is a problem concerning the concept «exceptional objective justification,» which is cited in the Article 42 of the Family Code. This concept has different interpretations by courts because what one court considers an «exceptional objective justification» is considered by another court to be otherwise. Therefore, two methods of interpretations: 1-an expanded methods takes into consideration every justification provided by the husband as long as the wife agrees to polygamy, and 2- a limited method just considers the exceptional objective justifications, regardless of the wife's consent or not.

The court considered the wife's moving inability to move and her loss of sight to be an exceptional objective justification for granting permission for polygamy[4]. The court also considers the wife is sick and has kidney dialysis an exceptional objective justification for polygamy[5].

The judiciary also considered that the wife's diabetes is an objective and exceptional justification that gives the husband the right to polygamy[6].

2.5. **Administrative Documents of the Marriage Contract**

The Family Code assigns Section Six of Book One to administrative and formal procedures for concluding a marriage contract. The Article 65 stipulates the administrative documents, which are required for the marriage contract file. We suggest that all information about a person must be included in his/her civil status, whether he is single, widowed, or divorced, with an explanation of the type of divorce or divorce. All information should be documented a copy of birth certificate to enable the person who wants to marry him to view his civil status. The copy of the birth certificate, which is given to the fiancés for marriage, must include all information in detail, just as it is the civil status system, which is common in European countries. All these is to avoid cases of fraud in marriage.

A detailed medical certificate of the two fiancées must also be attached in the marriage contract file, showing that they are free from infectious diseases, and they do not use any kind of drugs. This certificate shall be accompanied by documents of medical analyzes proving that.

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[4] The Judicial Rule issued by the Department of Family Justice on 20 March 2007 in Nador City. No. 524 File No. 2563/7, cited by Idris Al-Fakhouri in the Moroccan Family Law, Marriage Provisions: a comparative study enhanced by the latest judicial applications of the Court of Cassation and trial courts, Part One, Publications of the J*ournal of Rights,* Rabat, 2016 edition, p.243.

[5] The Judicial Rule issued by the Department of Family Justice on 9 May 2013 in *Laayoune City.* File No. 49/2013, cited by Idris Al-Fakhouri, ibid, p: 243.

[6] The Judicial Rule issued by the Department of Family Justice on 20 March 2007 in *Nador City.* File No. 1234/11. Ibid, p. 243.

2.6. **Enhancing the Role of the Public Prosecution in Family Cases**

The Public Prosecution must have the necessary means to intervene in order to protect the family, especially in some cases such as the children in a tough spot, the protection of the fostered child in case of conflict between the parents, and the protection of women, who are victims of violence, family conflicts, and family disintegration. In order to do so, there should be specialized police and social assistants, who receive special training in the family issues, in addition to creating shelter facilities, which have to run under the supervision of the Public Prosecution.

3. THE SECOND SECTION: AMENDING SOME PROVISIONS OF DIVORCE AND REPUDIATION

The Family Code defines the repudiation in Article 78, as «is the dissolution of the bonds of matrimony exercised by the husband and wife, each according to his or her respective conditions, under judicial supervision and according to the provisions of this *Moudawana*.»

Under the provisions of the Family Code, the divorce has become a right for both husband and wife, which is practiced according to specific rules and conditions under the supervision of the judiciary.

Although the divorce procedure is subject to judicial oversight, whether the request is submitted by the wife or husband, or both of them, to terminate the marital bond. Despite the guarantees and mechanisms stipulated in the Family Code to make divorce an exception and not a rule, the reality has proven that the rate of divorce with its various forms has increased since the Family Code went into force.

According to the official statistics of the Ministry of Justice regarding divorce cases, there are: 26,914 divorce cases in 2004; 20,372 divorce cases in 2020; 26,957 divorce cases in 2021.

Concerning the divorce by agreement, it increased from 1,860 divorce cases in 2004 to 20,655 divorce cases in 2021.

Divorce due to discord is the highest rate of divorce compared to types of divorce.

In the framework of the upcoming amendments of the Family Code, which will concern the termination of the marital bond, we see that some texts need to be reviewed, to name but a few: 1) the reconciliation procedure; 2) determining entitlements and vacating the marital home for the children; 3) inclusion of agency for divorce; 4) divorce due to discord; 5) return to the marital home; 6) hearing the matrimonial lawsuit and 7) notification in family lawsuits

We will discuss the proposed amendments shortly here.

3.1. **The reconciliation procedure**

The reconciliation procedure in its current form is useless and pointless. Therefore, we see that in order the reconciliation needs a practical meaning as it is envisaged by the legislator; the court should rely on the assistance of specialized parties for reconciliation such as Islamic Local Councils, social and psychological assistants, and family conflicts mediators. The reconciliation must be a first stage before filing a lawsuit to reduce pressure on the courts, and it should not take less than three months if the case of the parties has children, or granting the court wide discretion to determine the suitable period of reconciliation attempts, especially with the presence of children.

3.2. **Determining entitlements and vacating the marital home for the children**

For determining the children's dues in the event of divorce, we suggest that the court uses a report prepared by a social assistant. This report must include all the necessary information such as the father's wages, the type of schooling, public or private, the type of housing, etc., All these is to maintain the same living and social standard for the children after the divorce.

We also suggest introducing a legal text that expressly stipulates that a woman, who fills in the divorce lawsuit, should not be deprived from the

Consolation Gift, which is assessed based on the length of the marriage. The judicial jurisprudence has always denied her this right, noting that the current legal text does not deprive her of the *Consolation Gift*, even if she is the one who demands divorce. This will be important for avoiding the jurisprudential and judicial dispute.

Realistically, the judicial work confirms that there are many cases where wife suffers from harm so that she submits a request for divorce due to discord and is not arbitrary in her request. Even this is proven, she is denied the *Consolation Gift* for no reason just she is the one who submitted the request. This makes some husbands practice all forms of psychological violence to force her to submit the divorce request.

We also suggest including a text obligating the father to provide the residence for the children after the termination of the marital bond.

3.3. **Inclusion of Agency for Divorce**

Stipulating the possibility of using agency in divorce and divorce for Moroccans residing abroad, taking into account some special circumstances in which the marital relationship has actually ended. However, this cannot be practiced legally because one of the parties resides abroad, and s/he has not a legal residency there, which makes him or her unable to be present during the reconciliation period. Therefore, the legislative must enact the provision of agency in divorce as it is in marriage, taking into considerations of the conditions of agency as approved by the Court of Cassation. In this context, the decision of the Court of Appeal in Oujda[7] states that «after examining the documents and analyzing the reasons for the appeal, this court proved the validity of what the appellant insisted on; this is because the principle is the personal presence of the applicant for divorce to carry out the reconciliation procedures in person unless he is unable to attend for justifiable reasons. A suit filed by the lawyer of the appellant requesting the repetition of the reconciliation procedures either by assigning the Consulate General of the Kingdom of Morocco to her residence in France, or through an agency due to it was impossible for her to appear in person because she did not have a legal residency abroad.

[7] Unpublished Decision of the Oujda Court of Appeal in File No. 631/1607/2021 issued on 27 October 2021.

Therefore. the reason here is a legal reason, which justifies her using the agency, bearing in mind that although the Family Code does not stipulate the agency in divorce, there is no objection for apply the Article 400 of the Family Code, which refers to the Maliki jurisprudence, which considers agency in divorce. This is the approach followed by this court (Decision No. 278 issued on 03/31/2021 in file No. 463/1607/2020). This decision goes in line with the decision of the Court of Cassation No. 941, which is issued on 24 December 2013. In this decision, the Court of Cassation states that the Appeal Court did not make its judgment a valid legal basis because it did not take into consideration the Article 400, and therefore the appealed ruling was not accepted. However, the ruling must be canceled and returned to the Court of First Instance that issued it to complete the reconciliation procedures.

3.4. **Divorce due to discord**

The last paragraph of Article 45 of the Family Code stipulates that: «If the husband persists in his polygamy authorization petition, and the wife to whom he wishes to join a co-wife refuses to consent and does not ask for divorce, the court automatically applies the irreconcilable differences procedure in Articles 94 and 97 below.»

In this regard, we suggest cancelling the provisions of the last paragraph of Article 45 of the Family Code, which is related to the automatic use of divorce due to discord procedure, as this violates the Article 3 of Civil Procedures Law because of the absence of the plaintiff, and for the Family Code, which states the divorce is accepted under certain narrow conditions.

3.5. **Returning to the marital home**

We believe that some family cases should be reconsidered because they overburden the judiciary without achieving any purpose. These matters are mainly related to the suitcases demanding wives to return to the marital home. It is noted that most of the rulings issued for husbands to obtain a report of abstention to waive the wife's alimony. Hence, we suggest cancelling these provisions. However, the wife who is not in the marital home, in fact or in law, is not entitled to alimony.

3.6. **Hearing the Matrimonial Lawsuit**

A decision must be made in the requirements of Article 16 of the Family Code, which stipulates that the matrimonial lawsuit be heard in a transitional period not exceeding five years. Since the issuance of the Code in 2004, these five years have been extended several times until the extension terminated by law recently. Therefore, the Moroccan legislator has to define the exact means of how to implement the provisions of the last paragraph of Article 16, otherwise, it must be cancelled, especially after the jurisprudence adopted by the Court of Cassation. It extends the possibility of hearing a marital lawsuit based on Article 400 of the Family Code for marriage that took place before the end of the transitional period in 2019 This would lead to a kind of circumvention whereby the husband could claim his marriage at an earlier date to take advantage of the aforementioned exception.

There should be a legal provision that allows the judge to hear the matrimonial lawsuit, and it defines the cases, conditions, and areas where this exception can be applied by decree, especially areas where custom is common.

3.7. **Notification in Family Lawsuits**

There must be provisions for the implementation of the general rules in the Civil Procedure Law, which is related to notification in divorce and polygamy cases by limiting «legal notification» instead of «personal notification.» This is in order to quickly decide cases and enable the courts to monitor the issue rather than diving into formalities that may lead to a waste of judicial time. This results in the file being in front of the court for years, and, at the end, the request is rejected or non-accepted.

4. THE THIRD SECTION: AMENDING THE REQUIREMENTS FOR CUSTODY

We suggest reconsidering some of the requirements related to custody, especially the forfeiture of custody, and the best interest, which may prohibit the travel of the child outside of Morocco without the prior consent of his or her legal representative. Here, the Public Prosecution must play a key role in evaluating the best interest of the child in

custody who will travel abroad, and it protects the child in a tough spot. This must go into in line with the legal provisions and international agreements related to the protection of the child in a tough spot, especially in the case of a dispute between the parents. The legal text must explicitly stipulate that all requirements for custody, visitation, and disputes related to child must take into account the best interest of the child.

Here, we will briefly discuss some proposals related to custody as follows.

4.1. **Compatibility of Some Articles with the Constitution and International Agreements**

Among the articles that caught our attention and contradict with the provisions of the Moroccan constitution as well as bilateral and international agreements are Articles 174, 175 and 176 of the Family Code.

It is clear from reading Articles 174 and 175 of the Family Code that the Moroccan legislator considers that the principle is the forfeiture of the custodian's right to custody when she gets married. However, exceptionally, she can keep the custodian's right if some conditions, which are aforementioned two articles, fulfilled. This is considered sex-based discrimination according to the Moroccan constitution and the international conventions ratified by Morocco, including CEDAW[8].

The provisions of the two aforementioned articles are also considered to be in clear contradiction to the content and requirements of the bilateral agreements concluded by Morocco with some friendly countries, where Moroccan citizens resides. Just as the case of Article 19 of the Franco-Moroccan convention of 10 August 1981 relating to the status of persons, the family and judicial cooperation, which stipulates that: «by reciprocity, the two states shall guarantee on their land and under the control of their judicial authority the freedom to exercise the right of custody over a minor child while observing his/her interest, without any other consideration deriving from their internal law.»

[8] CEDAW stands for the Convention on the Elimination of All Forms of Discrimination Against Women.

Likewise, the Moroccan-Spanish Convention on Judicial Cooperation, Recognition, and Implementation of Judicial Decisions in the Article of Custody, the Right to Visit, and the Return of Children dated 30 May 1997, which in turn confirms the criterion of the best interest of the child, as it stipulates in the Article 9 that: «...when assessing these circumstances, the judicial authorities take into consideration the interest of the child only without any restriction derived from its internal law...»

Due to the above-mentioned reasons and justifications, we believe that it is more appropriate to cancel Articles 176, 174, 175 of the Family Code, as well as the fourth Section of Article 173 of the Code (which in turn refers to the requirements of Articles 174 and 175 of the Code). We suggest keeping the last section of the Article 173, which states: «If there is a change in the status of the custodian, and it is feared that it will harm the child in custody, the custody is forfeited, and it is transferred to the next custodian.»

An explicit legal text can also be stated that the principle is to assign custody to the mother and it cannot be forfeited except for objective and exceptional reasons and justifications, such as marital infidelity, breach of good morals and integrity, or deliberately exposing the child to negligence.

4.2. **Observing the Best Interest of the Child**

The best interest of the child should be considered the sole criterion to be adopted for resolving judicial disputes concerning the child, whatever his status, especially with regard to the affairs of the child. This must goes in accordance with the Convention on the Rights of the Child, whose first clause of Article 3 states that «in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.» In addition, the Article 19 of the Moroccan - French Convention and Article 9 of the Moroccan-Spanish Convention must be applied.

Therefore, we suggest that a new clause be added to Article 163 of the Family Code (just similar to what is stipulated in Article 186 of the Family Code contained in Chapter 4 related to visiting to the child), stat-

ing that: «the court is obligated to give primary consideration to the interest of the custody of child in all cases and custody disputes», so that, the Article 163 becomes as follows:

«Custody is to protect the child from what may harm her/him, and to take care of her/his upbringing and interests. The custodian must take all necessary measures as far as possible to preserve the child and her/his body and soul safety. In addition, the custodian must carry out the child interests in the absence of the legal representative».

In the case of necessity, when the interests of the child will be under threat, the court is obligated to take into consideration the interest of the child in all cases and disputes related to custody and subsequent effects such as visitation.

4.3. **The Kinship Relationship**

The issue of the kinship relationship with the children must be reconsidered when the marital relationship still exists, but there are some problems arise between spouses. In reality, when the dispute between the spouses takes a time, the mother take alone the custody and she deprives father from the kinship relationship with his children. In this case, the father has only one option, which is the judiciary, where he requests the president of the First Instance Court, as a judge for urgent matters, to provide him the permission of vising his children. The court sometimes may not respond to his request because of lack of jurisdiction for the benefit of adjudicating the matter. It is possible to rely on the Article 400 of the Family Code and the requirements of Maliki jurisprudence when there is legal text… sometimes the mother refuses to Court decision. So, we wonder here if the father can claim a threatening fine? In this matter, we have noticed that some fathers kidnap their children from their mother, and this is another issue

4.4. **Taking the Children Abroad**

The Article 179 of the Family Code, which is related to permission for taking the children abroad, needs a reconsideration by adding a paragraph that gives the Court possibility to authorize the child to reside

abroad. It is not reasonable for the child to stay with his grandmother in Morocco and his custodial mother working and residing abroad, especially when the legal representative is absent or abandoned from carrying out his duties, which are imposed on him by virtue of the ruling of the alimony and kinship ties.

There must be an explicit stipulation that among the right of the custodian is to take the child abroad according to rules and conditions that guarantee the return of the child and without prejudice to the right of visitation, unless the interest of the child requires otherwise, such as the purpose of going abroad is the hospitalization.