

PROTECTION OF CHILDREN'S RIGHTS IN DIVORCE PROCEEDINGS: A COMPARATIVE ANALYSIS OF VIETNAMESE AND FRENCH LAWS AND RECOMMENDATIONS

PROTEÇÃO DOS DIREITOS DA CRIANÇA EM PROCESSOS DE DIVÓRCIO: UMA ANÁLISE COMPARATIVA DAS LEGISLAÇÕES DO VIETNÃ E DA FRANÇA E RECOMENDAÇÕES

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Abstract

This article examines the protection of children's rights in divorce proceedings through a comparative analysis of Vietnamese and French law, focusing on key aspects such as the best interests of the child, the right to be heard, the maintenance of parent-child relationships, alimony obligations, and enforcement mechanisms. Using doctrinal and comparative methods, the study finds that although Vietnamese law incorporates core principles of the United Nations Convention on the Rights of the Child (UNCRC), its implementation remains fragmented and lacks institutional coherence, whereas French law provides a more flexible and effective framework supported by specialized judicial institutions and an interdisciplinary support system, enabling individualized decision-making and more effective enforcement. On this basis, the article argues that the primary challenge in Vietnam lies in the gap between legal design and practical implementation, and proposes several reforms, including clarifying the best interests principle through guidelines and case law, establishing mechanisms for independent representation of children, strengthening support for the right to be heard, improving enforcement of maintenance obligations through data integration, and

Resumo

Este artigo examina a proteção dos direitos da criança em processos de divórcio por meio de uma análise comparativa das legislações vietnamita e francesa, com foco em aspectos-chave como o interesse superior da criança, o direito de ser ouvida, a manutenção das relações entre pais e filhos, as obrigações alimentares e os mecanismos de execução. Utilizando métodos doutrinários e comparativos, o estudo constata que, embora a legislação vietnamita incorpore os princípios fundamentais da Convenção das Nações Unidas sobre os Direitos da Criança (UNCRC), sua implementação permanece fragmentada e carece de coerência institucional, enquanto a legislação francesa oferece um marco mais flexível e eficaz, apoiado por instituições judiciais especializadas e um sistema de apoio interdisciplinar, permitindo a tomada de decisões individualizadas e uma execução mais eficaz. Com base nisso, o artigo argumenta que o principal desafio no Vietnã reside na lacuna entre o desenho jurídico e a implementação prática, e propõe várias reformas, incluindo o esclarecimento do princípio do melhor interesse por meio de diretrizes e jurisprudência, o estabelecimento de mecanismos para a representação independente das crianças, o fortalecimento do apoio ao



developing an interdisciplinary judicial support framework.

Keywords: Children's Rights. Divorce Proceedings. Comparative Law. Vietnam. France. Parental Responsibility.

direito de ser ouvido, a melhoria da execução das obrigações de pensão alimentícia por meio da integração de dados e o desenvolvimento de um quadro de apoio judicial interdisciplinar.

Palavras-chave: Direitos da Criança. Processos de Divórcio. Direito Comparado. Vietnã. França. Responsabilidade Parental.

1 INTRODUCTION

1.1 Research context

In recent years, along with socio-economic development and changes in family structure, the divorce rate in Vietnam has tended to increase. According to the Report of the Ministry of Justice at the National Review Conference on the Implementation of the Law on Marriage and Family 2014 (Ministry of Justice of Vietnam, 20225), in the period 2015–2025, the Court has resolved about 750,000 divorce cases; with an average increase of 4–5% per year. This reflects the trend of increasing family conflicts in the context of rapidly changing society. Divorce is not only the termination of marital relations but also entails profound social consequences. Divorce is not only the end of marital relations but also entails profound social consequences, especially for children. Empirical studies have indicated, as discussed in the literature, that children in divorced families are at higher risk for behavioral problems, impaired academic performance, and difficulties in establishing stable social relationships in adulthood (Fagan & Rector, 2000). In many cases, children become the most vulnerable group, facing disruption in their living environment, changes in family relationships, and long-term psychological effects.

Therefore, the protection of children's rights in family proceedings, especially when parents divorce, has become a central priority of modern legal systems. The United Nations Convention on the Rights of the Child (UNCRC) establishes a normative framework with three basic pillars: the principle of the best interests of the child (Article 3), the right to be heard and involved (Article 12), and the right to maintain family relations (Article 9). These norms have been developed in many jurisdictions into specific legal and institutional mechanisms in the field of family justice (Liefwaard & Doek, 2015).

1.2 Research issues

Although Vietnamese law has made significant strides in internalizing UNCRC norms, especially through the 2014 Law on Marriage and Family and its legal instruments, the practice still shows significant limitations.

Firstly, the principle of "the best interests of children" has not been concretized by clear criteria, leading to a great dependence on the Court's subjective assessment (Le, 2018).

Second, children's right to be heard is still formal when there is a lack of a standardized procedural process in terms of children's consultation techniques as well as intermediary support institutions (Truong, 2020).

Third, the mechanism to ensure the implementation of children's rights, especially in the field of alimony and maintenance of relations with parents, is limited due to the lack of effective participation of non-judicial support institutions. The lack of detailed guidelines on economic and psychological conditions in ensuring children's rights has created inadequacies in the enforcement of child custody and support (Hoang, 2021). These limitations show that the gap between legal regulations and the practice of protecting children's rights in divorce in Vietnam is still significant.

1.3 Research gaps and reasons for choosing French law as the object of comparison

Although many studies have focused on analysing individual institutions such as child custody or alimony in Viet Nam, the approach is still limited when it does not place children's rights in a unified protection model. In particular, comparative studies have not clarified the relationship between legal design and enforcement effectiveness in judicial practice. The absence of this approach makes the recommendations to improve the law not really associated with international experience and practical conditions of Vietnam.

In this context, the choice of French law as a benchmark not only stems from the similarity of the foundations of the Civil Law system, but also because France is a typical country in transforming the norms of the UNCRC into the national system through specialized family justice institutions such as the *Juge des affaires familiales*. The interdisciplinary support regime includes social investigations, psychological

assessments and family mediation. Experiences from a system with a long history of *autorité parentale conjointe* such as France, along with modern judicial adjustment trends in the world (Kamińska, 2022), will provide important policy implications for Vietnam in the judicial reform period.

On that basis, the article aims to analyze the systematic comparison between Vietnamese law and French law in order to clarify how to institutionalize and enforce children's rights when parents divorce, thereby proposing complete orientations in accordance with Vietnam's legal and institutional conditions.

2 THEORETICAL BASIS FOR THE PROTECTION OF CHILDREN'S RIGHTS IN DIVORCE SETTLEMENT

2.1 Concept and content of protection of children's rights when parents divorce

Protecting children's rights when parents divorce means that the law and competent agencies establish and implement mechanisms to ensure that the legitimate rights and interests of children are not infringed upon in the process of terminating the marriage relationship between parents. Unlike the usual dispute resolution between equal subjects, divorce cases involving children require a specific approach, in which children are considered subjects in need of special protection due to limitations in cognitive capacity as well as self-protection ability and weak position in legal relations.

From the perspective of international law, especially the United Nations Convention on the Rights of the Child (CRC), the protection of children's rights in divorce is structured around three basic pillars: (i) the principle of the best interests of child (Article 3); (ii) ensuring that a child shall not be separated from his or her parents against their will (Article 9); and (iii) the right to be heard and involved in decisions relating to children (Article 12). These three pillars are not only fundamental but also shape the way legal mechanisms are designed and operated in the field of modern family justice.

The above three groups of rights do not exist independently but have a reciprocal and complementary relationship. Securing material rights without focusing on a child's right to maintain family relations or the right to be heard can impair the overall protection effect. Therefore, the protection of children's rights in divorce needs to be approached in

an integrated approach, combining legal, psychological and social factors, and associated with mechanisms to ensure effective enforcement. This approach is also the theoretical basis for the comparative analyses in Section 4 and the recommendations to improve the law in Section 5 of this research.

2.2 The principle of "best interests of children"

The principle of "best interests of the child" is widely recognized in international and national law as a central benchmark in the protection of children. This principle is enshrined in Article 3 of the Convention on the Rights of the Child, according to which, in all decisions involving children, the best interests of the child must be considered as the primary concern.

According to General Comment No. 14 of the UN Committee on the Rights of the Child, the best interests of the child are understood in the literature as encompassing a substantive right, a principle of interpretation, and a procedural requirement in judicial decision-making (UN Committee on the Rights of the Child, 2013). This requires the agencies conducting the proceedings not only to declare the division of custody, but to prove that the decisions have actually optimized the interests of the child.

In essence, this is an open principle, which is not determined by rigid criteria but depends on the specific circumstances of each case. This allows the competent authority, especially the court, to have the flexibility to assess relevant factors such as the child's age, relationship with the parents, economic conditions, living environment, and the child's holistic developmental needs. However, the "open" nature of this principle also poses a challenge to consistency and predictability in the application of the law.

The principle of "best interests of children" performs three basic functions. Firstly, it serves as a guiding principle, governing the development and perfection of laws related to children. Secondly, it is a legal interpretation tool, helping law enforcement agencies choose the appropriate interpretation in case there are many different interpretations. Third, it is a decision-making criterion, especially in custody disputes, where the interests of the parents must give way to the interests of the child.

When resolving divorce cases, this principle requires a shift in focus from the rights and interests of parents to the rights and interests of children, thereby reflecting a

shift in legal thinking from "family-centered" to "child-centered" (Council of Europe, 2021).

2.3 Role of the court and procedural characteristics in child protection

Within the framework of modern theory on the protection of children's rights, the Court is not only seen as a civil dispute settlement agency but also as a central institution for the judicial guarantee of children's rights in family proceedings (IAALS, 2014). This role stems from the dual nature of children's rights, which are both substantive rights and tied to procedural safeguards. Accordingly, the realization of core principles such as the best interests of children and the right to be heard are inseparable from the way the proceedings are organized and operated.

From this perspective, the Court in divorce cases involving children must be placed in a child-centred justice model, in which the focus is not only on the outcome of the judgment but also on the reasonableness, transparency and child-friendliness of the entire decision-making process. This requires the Court to not only apply the law in a passive way, but also ensure that the proceedings are designed and operated in a child-sensitive manner, allowing for the full identification and evaluation of factors related to the comprehensive development of children.

In this model, the Court also plays the role of institutional coordination, connecting legal regulations and interdisciplinary support institutions, including psychologists, social workers and intermediary mechanisms. This coordination aims to ensure that children's wills, needs and interests are approached in a multidimensional manner and are faithfully reflected in judicial decisions, rather than just based on adversarial logic between the parties involved.

The specificity of family proceedings is also clearly reflected in the requirement to ensure children's right to participate in a safe and appropriate manner. The exercise of the right to be heard is not merely a procedural step but has been recognized in the literature as requiring technical and ethical safeguards to prevent psychological harm and avoid placing the child in a situation of divided loyalties between parents (Council of Europe, 2021). Therefore, procedural guarantees in this area need to be designed in a

flexible, individualized and professional manner, appropriate to the maturity level and specific circumstances of each child.

From the above analysis, it can be seen that the protection of children's rights in the context of divorce is not only a matter of content norms but also a matter of institutional design and processes. The integration of substance and procedure has been widely recognized in the literature as a core foundation of child-friendly justice frameworks in recent international instruments (OECD, 2023). This theoretical framework also provides a basis for assessing the level of institutionalization and enforcement effectiveness in legal systems, as a premise for comparative analyses in Section 4 and recommendations to improve the law in Section 5 of this research.

3 RESEARCH METHODOLOGY

The article uses a combination of research methods typical of legal science, in which the focus is on doctrinal legal analysis and comparative legal methods.

First of all, the method of jurisprudence analysis is used to systematize and clarify the content of Vietnam's current legal provisions related to the protection of children's rights in divorce proceedings. This approach allows for an assessment of the internal structure of the legal system, determining the degree of internalization of international norms, especially the United Nations Convention on the Rights of the Child (UNCRC), as well as identifying gaps and limitations in normative design.

In addition, the article applies the criteria-based comparative approach, through the comparison of Vietnamese law and French law on five core aspects: (i) the principle of the best interests of children; (ii) the right to be heard; (iii) the right to maintain the relationship with the parents; (iv) alimony obligations; and (v) the mechanism to ensure implementation. The choice of French law as a reference stems from the similarity in the foundations of the Civil Law system, and France is a typical example in institutionalizing UNCRC norms through specialized family justice institutions.

Comparative analysis is carried out in a functional approach, whereby the focus is not only on normative differences but also on how regulations are operated in practice and the extent to which the goal of protecting children's rights is achieved. This allows to

assess not only "what the law prescribes" but also "how the law works come on", thereby clarifying the relationship between legal design and enforcement efficiency.

Regarding the scope of analysis, the research focuses on the current legal regulations and relevant guidelines applied in the recent period, combined with reference to a number of typical case laws and trial practices to illustrate how the law is applied in practice.

In addition, the research uses desk-based research, including legal documents, case law, policy reports, and academic works at home and abroad, to ensure the reliability and up-to-date of research data.

On the basis of combining the methods mentioned above, the article aims to make recommendations to improve Vietnamese law in a direction that is both in line with international standards and feasible in the context of current judicial institutions and practices.

4 COMPARISON OF LAW AND VIETNAM ON PROTECTION OF CHILDREN'S RIGHTS IN DIVORCE SETTLEMENT

4.1 The best interests of the child

Clause 1, Article 3 of the 1990 United Nations Convention on the Rights of the Child stipulates: "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 both the Vietnamese and French legal systems, the principle of the best interests of children is always recognized as a paramount consideration in resolving issues related to children when settling divorce cases. However, the main difference lies in the level of concretization and operation of this principle in adjudication practice.

In Vietnam, this principle is recorded in Clause 3, Article 5 of the Law on Children 2016 (National Assembly of Vietnam, 2016) (amended and supplemented in 2018) and Clause 2, Article 81 of the Law on Marriage and Family 2014. According to Clause 2, Article 81 of the 2014 Law on Marriage and Family (National Assembly of Vietnam, 2014), in case the husband and wife cannot reach an agreement on the person who directly

raises the child, the Court shall decide to assign the child to a party who directly raises the child based on "the interests of the child in all aspects";

The criteria for determining what is "the interests of the child in all aspects" are also explained in Clause 6 of Resolution No. 01/2024/NQ-HDTP dated May 16, 2024 of the Council of Judges of the Supreme People's Court guiding the application of a number of legal provisions in the settlement of cases on marriage and family affairs (Resolution No. 01/2024). These criteria include: Conditions and ability of parents to look after, care for, nurture and educate their children, including the ability to protect their children from abuse and exploitation; The right of children to live with the person who directly raises them, to maintain a relationship with the parent who does not directly raise them; The degree of emotional attachment between the child and each parent; Parents' concern for their children; Ensure stability, limit disturbances in the living environment and education of children; The child's desire to be with siblings (if any) to ensure the child's psychological and emotional stability; The child's desire to live with his or her parent.

The criteria listed above all put the child's interests at the center. This is a point of progress in the development and application of law in Vietnam and also a timely solution to contribute to protecting the interests of children when parents divorce in the current context.

Although there are many factors that can be applied to assess the "interests of the child in all aspects", the practice of adjudicating disputes over child custody at the Court has shown that, based on the "stability of the living environment" and "the actual conditions of the father, mother" (specified at points a and dd, Clause 1, Article 6 of Resolution No. 01/2024) are factors commonly considered when deciding on child custody. Example: In Judgment No. 08/2024/HNGĐ-PT, the Court decided to assign the child to Ms. T (the defendant) to directly care for and nurture with the comment that "Ms.T has a stable economy, works at a limited company, in Industrial Park, with her working hour in the day time, so that she h time to take care of her children. She also lives with her mother. Besides, the children have lived stably with Ms.T, the children are still young, so they need more attention, care and education from the mother". In another case, the Court held that "in order to ensure the mental and academic stability of the child, avoid unnecessary disturbances, it is appropriate to keep the child under its father's care continuously" in the context that both parents are eligible for income as well as affection,

attention and care for the child. It can be seen that "stability of the living environment" is a key factor considered by Courts at all levels when making judgments on child custody in addition to the financial conditions of parents (Ngo, 2025).

In France, the principle of "the best interests of the child" (*l'intérêt supérieur de l'enfant*) is stipulated in Article 371-1 of the French Civil Code. This is considered a fundamental principle, placing children as subjects of rights, not just objects of protection. This principle is placed in the structure of the *autorité parentale* regime, which clearly defines the content of parental rights associated with ensuring the safety, health, morality and comprehensive development of children. In practice, this principle operates as an "open concept", allowing judges to flexibly consider the specific elements of each case.

In France, the principle of "the best interests of the child" is basically, and in the most general sense, to ensure the healthy development of children, both physically and morally. In assessing the child's interests, the literature generally identifies at least the following factors: parental conduct, including each parent's willingness to fulfil their own obligations and respect those of the other, and the organization of the child's personal life to maintain family relationships (European Parliament, 2010, p.100).

In the practice of resolving parental disputes in France, the Case Law shows that a change of residence, including moving to another country, as well as the geographical distance between the child and the non-direct parent, is not automatically considered contrary to the child's interests as long as the person directly nurturing them is able to ensure good living conditions and respect their obligations to the other person. However, changes in the child's living arrangements have been understood to require the avoidance of abrupt disruption to the social, cultural, and linguistic environment with which the child is familiar (European Parliament, 2010, p.101).

From the analysis of the above regulations and practices, it is possible to draw some core similarities and differences in the operation of the principle of the best interests of children between France and Vietnam as follows:

Firstly, about the concretization of the evaluation criteria. The applicable Vietnamese law, through Resolution No. 01/2024/NQ-HDTP, has made great strides when listing in detail quantitative criteria (economic conditions, accommodation, children's aspirations). This helps judges have a clear "checklist", limiting arbitrariness and creating consistency in adjudication. In France, by contrast, the "notion à contenu

indéterminé" still prevails. French judges tend to personalize each sentence based on the psychological balance and ability of the parents to cooperate rather than relying solely on predetermined material conditions.

Secondly, about the approach to children's stability. Both systems value "stability," but the interpretation has subtle differences. In Vietnam, adjudication practice often associates stability with the physical residence and financial condition of the caregiver (as in the case of Judgment No. 08/2024/HNGĐ-PT). French case law, meanwhile, focuses on "stability in relationships." Geographical (even cross-border) changes are acceptable if the foster person demonstrates the maintenance of cultural, linguistic and especially respectful of the other person's right to visitation. This shows that France approaches the interests of children from the perspective of "the right to maintain family relationships" in a stronger way.

In conclusion, despite differences in legal traditions and legislative techniques, both France and Vietnam are working to optimize the principle of the best interests of children in order to minimize trauma after divorce. The similarity lies in the goal of ensuring the living environment is not disturbed, but France shows more flexibility and multidimensionality in handling complex population displacement situations. For Vietnam, learning from France's approach to "softening" geographical barriers and promoting respect for obligations between parents will be a valuable reference to improve the practice of applying Resolution 01/2024, especially in cases involving foreign elements or changing residence after divorce.

4.2 The child's right to be heard

Article 12 of the 1990 United Nations Convention on the Rights of the Child stipulates: " States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child".

In the process of internalizing international standards, Vietnamese law has recognized this right in Clause 2, Article 81 of the Law on Marriage and Family 2014: "Husband and wife agree on the person who directly raises the child, the obligations and

rights of each party after divorce for the child; in case of failure to reach an agreement, the Court shall decide to assign the child to a party to directly raise it based on the interests of the child in all aspects; If the child is full 07 years old or older, the child's aspirations must be considered". At the same time, Clause 2, Article 6 of Resolution No. 01/2024/NQ-HDTP stipulates that the collection of opinions of minor children aged full 07 years or older must ensure the following requirements: Ensure friendliness, suitability for psychology, age, and maturity level so that children can express their opinions correctly and fully; Do not consult in front of parents to avoid psychological pressure on children; Do not force, do not put pressure or stress on your child.

However, the practice shows that there is still a significant gap between legal regulations and enforcement effectiveness. The lack of a standardized process for the technique of collecting children's opinions makes this activity significantly dependent on the personal experience of the Judge. In some cases, the way of asking questions is direct or inappropriate for children's psychology can lead to children not daring to express their true opinions, thereby reducing the value of this source of information in the decision-making process (Tran, 2023). This shows that the right of children in Viet Nam to be heard has not been fully realized under the "child-centred justice" approach.

Meanwhile, French law approaches this right in a more flexible and individualized way. Article 388-1 of the French Civil Code does not set a specific age threshold, but relies on the criterion of "capable de discernment" to determine whether a child can be heard. This approach is in line with the spirit of Article 12 of the CRC, which emphasizes maturity rather than mechanical age. In practice, the *juge aux affaires familiales* has been described as assessing each case on the basis of the child's age, psychological development, and individual circumstances (Ferrand, n.d.).

Notably, French law also establishes a mechanism to ensure the effective implementation of this right. When a child has a request to be heard and has sufficient cognitive abilities, the judge is obliged to comply with that request, unless there is a good reason expressly stated in writing. This mechanism contributes to limiting the discretion of the adjudication authority and ensuring that the child's voice is not ignored during the proceedings. In addition, listening to children can be done not only by judges but also through intermediaries such as psychologists or social investigators, in order to minimize psychological pressure and improve the quality of information collected. In particular, in

the event of a conflict of interest between the child and the parents, French law allows the appointment of a *administrateur ad hoc* to ensure that the child's voice is expressed independently in the proceedings. The child's opinion in this case is not decisive, but it is considered an important source in the overall basis for determining the best interests of the child.

From a comparative perspective, it is possible to identify some core differences between the two legal systems.

Firstly, in terms of the criteria for determining the audience to be listened to, Vietnam applies a "quantitative" approach through setting a minimum age. This approach has the advantage of creating clarity, ease of application and ensuring consistency in adjudication practice. However, according to the assessment of the Supreme People's Court (2025), the collection of opinions at this age is considered inappropriate, "causing a great impact on the psychology and emotions of children". In contrast, the French "qualitative" approach allows for the individualization of judicial decisions, but also significantly increases the discretion of judges, potentially risking inconsistencies in judicial practice.

Secondly, about the mechanism for exercising the right to be heard. In Vietnam, although Resolution No. 01/2024/NQ-HDTP has emphasized the requirement of "ensuring friendliness" when collecting children's opinions, there is still a lack of a specialized and standardized procedural process. The collection of children's opinions is still largely carried out directly by the Judge, relying heavily on personal skills and practical experience, while the participation of psychology and social work experts is still limited.

Meanwhile, France has developed a multi-tiered mechanism with the participation of intermediaries and a mandatory guarantee mechanism. Children can be heard directly by a judge or through intermediaries such as psychologists, social workers, or court-appointed persons. This contributes to improving the objectivity and effectiveness of the exercise of children's right to participation.

In conclusion, it can be seen that France and Vietnam have different approaches in recognizing as well as establishing mechanisms to ensure children's right to be heard. France's experience, especially in the use of intermediaries with in-depth support mechanisms from psychologists and social workers, provides important clues for

Vietnam in building a child-centered family litigation model. thereby better ensuring the rights and interests of children in divorce cases.

4.3 The right to maintain personal relations and direct contact with both parents

Article 9 of the United Nations Convention on the Rights of the Child affirms that children have the right to maintain personal relationships and regular contact with both parents, unless the maintenance of such relationships is contrary to the best interests of the child. At the same time, Article 18 of the Convention emphasizes the shared responsibility of parents in the nurturing and development of children. Accordingly, the right to maintain a relationship with a parent should be seen as an intrinsic component of the principle of the best interests of the child, ensuring that divorce does not lead to the breakdown of family relationships that are essential to the integral development of the child.

On the basis of this standard, both Vietnamese and French law recognize a basic principle: divorce does not terminate the rights and obligations of parents to their children. This principle is recorded in Clause 1, Article 81 of the Law on Marriage and Family 2014 and Article 373-2 of the French Civil Code. However, the way of institutionalizing this principle through the organizational models of parent-child relations after divorce between Vietnam and France is significantly different.

Firstly, about determining the person who directly raises after divorce:

Both systems prioritize parental consent; in case of failure to reach an agreement, the Court will intervene on the basis of the child's interests. However, Vietnamese law tends to combine the principle of openness and relatively specific orientation criteria. According to Clauses 2 and 3, Article 81 of the 2014 Law on Marriage and Family, the Court decides to assign the child to a party based on the "interests of the child in all aspects", and at the same time must consider the aspirations of the child from full 7 years old. Notably, the law establishes a legal presumption according to age when priority is given to the mother of a child under 36 months of age, unless the mother is not eligible or there is another agreement in accordance with the interests of the child. The criteria for assessing "ineligible" continue to be concretized in Resolution No. 01/2024/NQ-HDTP. While this approach contributes to improved predictability and ease of law application, it

can also limit the degree of individualization in assessing the specific circumstances of each child.

In contrast, French law does not establish hard legal rigid speculations, but gives the Court jurisdiction to make an assessment based on an open and multi-factor criteria system. Article 373-2-11 of the French Civil Code requires the Judge to comprehensively consider factors such as the child's living habits, the involvement of each parent, the child's opinion, as well as the ability of each party to respect the rights of the other party. In addition, before deciding on the method of exercising parental rights and visitation rights or deciding to hand over the child to a third person, the judge may appoint any person who is qualified to conduct a social investigation. The social investigation mechanism under Article 373-2-12 allows the collection of in-depth information on the living environment and nurturing conditions, thereby improving the quality of evidence and enhancing the individualization of judicial decisions.

Secondly, about the right to visitation after divorce:

Both legal systems recognize that the person who does not directly raise the child has the right and obligation to maintain a relationship with the child, and the exercise of this right must not be arbitrarily hindered. Vietnamese law stipulates relatively clearly in Article 82 of the Law on Marriage and Family 2014, according to which the right to visitation can be restricted if it is abused and adversely affects the care and education of children. Similarly, French law recognizes the right to maintain a personal relationship between children and parents in Articles 373-2 and 373-2-1 of the Civil Code, and gives the Court the authority to adjust or restrict the right to visit when the exercise of this right is no longer in the interests of the child.

However, the intrinsically significant difference between the two legal systems is reflected in the model of organizing the parent-child relationship after divorce. In fact, Vietnamese law mainly operates under the sole custody model, in which there is an institutional asymmetry structure: one parent assumes the role of direct custody (Article 82), while the other party exercises the right of visitation and support obligations to a more limited extent (Article 83). This model has the advantages of stability and uniform applicability, but at the same time tends to "role-divide" parental responsibilities in a separate direction, thereby reducing the level of substantive participation of the non-custodial party in the child's daily life.

In contrast, French law is showing a clear trend towards a shared parenting/joint custody model, institutionalized through *autorité parentale* and flexible mechanisms such as *résidence alternée*. In this model, both parents continue to participate in a substantive, continuous and balanced way in the child's life, not only emotionally but also in important decisions related to nurturing and education. This approach reflects the post-divorce co-parenting paradigm, in which a child's right to maintain a relationship with both parents is not only formally guaranteed, but also realized through specific life organization mechanisms.

From a comparative perspective, it can be seen that while Vietnamese law still favors a stable model based on the assignment of roles, French law aims for a more flexible, multidimensional and individualized model, thereby strengthening the ability to ensure children's rights to maintain a substantive relationship with both parents after divorce. This difference is not only reflected through legislative techniques, but also shows different levels of development in the mindset of approaching children's rights in the field of family justice.

4.4 Alimony obligations

In both the Vietnamese and French legal systems, the alimony obligation is defined as the ongoing legal obligation of the parents, in order to ensure the material needs and development of the child on the basis of balancing the needs of the supported person and the ability of the obligor. However, between the two systems, there are differences in the scope of obligations, methods of implementation and especially the mechanism to ensure the performance of alimony obligations.

In Vietnam, according to Article 116 of the Law on Marriage and Family 2014, the level of alimony is agreed upon by the parties or decided by the Court based on the income, actual ability of the obligor and the essential needs of the child. This approach theoretically ensures flexibility, but in practice it faces many difficulties in the application process. First of all, the determination of the "actual income" of obligors still lacks an effective verification mechanism, especially in the context that informal income accounts for a large proportion. In addition, the mechanism for enforcing the enforcement of alimony obligations is mainly based on the civil judgment enforcement system, which is

still limited in effectiveness, leading to the situation that many alimony judgments are not fully or promptly enforced.

These limitations have also been noted in the practice of summarizing law enforcement. According to the Report of the Ministry of Justice at the National Review Conference on the Implementation of the Law on Marriage and Family in 2014 (24/12/2025), the regulation on determining the level of alimony "based on the actual ability of the obligor" faces many difficulties in applying, especially for cases where the obligor is a self-employed worker who has unstable income or deliberately shirks obligations; the level of alimony in many cases does not meet the minimum living needs of the supported person; At the same time, the applicable law lacks clear provisions on legal consequences for delaying the performance of support obligations (Ministry of Justice of Vietnam (2025)). These assessments show a significant gap between legal regulations and enforcement effectiveness in practice.

In contrast, French law approaches the alimony obligation as a constituent part of parental rights (*autorité parentale*), with a more flexible scope and mechanism and method of implementation. The judge may decide to provide alimony in the form of periodic payments, allow the child to enjoy the property, or require the obligor to directly pay for specific expenses such as tuition and medical expenses (Article 373-2-2).

In particular, the highlight of French law lies in the mechanism to ensure effective enforcement, with the active participation of social security institutions. Through agencies such as the Caisse d'Allocations Familiales (CAF) and the Agence de recouvrement and d'intermédiation des pensions alimentaires (ARIPA) system, the State not only monitors the performance of parents' obligations, but can also advance alimony and proactively arrears from obligors. Thereby ensuring the continuity of financial resources for children, especially in the context of the risk of delay or non-fulfillment of support obligations.

From a comparative perspective, it can be seen that the core difference between the two systems lies not in the recognition of the support obligation, but in the institutional approach to ensuring the performance of this obligation. While Vietnamese law still primarily approaches the obligation of alimony as a civil relationship, with enforcement dependent on the civil judgment enforcement mechanism – which is passive and based on the requests of the litigants – French law has established a model of active intervention,

combining justice and social security to ensure the material interests of children in a substantive and sustainable way.

5 PROPOSALS TO IMPROVE VIETNAMESE LAW

On the basis of the comparative analysis in Section 4, it can be seen that the limitations of Vietnamese law do not only lie in the normative content, but mainly stem from the institutional design and the effectiveness of the enforcement mechanism. In particular, the differences between Vietnam and France show a trend of shifting from the model of "recognition of rights" to the model of "guaranteeing rights" through supporting institutions and proactive intervention mechanisms of the State.

In this context, the improvement of Vietnamese law needs to be approached in a multi-layered and interdisciplinary way, in order to strengthen the level of internalization and effective implementation of the standards of the United Nations Convention on the Rights of the Child, including: (i) concretizing legal standards; (ii) improve enforcement efficiency; and (iii) develop specialized judicial assistance institutions.

5.1 Concretizing the principle of the best interests of children in the direction of multi-factor assessment and relationship orientation

The analysis in Section 4.1 shows that, although Vietnamese law has made progress in concretizing the principle of the best interests of children through the system of criteria in Resolution No. 01/2024/NQ-HDTP, the current approach still tends to favor material factors and stability of residence, while not fully assessing the aspect of maintaining and developing children's family relationships. At the same time, the application of pre-oriented criteria in the form of "checklists" also somewhat limits the level of individualization in judicial decisions.

To overcome these limitations, Vietnamese law needs to be improved in the direction of:

- Adding the criterion of "stability in relationships" as a central factor in determining the child's best interests, including the ability to maintain an

emotional relationship with both parents, as well as the child's familiar social environment;

- Shifting from a "closed" criterion approach to a "structured but non-exhaustive criteria" model, whereby the law only provides a guiding framework, and at the same time gives the Judge the right to consider other factors suitable to the specific circumstances of each case;
- Strengthen assessment support tools such as social surveys and psychologist opinions, in order to supplement information about children's comprehensive developmental conditions, rather than relying only on quantitative factors such as income or material conditions;
- Develop a system of case law to guide the application of this principle in the direction of emphasizing the element of relationships and family cohesion, thereby ensuring the consistency and predictability of adjudication practice.

These adjustments contribute to the shift from a quantitative and formal assessment model to a multidimensional, individualized and relationship-oriented assessment model, in line with the requirements of the United Nations Convention on the Rights of the Child and the development trend of modern family justice.

5.2 Establish a mechanism to ensure children's right to be heard in a supportive and compulsory manner

The analysis in Section 4.2 shows that, although Vietnamese law has recognized the right to be heard by children in divorce cases, the exercise of this right in practice is still formal, due to the lack of professional support institutions and guaranteed procedural mechanisms. In particular, the absence of intermediaries such as psychologists and social workers makes the recording of children's opinions often directly dependent on the Judge, while this is not an in-depth training subject to assess the psychological and developmental factors of children.

Meanwhile, the experience of French law shows that the right to be heard is only truly meaningful when placed in a procedural guarantee mechanism, with the participation of intermediary institutions.

On that basis, Vietnamese law needs to be improved in the direction of:

- Establish a mechanism of "assisted listening", in which the recording of children's opinions is carried out through or with the support of psychologists and social workers, in order to ensure objectivity and suitability to the child's level of development;
- Develop a standard process for consulting children in family proceedings, including the principles of a friendly environment, information confidentiality and age-appropriate methods of recording opinions;
- The study establishes an independent representation or protection mechanism for children in cases where there is a conflict of interest between children and parents.

These solutions contribute to the shift from a model of "direct and formal listening" to a model of "certified listening and professional support", thereby ensuring that children's right to be heard is not only legally recognized but also realized in a substantive way. in accordance with Article 12 of the United Nations Convention on the Rights of the Child.

5.3 Orientation to transition to a co-parenting paradigm to enhance flexibility and individualization

The analysis in Section 4.3 shows that Vietnamese law still operates mainly according to the sole custody model, based on a relatively clear assignment of roles between parents after divorce: one party is nurturing - the other is visiting. This model has the advantages of clarity and ease of application. but tend to limit a child's ability to maintain a substantive and regular relationship with both parents, especially in the context of increasingly diverse and flexible family life.

Meanwhile, the experience of French law, through the *autorité parentale conjointe*, suggests a more flexible approach, in which the organization of parent-child relations after divorce is not limited to the identification of a direct custodian, but rather aims to maintain the role of both parents in the child's life. This approach reflects a shift from a role-assignment model to a co-responsibility model, in line with child-centered trends in modern family justice.

On that basis, Vietnamese law needs to be improved in the direction of establishing the principle of co-responsibility of parents after divorce, whereby both

parents continue to jointly exercise their rights and obligations related to the care, education and decision on important issues of the child, regardless the child is living with who directly.

Accordingly, the focus of legal thinking needs to shift from determining "who is the custodian of the child" to designing "how both parents jointly exercise their responsibilities to the child after divorce". This shift is in line with the spirit of the United Nations Convention on the Rights of the Child, and reflects the development trend of modern family justice systems towards child-centeredness.

5.4 To improve the mechanism for enforcement of alimony obligations in the direction of enhancing the active participation of the State and social institutions

The analysis in Section 4.4 shows that the core limitation of Vietnamese law in the field of alimony does not lie in the lack of provision on obligations, but in the institutional approach to ensuring the performance of this obligation. Currently, the alimony obligation is mainly implemented through a passive civil judgment enforcement mechanism, depending on the request of the involved parties, leading to delay or non-performance of obligations, thereby directly affecting the material interests of children.

Meanwhile, the experience of French law suggests a more efficient model, in which the alimony obligation is placed in relation to the social security system, allowing the State to participate as an intermediary to ensure the continuity and stability of children's finances.

On that basis, Vietnamese law needs to be improved in the direction of transforming from a private enforcement model to a state-assisted enforcement model, and at the same time combined with the participation of social institutions, with the following main contents:

- Establish an intermediary mechanism for payment of alimony obligations, in which a state agency or authorized organization can take the stand to receive and transfer alimony between the parties, thereby minimizing direct conflicts and ensuring transparency in the performance of obligations;

- To study the application of the mechanism of advance support in cases where the obligor fails to perform or delays the performance, and at the same time grants the competent agency the right to collect the advance amount in arrears;
- Strengthen automatic and effective enforcement measures, such as deductions from income, bank accounts or other lawful revenue sources of obligors on the basis of effective court decisions;
- To build an interconnected information system for the determination of income and the ability to perform support obligations, thereby improving the feasibility of enforcement measures;
- Promote the role of social organizations in the protection of children's rights, especially the Association for the Protection of Children's Rights, in the direction of allowing these organizations to participate as a subject to support and supervise the performance of support obligations. Specifically, the Association can participate in legal advice, support the person directly raising the child in requesting the performance of obligations, and at the same time play the role of a representative or propose the competent authority to intervene in case the child's interests are not fully guaranteed.

The combination of the judicial mechanism, the active intervention of the State and the supporting role of social institutions contributes to the formation of a multi-actor framework in the field of alimony, thereby reducing dependence on the voluntary will of obligors and ensuring the continuity of financial resources for children.

These adjustments not only improve the effectiveness of the enforcement of the support obligation, but also reposition it as a tool to ensure children's rights in social policy, in line with the spirit of the United Nations Convention on the Rights of the Child and the development trend of modern family justice systems.

6 CONCLUSION

The research has carried out a systematic comparative analysis between Vietnamese law and French law on the protection of children's rights in divorce settlement, on the basis of five core criteria including: the principle of the best interests of children, the right to be heard, the right to maintain relations with parents, etc alimony

obligations and mechanisms to ensure performance. Through a combined approach of jurisprudence and comparative law in a functional direction, the study not only clarifies normative differences but also points out differences in the operation and enforcement effectiveness of the two legal systems.

The results of the study show that, although Vietnamese law has relatively fully codified the standards of the United Nations Convention on the Rights of the Child (UNCRC), especially in recognizing the principle of the best interests of children and their right to participate, there is still a significant gap between legal regulations and enforcement. This gap is manifested in three main aspects: (i) the approach is still generalized and lacks a mechanism to support individualization in the trial process; (ii) the organizational model of parent-child relations after divorce is still biased towards the assignment of roles, not fully ensuring the maintenance of the substantive relationship of children with both parents; and (iii) the mechanism for enforcing the alimony obligation is still passive, highly dependent on the will of the involved parties.

On the contrary, the experience of French law shows the effectiveness of an integrated model of protection between norms and institutions, in which children's rights are realized through specialized judicial mechanisms, child-friendly procedural processes and an interdisciplinary support ecosystem. This approach reflects a shift from a traditional protectionist model to a rights-based approach, and emphasizes the role of procedural guarantees in realizing children's content rights in practice.

On that basis, the research proposes to improve the law in the direction of shifting from a formal approach to a substantive approach in protecting children's rights. Specifically, it is necessary to strengthen the mechanism of individualization in adjudication through interdisciplinary support tools; improve the procedural model to ensure children's right to be heard with the participation of professional intermediaries; gradually transform from a single parenting model to a model of parental co-responsibility; and reform the mechanism for enforcing the support obligation in the direction of strengthening the active participation of the State in combination with social institutions.

These recommendations are not only aimed at overcoming the specific limitations of the current law, but also towards a deeper transformation of legal thinking in the field of family justice. Accordingly, the focus is no longer on resolving disputes between

parents, but on designing legal mechanisms to ensure the rights and interests of children in a comprehensive, continuous and sustainable way in the context of the family after divorce.

Thereby, the article affirms that the improvement of the law on the protection of children's rights in divorce settlement should be placed within a child-centered framework, combining international standards and practical conditions of Vietnam. This is not only a legal requirement, but also an important policy direction to ensure the comprehensive development of children in modern society.

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