

The Liability of the Supervisor: Between the Provisions of Civil Law and the Perspectives of Social Upbringing

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ABSTRACT

Based on the incident of the boat theft by Algerian minors and the illegal immigration to Spain, this intervention raises a new perspective for academic studies and establishes the responsibility of persons in charge of supervision for the damage caused as a result of these reckless act, which necessitate responsibility for both of the minor's personal act and the person in charge of supervision. It is necessary to define the provisions of liability based on the assumption of negligence in supervision, which requires compensation for those harmed as a result of these actions. There is a new approach to establishing a new basis for liability. Thus, it is a necessity to address the foundations of sound upbringing from various sources; from the family to the school, in the proper guidance and counseling of the actions of these minors.

Keywords: Minors, legal guardianship, Social upbringing, Legal supervision, Agreement supervision, Liability.

Introduction

In Algerian civil law, the responsibility of the supervisor for damage caused by a person under his supervision is a liability for the actions of others, based on presumed fault, which requires the existence of a supervisory relationship between two persons. The supervisor is liable for compensation to the injured party unless he can prove that he fulfilled his supervisory duty, or that the damage was real and not imaginary. Our study in this international forum is limited to examining the dimensions of this responsibility for parents and those to whom the provisions of contractual supervision over the actions of minor children are transferred, and the prospects for the social upbringing of these minors to ensure that they do not commit mistakes that would require compensation, and to distinguish right from wrong. The law seeks to promote conscious supervision and care, thereby reducing potential harm and achieving a balance between the rights of all parties. Our study examines the causes of the phenomenon of minors fleeing their homes, which is a cause of great concern, not only because of its humanitarian gravity and the tragic scenes it engenders, but also because it is a phenomenon that is a strong indicator of a deep-rooted structural crisis in society and the state. When a minor impulsively steals a boat and throws himself

into the sea, it is not merely a whim or blind imitation of a popular trend on social media, or a lack of upbringing, as some believe, but rather a call for the enforcement of the law on those who are responsible for actual supervision and who instill social values in minors.

The first thing to note is the study of the role of social institutions such as the family, which is the primary unit for producing values and protecting children. The family has become burdened with social and economic pressures that have rendered it incapable of performing its traditional function, such as parental involvement and family solidarity. All of this has made minors vulnerable to wrongdoing for which those responsible for their supervision are held accountable. From this perspective, we pose the following question:

Are the provisions of special laws sufficient to regulate and frame the basis and scope of the responsibility of those in charge of supervision?

First axis: The responsibility of the legal guardian

The basis of parental responsibility as legal guardians or those who assume this responsibility by agreement for the actions of minor children is considered responsibility for the actions of others based on presumed fault that can be proven otherwise, but jurisprudence has tended to consider this basis as having the force of law (1) The fault of a minor and even something under his or her custody entails parental responsibility, unless it is proven that there is no causal relationship between the fault and the damage. This basis is legal according to legal texts. As for the reasons for adhering to the new basis adopted by the judiciary, it is that the requirements of the social system necessitate strengthening the family ties between parents and children or those who are responsible for their supervision. This calls for stricter parental responsibility, because liberal upbringing through the weakening of parental authority is an artificial imposition of responsibility for the duties of supervision and upbringing.

The incidental damage caused by minor children as a result of their disruptive behaviour and immaturity justifies holding parents liable for these acts without fault. Parents are liable for compensation for the damage, as they exercise parental authority over their minor children. Previously, liability was linked to the presumption of fault in order to make it objective.

Under Algerian law, parents are liable for the acts of their minor children on the basis of the actions of others, subject to the provisions of Article 134 of the Civil Code, noting that this article was amended in 2005 and Article 135/1 of the Civil Code was repealed. The second paragraph was incorporated as paragraph 2 of Article 134 of the Civil Code, noting that Article 134/1 does not include the phrase ‘on the basis of the actions of others’. 1 of the Civil Code was repealed, while the second paragraph was incorporated as paragraph 2 of Article 134 of the Civil Code, noting that Article 134/1 does not include the phrase ‘and this obligation applies even if the person who committed the harmful act was not of sound mind,’ which was present in Article 134 before the amendment (2).

Article 134 of the Algerian Civil Code, in its current form, raises some issues when a minor child causes harm to others. Is the father alone liable, or are both the father and mother liable? Is the mother solely liable in the absence of the father, such as in the event of his death or incapacitation? The same applies in the event of divorce and the transfer of custody to the mother. Therefore, the

basis of this liability must be changed so that it becomes a liability by force of law and the injured party is exempt from proving fault on the part of the parents or one of them, or proving fault on the part of the minor child (3).

First: Conditions for civil liability

The liability of the supervisor for the actions of others is considered exceptional because, in principle, a person is liable for actions that cause harm to others and is not liable for the actions of others. Therefore, the supervisor is liable for compensation for damages caused by the actions of others.

This was stipulated in Article 134 of the Algerian Civil Code after the repeal of Article 135 of the Civil Code (4). It should be noted that the Algerian legislator, in amending the text of Article 134 in accordance with the 2005 amendment to the Civil Code, transferred the second paragraph of the old Article 135 and added it to Article 134, which now consists of two paragraphs. The first paragraph stipulates the general principle of liability for the acts of others, replacing the word 'work' with the word 'act'. Paragraph 2 stipulates the means of payment or denial of liability (5).

1- General conditions for establishing supervisor's responsibility

Referring to the amended text of Article 134, we note that anyone who is responsible for supervising a person in need of supervision due to their minority or mental or physical condition is obliged to compensate for any damage caused by that person to others through their harmful actions. The person responsible for supervision may be relieved of liability if it is proven that they fulfilled their duty of supervision

or that the damage would have occurred even if he had performed this duty with the necessary care. It should be noted that the phrase 'even if the person who committed the harmful act was not of sound mind' has been omitted from the first paragraph.(6)

1-1 Conditions that must be met by the supervisor

To understand these conditions, we will discuss the obligation of supervision imposed on the person entrusted with it by law or agreement.

As a general rule, a person is held accountable for the actions of others when they are responsible for supervising them in cases where supervision is required. The duty of supervision is the basis of responsibility, as stipulated in Article 134.

With regard to the term 'legal or contractual supervision,' these persons were not specified, and only the source of the obligation was mentioned. The legislator merely mentioned the source of supervision (7). Unlike the French legislator in Article 1384, who did not establish a general rule but mentioned officials by way of limitation, making the father responsible and, after his death, the mother responsible for damage caused by minor children living with them, the 1970 amendment made the responsibility joint because it amended the provisions of the article and equalized the responsibility of the father and mother, making them jointly liable.

1-2 Source of the supervision obligation

This supervision has two sources: the law or an agreement, such as the guardian's obligation to supervise a minor as stipulated in the contract, or the teacher's obligation to supervise students as stipulated in the contract, or the hospital's obligation to supervise patients due to physical or mental

disability. The legislator has based this responsibility on the presumption of fault on the part of the person responsible for supervision (8), as the duty of legal supervision is embodied under parental authority, the father assumes responsibility for the actions of his minor children, which then passes to the mother after the father's death. Whereas contractual supervision takes place in kindergartens, schools, or hospitals, where there is an obligation between the guardian and those entrusted with the contractual duty to exercise supervision and assume responsibility in accordance with their commitment to this agreement.

1-3 The essence of the obligation of guardianship

This obligation is defined as the authority to care for, nurture and guide, and some see it as enlightening a person's upbringing and preventing them from harming others by taking the necessary precautions, as well as preventing them from causing harm to others by monitoring and observing their behaviour and actions, taking the necessary precautions to that end.

Scholars differ on the type of supervision: whether it is guidance, education and care of the person under supervision, or physical supervision. It should be noted that the Algerian legislator did not mention this in the content of Article 134 and left the discretion to the judge. If we take the text of the article literally, the supervision that is apparent to the eye is physical supervision, i.e. monitoring the behaviour and actions of the person subject to supervision and preventing them from harming others, otherwise they would be held accountable for the actions of the minor.

1-4 Conditions applicable to persons subject to supervision

Article 134 sets out the conditions applicable to persons subject to supervision, whether they are of sound mind or not, or have a physical or mental disability, and stipulates that they must have committed a harmful act to others that requires the person responsible for their supervision to be held liable. As the article explicitly states – supervision of a person in need of supervision – a minor in the eyes of Algerian civil law is a person who has not reached the age of 19, according to Article 40/2. In this regard, a distinction must be made between a minor who is capable of discernment and one who is not. According to Article 42/2, a person who has not reached the age of 13 is considered incapable of discernment, and at this stage the personal responsibility of the non-discerning minor is excluded due to the impossibility of committing a mistake, because negligent error requires discernment. Thus, supervision is determined to be the responsibility of the father, as he has guardianship over the minor (9), and after his death, the mother, and if he is an orphan, guardianship is transferred to the person who has contractual supervision.

However for the discerning minor, the provisions of Article 125 of the Algerian Civil Code apply to him, which requires him to be held personally liable. Thus, we find ourselves in a situation between the responsibility of the guardian and the personal responsibility of the discerning minor, whereby the responsibility of the discerning minor is established first, followed by the responsibility of the guardian. The guardian is secondarily liable, and the deletion of the phrase ‘even if the harmful act was committed by a non-discerning person’ from the text of Article 134 prior to the amendment confirms the duty of supervision over the person subject to it due to their minority, regardless of whether they are discerning or non-discerning (10).

If a minor has a physical or mental disability that makes him subject to supervision and in need of continued supervision even after reaching the age of majority, as indicated in the provisions of Article 43 of the Algerian Civil Code, this is confirmed by Article 81 of the Family Code for If someone is legally incapacitated or has limited legal capacity due to young age, insanity, dementia, or prodigality, the guardian or custodian shall act in his place legally, a guardian, trustee, or representative shall act on their behalf in accordance with the provisions of this law (11).

1-5 Causal relationship between harmful act and damage

In law, fault is defined as deviant behaviour with awareness of this deviation. Liability is based on three fundamental elements: fault, damage and causality. Accordingly, the presumed fault in the duty of supervision is the basis of the supervisor's liability if the fault is based on a breach of the duty of supervision. It is based on two material elements, namely deviation and transgression, and a moral element, which is embodied in the element of awareness, which is the necessity of intent. Hence, liability is based on presumed fault, and the liability of the supervisor is considered original (unrestricted). The supervisor may prove that he fulfilled his supervisory duty or that the damage would have occurred even if he had fulfilled with the necessary care and proof of this duty. This duty is proven by negating the presumed fault, which is considered a simple presumption that can be disproved, such as by proving that he fulfilled his duty with sufficient care and that he took all reasonable precautions in preventing harm to others.

Second axis: Family and education role in the children social upbringing

2-1- Functions of the family

When a baby is born into a Muslim family certain traditional rites take place to welcome the newborn (Zaydan 1993, in Arabic) Make the call to prayer in the newborn's ears. Al-H. ākim reported from Abū Rāfi' that he saw the Prophet ﷺ recite the Adhān (primary call for prayers) in the ear of al-H. asan, the son of 'Alī, when his mother Fāt.imah delivered him. Calling the Adhān in the right ear and the iqāmah (immediate call for prayers) in the left ear upon birth declares the oneness of God, affirms the message of Prophet Muhammad ﷺ and reminds believers to perform prayers for the baby in the future.(13)

Family functions are subject to the influence of social and cultural developments and trends. Historically, they have tended to decline in favour of other social institutions. Nevertheless, the family has remained 'the primary institution with a strong influence on the education of young people, instilling in them a set of values, customs, traditions and norms through the process of socialisation.' Social studies have shown that the functions of the family can be summarised in the following tasks:

Procreation and emotional interaction between family members .

- Physical protection of family members.
- Giving social status to adults and children.
- Socialisation and social control..

Williams Ogburn points to six functions of the family: economic, social, educational, protective, religious, and finally, entertainment function.

A. Economic function: The family initiates what it produces .

B. Social function: Individuals derive their social status from their family's status in society, as the family is the primary social environment that welcomes the child from birth and continues with him or her .

Educational function: The family is the first cradle for shaping behaviour through the guidance and models with which the child interacts.

D. Protective function: The family plays a role in the physical, economic and psychological protection of its members .

Religious function: It teaches its members to pray, read religious books, and practise worship .

Entertainment function: The family plays a major entertainment role. Williams Ogburn warned that the loss of these functions by the family is what dismantled and dissolved it.(14)

2- 2- Role of the parents in upraising children

One of the primary stakeholders in the educational process is the family unit or its individual members (Ceka & Murati, 2016), The term "parent" should be understood as encompassing a number of related concepts, including but not limited to: the parents' actions and activities toward the attainment of a priori set goals; the parents' care and contribution towards the upbringing of their children; and the parents' nativity rate.(15)

Studies about the role of parents in raising environmental attitudes in early childhood are essential because early age is a golden age, which is the right time to form the basics of behavior that will determine their development at a later stage. (16)

2-3- Parents as a Model

Parents are role models and are responsible for educating children (Hardianto & Haryani, 2017). A child will notice behavior shown by their parents and imitate values as well as behavior them. According to Bandura's theory of observational learning, a person can imitate the behavior of others who are models by observing and imitating them (Nelson , Groom, Ryan,, Potrac, Paul,, 2016).(17)

2-4- Parents' situation

Family Systems Theory proposes that families are interconnected units in which each member exerts a reciprocal influence on the other members (Boss et al., 1993). Thus, each member of a family is affected by the family system in which they participate (Berger, 2000). Changes occurring in any part of the family system, such as a parent losing a job or a child switching classrooms, affect and initiate changes within other members of the family. Thus, early care and education programs can expect to see changes in children based on what happens within the family system. (18)

According to Bauer and Barnett (2001), the U.S. has a high percentage of children in poverty, particularly those raised by single mothers. The U.S. Census Bureau (2000b) reports that over 2.5 million families with children under age 5 live below the poverty line, influencing their overall access to resources and participation in parent education programs.

Parents from lower socioeconomic status (SES) backgrounds face significant obstacles that hinder their participation in various activities. Key challenges include time constraints due to work and childcare demands, transportation issues, and financial difficulties. In contrast, parents from higher

SES backgrounds typically have more flexible schedules and fewer daily stressors. This disparity can impede effective parenting among those with limited resources, as they may lack the time and support they need. Furthermore, lower SES parents often receive inadequate treatment from educators and professionals, compounding their difficulties. (19)

“Let families take care of families, and society will take care of itself”. (Confucius) (20)

Who Should do What?

Parents: Create a happy home.

Children: Learn from your parents and support them.

Grandparents: Bring the family together across generations.

Friends: Help the parents.

Teachers: Educate the children.

Reformers: Show parents how to practice good parenting (21)

Single parents role in raising children

Below are some facts concerning the negative impact of single-parent homes on children (Harper and McLanahan 2004):

- Single parent homes are less able to protect the well-being of women and adolescent children compared to the traditional married couple.
- Girls who grow up without both biological parents are more likely to become sexually active as teenagers.
- Children and teenagers living without their biological fathers are at greater risk of suffering physical, emotional, or sexual abuse.
- High school students from broken homes cause more problems in school.
- In some communities, children of single parents commit more crimes.
- Children of single parents are more likely to be abused or neglected, and are more likely to end up in jail. (22)

2-5- Education and community role

Parents were characterized as ambivalent towards school. On the one hand, the teachers reported parents offered advice to teachers and guidance on how to do their jobs in a way that was increasingly intrusive. On the other hand, parents fully delegate the achievement of educational goals to teachers. It appears that parents think that teachers are the only people with responsibility for educating their children, and, whether due to disadvantage or indifference do not see themselves as successfully contributing to their children’s educational development.

Finally, in the teachers’ view, parents are increasingly focused on their children’s individual needs. It seems that parents do not recognize the specific nature of educational experience, and this leads them to make personalized requests that are incompatible with optimum classroom management.(23)

School education aims to bring about social development based on clear goals and objectives and through short- and medium-term dimensions:

- The values of the school aim to shape generations capable of adapting to their environment and participating in its change and development

- Promoting ethical values in educational work.
- Raising awareness and responsibility regarding volunteer work and environmental conservation.
- Responding to violence and providing an ideal educational environment.
- Promoting the educational process and advancing it towards excellence, innovation and initiative.
- Performing the function of education and transmitting advanced culture, and providing conditions conducive to physical, intellectual, emotional and social development

The values of the school aim to shape generations capable of adapting to their environment and participating in its change and development.(24)

“Gold Beamon” believes that education is a tool for mental growth and spiritual prosperity through virtuous character. Muhammad Mustafa Ahmed says that the true role of the school should be to support and accelerate cultural change and guide its understanding by introducing students to cultural changes and developing new habits and attitudes and generations that create change and accept and welcome everything positive. (25)

In this regard, we find functional structuralism to be one of the most important sociological currents that examines the structure and function of schools. Following **Radcliffe Brown** and **Malinowski**, who were pioneers of this modern sociological trend that emerged in the first decade of the twentieth century. This trend is led by **Talcott Parsons** and **Robert Merton**. In defining the system, Parsons generally distinguishes between four constituent groups of the system, which are:

- Roles, which are represented by the activities carried out by individuals.
- The system of norms that prevail within the system.
- Groups such as class groups, families and individuals.
- The system of values that prevail within the system and guide its course.(26)

3- The incident of a group of Algerian teenagers who crossed illegally to Spain.

A group of Algerian teenagers stole a motorboat in Algiers and illegally crossed the Mediterranean to Ibiza, Spain, documenting parts of their journey on social media.

According to journalist Abdenacer Hannou, the story, which has been widely shared in Algeria, began when eight youths aged 14 to 17 from the La Perouse and Tamenfoust districts of Algiers rented a boat before migrating illegally to Spain. Videos and live streams uploaded after their arrival showed them describing the difficulties of the crossing upon reaching European shores.

The Spanish press has also reported on the incident. Periódico de Ibiza said that a motorboat carrying seven people landed at Platja d'en Bossa at 6:30 p.m. local time on Wednesday. The local rescue service spotted the boat and alerted police, who secured the vessel and took the group into custody. Authorities noted that the passengers appeared to be in good health but were possibly minors, pending confirmation.(27)

This phenomenon carries messages that warn of the dangers facing young people, or rather minors, such as considering illegal immigration, exposing themselves to a high probability of death and causing grief and sadness to their families and relatives. This illegal and unethical incident,

that surprised and amazed everyone who saw the video posted by these minors as they skillfully steered the boat, overturns Stereotypes, ideas and old assumption prevailing that minors are incapable of such responsibilities. They managed a well-planned escape across the sea, as if it were an exciting fantasy movie. This phenomenon places the authorities, the relevant agencies and parents alike before an urgent responsibility of reviewing the methods and policies of parenting, educational curricula and awareness centers within this category.

Conclusion

In the legal context and based on the provisions of Article 134 of the Algerian Civil Code and the provisions on civil liability for the acts of minors, the guardian, such as parents, trustees or supervisors, shall be liable within the scope of contractual liability for compensation for damage resulting from the act of the minor if negligence in supervision is proven, which is presumed to be the case unless proven otherwise. Consequently, there is a tendency to establish this liability on an objective basis based on conscious negligence and the obligation to compensate those who have suffered damage. We have thus reached the following conclusions

1/ Recognition of the minor's fault in accordance with the provisions of Article 125 of the Civil Code for minors who are distinguished from their personal actions for stealing the boat in the cited case.

2/ There was negligence in supervision and lack of foresight on the parents part in monitoring the actions of their minor children in stealing the boat and their reckless behaviour in illegal immigration.

3/ Negligence on the parents part in supervising their children's movements.

4/ The responsibility of the parents must be established in accordance with the principle of good social upbringing. Therefore, the following recommendations must be adopted:

1/ Strengthening social programs to prevent these dangerous adventures.

2/ Strictly holding parents criminally liable for neglecting their duty of education, supervision and guidance.

3/ Adopting new legal texts and international agreements to strengthen the protection of minors and bringing them back to Algeria.

4/ Involving delinquent children in charitable and voluntary associations to promote initiative, responsibility and patriotism

5/ Assigning simple jobs and duties to adolescents in their free time under the supervision of the government and parents

6/ Mandatory integration of adolescents and children into sports activities and teams

7/ Strengthening the role of child protection organizations and reactivating and expanding the role of Islamic scouts in all states and cities.

8/ The importance of leaders and people of knowledge in maximizing the schools functionality and efficacy.

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Footnotes:

- 1- Qashi Allal: Towards establishing a new basis for parental civil liability for the actions of their minor children, a comparative legal study – Journal of Legal and Political Sciences, Volume 11, Issue 03, December 2020, p. 22
- 2- The provisions of Article 125 of the Algerian Civil Code, amended in 2005, stipulate that the person causing the damage shall only be held liable if he or she is of sound mind. If he or she is a minor, the person responsible for his or her supervision shall be held liable.
- 3- Fathia Nasser: Civil Liability for Negligence by Children, Volume of Legal and Administrative Sciences, Faculty of Law, Aboubakr Belkaid University, Tlemcen, Issue No. 03, 2005.
- 4- Article 135 was taken from Article 1384 of the French Civil Code. See Ali Filali, Obligations, Work Entitled to Compensation, published in 2002, p. 88.
- 5- The text of Article 135 of the Civil Code, repealed by the 2005 amendment, limits liability for the acts of minors to the father and, after his death, the mother, whereas Article 134 is a general provision on liability for the acts of minors, as it covers all legal and contractual guardians.
- 6- This is known as the obligation of supervision. See Belhaj Al-Arabi, The General Theory of Obligations in Algerian Civil Law - Part 02 - University Publications Office, Algeria, 1999, p. 286.
- 7- Ahmed Abdel Razzaq Al-Sanhouri, Al-Wasat fi Sharh Al-Qanun Al-Sif (The Middle Ground in the Explanation of Civil Law), Theory of Obligations, Part I, Dar Ahya Al-Turath Al-Arabi, Beirut, 1964, p. 996.
- 8- Ali Filali, op. cit., p. 91.
- 9- Guardianship in Islamic law is entrusted to the male relatives, starting with the father, then his guardian, then the grandfather and his guardian. If there are no male relatives, the judge appoints a guardian for the minor.
- 10- Belhaj Al-Arabi, op. cit., p. 299, Ali Filali, op. cit., p. 97.
- 11- Nationality provisions in accordance with Article 92 of the Family Law and the provisions of Article 99 of the Law on
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- 19- Hicham Altalib and others, Op, cit. P48
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