



The Protection of the Rights of Children at Risk

حماية حقوق الأطفال المعرضين للخطر

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Abstract.

Human rights in general and children's rights in particular are a subject of international concern, and for this matter many organizations have been established that drive change for children in particular those who are at risk through research and education and influence public policy focusing on the well-being of children and educating legislators on the importance of a variety of issues such as human trafficking, insecurity Food, education and juvenile justice.

With the ratification of the Convention on the Rights of the Child, the Algerian legislator has attempted to materialize these rights in Law 15-12 related to the protection of children, through a set of mechanisms that guarantee the rights of children at risk, which are social, institutional and judicial mechanisms in view of the particularity of children at risk.

Key words: human rights, law, the child in danger, protection, institutions, danger, justice...

الملخص:

تعتبر حقوق الإنسان بصفة عامة وحقوق الأطفال بصفة خاصة موضوع اهتمام دولي، ولهذا الشأن تأسست العديد من المنظمات تقود التغيير للأطفال خاصة المعرضين منهم للخطر من خلال البحث والتعليم والتأثير على السياسة العامة مركزة على رفاهية الأطفال وتثقيف المشرعين حول أهمية مجموعة متنوعة من القضايا كالاتجار بالبشر وانعدام الأمن الغذائي والتعليم والتربية وقضاء الأحداث.

ومع التصديق على اتفاقية حقوق الطفل، حاول المشرع الجزائري تجسيد تلك الحقوق في القانون 15-12 المتعلق بحماية الطفل، من خلال مجموعة من الآليات والتي تضمن خاصة حقوق الطفل المعرض للخطر، وهي الآليات الاجتماعية ومؤسسية وقضائية نظرا لخصوصية الطفل في خطر. الكلمات المفتاحية: حقوق الإنسان، القانون، الطفل في خطر، الحماية، المؤسسات، الخطر، القضاء...

الكلمات الدالة: حقوق الإنسان، القانون، الطفل في خطر، الحماية، المؤسسات، الخطر، القضاء...

1. Introduction:

Since ancient times, human rights have been linked to the emergence of human beings and their origins on earth where people have been struggling to protect and ensure their rights in all ways. In this way, a number of international and regional agreements have emerged in this regard, the most important of which is the Universal Declaration of Human Rights, which recognized a number of human rights consecrated by internal constitutions and laws in a form of various legislations.

As long as the child is a human being, he benefits from the general rights established for the human being, in addition to that, he has rights of his own as a result of his weakness and his inability to defend himself and his needs for care and protection, which is what various legislations have sought, as many international conventions have also approved, internal constitutions and legislations have included such as the Algerian legislator who has paid great attention to the child by enacting a set of laws to ensure the rights and protection of the child. This study aims to expose the position of the Algerian legislator through the new law related to child protection issued on July 19th, 2015, trying to discuss the problematic mainly related to the forms of protection guaranteed by this law for a specific group of children, children at risk.

2. The concept of child at risk and his right to protection:

There is no legal definition of child protection, but services aim to identify those children who are at risk of serious harm. Child protection aims to keep children safe where there is serious risk of harm. Serious risk of harm many arise from a single event or a serious of concerns over time.⁽¹⁾

In the Child Protection Act, The Algerian legislator determines what the child at risk is and the number of cases in which he is at risk, highlighting the role of the family and the state in the protection process.

2.1. The concept of child:

In Islamic jurisprudence, a child is defined as: “A person from the moment he becomes a fetus in his mother’s womb until puberty, and if signs of puberty⁽²⁾ do not appear on, he remains a child until the age of fifteen”.

According to the International Convention on the Rights of the Child,⁽³⁾ a child is defined according to Article 1 of Part One as: “as a person below the age of 18, unless the relevant laws recognize an earlier age of majority.

As for the African Charter on the Rights and Welfare of the Child,⁽⁴⁾ the child was defined in the text of Article 2 of Part One as: “ every human being below the age of 18 years..”

2.2. The definition of the child in domestic laws:

Under the Child Protection Act, the Algerian legislator stated explicitly in Article 2 that the child means: “Every person who has not reached the age of complete eighteen years.” It is noted that the Algerian legislator did not define the child accurately, but rather determined the maximum childhood in line with the ratified Convention on the Rights of the Child, which is 18 years, contrary to what was stipulated in Article 1 of Ordinance 72-03 of February 10, 1972, relating to the protection of children and adolescents, as it was limited to 21 years.⁽⁵⁾

The Algerian legislator did not specify when the childhood stage begins, and that, by reference to jurisprudence, a controversy has arisen over the stage in which the childhood stage begins, does it extend to include the pre-birth stage of the child, i.e. being a fetus in the mother’s womb or the moment of his birth alive, there are jurists who catch up the previous stage of childbirth, and there are those who consider it an independent stage. The most correct view is that the child is protected before and after birth.⁽⁶⁾

The Algerian legislator has also indicated in the text of Article 2 of the Child Protection Act referred to above: “The term juvenile has the same meaning as child,” and accordingly it equates to mentioning the term child or juvenile according to what the Algerian legislator adopted. It is also worth noting that the Algerian legislator adopted another term that is synonymous with the term child, which is the term “minor”,⁽⁷⁾ and it has been used a lot in the provisions of the Civil Code and in some provisions of the Penal Code as well, and he is the person who has not yet reached the age of majority.

3. The definition of child at risk:

The Algerian legislator used the term "child at risk" in the Child Protection Act, knowing that the term that was used in previous law Ordinance 72-03 related to child and adolescent protection referred to above is the term "child at moral risk", and the reason for this can be due to the multiplicity of cases of the child being exposed is also subject to material risk.⁽⁸⁾

According to the text of Article 2 of the Child Protection Law, the Algerian legislator defined the child at risk as: "the child whose health, morals, upbringing or security are at risk or subject to or his living conditions or behavior would expose him to a potential danger or harmful to its future, or it is in an environment that endangers its physical, psychological, or educational safety."

Thus, the Algerian legislator, unlike the previous law, has expanded to define the concept of the child in danger to include the presence of the child in an environment that exposes him to physical danger to the safety of his body or the moral reality on his psychology or his upbringing.⁽⁹⁾ Consequently, children are vulnerable in this way, include the following groups:

Category 1: Children whose health, morals, or upbringing are at risk.

Category 2: children whose living conditions or behavior are harmful to their future.

Category 3: Children in an environment that puts their health or their education at risk.

Hence, the Algerian legislator did not depart from what was prevailing, so he concluded that children are at risk are children who are vulnerable to delinquency and children who have been victims of attacks.⁽¹⁰⁾

It should be noted that the Algerian legislator did not only defined the child at risk but rather in the same article he numbered cases that put the child at risk in the manner that will be exposed in the following element.

3.1. Cases of a Child at Risk:

The Child Protection Act mentioned, in Article 2, the cases that put the child at risk, and it is noted that the Algerian legislator mentioned these cases as an example only, which left discretion to the competent juvenile judge to approve cases other than those stipulated. The legislator did well to do this because not all cases in which the child is at risk can be counted, but each case must be studied separately.

3.1.1. Infringing the child's right to education:⁽¹¹⁾

- Exposing the child to neglect or displacement.⁽¹²⁾
- The inability of the parents or the person caring for the child to control his actions that would affect his physical, psychological or educational safety.
- The child loses his parents and remains without a family bond. In this case, he is vulnerable to neglect and displacement.

- Mistreatment of the child, especially by subjecting him to torture, assaulting his physical integrity, detaining him, preventing food from him, or performing any act involving cruelty that would affect the child's emotional or psychological balance.

3.1.2. The child as a victim of certain crimes:

The child is at risk of being a victim of one of the following crimes:

- If the child is a victim of a crime from his or her legal representative,⁽¹³⁾ or from any other person if the child's interest requires to be protected. The legislator did not specify the type of crime committed, but was satisfied as the perpetrator, as the person concerned with caring for the child and the child victim.

- Begging or exposing the child to beg .⁽¹⁴⁾

- Sexual exploitation of a child in all its forms.

- The economic exploitation of the child, in ways harmful to physical or moral integrity.⁽¹⁵⁾

- The child victim of armed conflict and other instability.⁽¹⁶⁾

3.1.3. The refugee child:

The refugee child, in the sense of Article 2 of the Child Protection Act, means a child who has been forced to flee his country, crossing international borders, seeking asylum or any other form of international protection.⁽¹⁷⁾

4. The rights of the child at risk:

4.1. The child's general rights:

In accordance with Article 03 of the Child Protection Act, without discrimination based on color, sex, language, opinion, disability, or other forms of discrimination, every child has all the rights stipulated in the CRC and other relevant international agreements ratified by the Algerian government. And those stipulated in the national legislation.⁽¹⁸⁾

Article 8 of the same act added that the child has the right to express his views freely according to his age and degree of maturity within the framework of respect for the law, public order, morals and the rights of others, Article 9 also prohibited others under penalty of criminal prosecution from using the child in advertising flashes, films, pictures or recordings, whatever their form, except with the permission of his legal representative and outside the periods of schooling, according to the legislation and regulation in force.

In addition to the rights mentioned above, a disabled child has the right to care, the right to treatment, the right to education and rehabilitation, which enhances its independence and facilitates its effective participation in economic, social and cultural life; the gifted child also enjoys special care from the state to develop his skills and capabilities.

4.2. The Child's Right to Protection:

4.2.1. The role of family in protecting the child:

As a general principle, the family has a responsibility to protect the child, and it is its responsibility to secure the living conditions necessary for its development within the limits of the available financial possibilities, since the family is the natural medium for the child's development and can only be separated from it by an order, ruling or decision by the judiciary and according to what it stipulated by law.⁽¹⁹⁾

The state must take all appropriate measures to protect the child and provide the conditions necessary for his or her development and care, and to maintain his or her safe and sound development in a healthy and fit environment and to protect his rights in emergency situations, disasters, wars and armed conflicts.

The state also ensures that the information that is directed to the child by various means does not harm his physical and intellectual balance.

4.2.2. The role of the state in protecting children:

In accordance with the provisions of Article 5, paragraph 3, and Article 6 of the Child Protection Act, the state is obligated to provide the necessary financial assistance to guarantee the child's right to protection and care, and it also guarantees the disadvantaged child the right to alternative care and then the right to protection.⁽²⁰⁾ This is generally due to local groups in helping children. The state also guarantees the child's right to be protected from all forms of harm, neglect, violence, abuse, exploitation, or physical, moral, or sexual abuse.

5. The legal mechanisms to protect children at risk in The Algerian legislation

The Algerian legislator dealt with the protection of children at risk in Law 15-12 related to the protection of children in Chapter Two, through two forms: social and judicial protection.

5.1. The social protection:

The Algerian legislator divided the social protection of the child at risk into national and local protection, according to the following:

5.1.1. The social protection at the national level:

Under the aforementioned Child Protection Act, the Algerian legislator created the National Authority for the Protection and Promotion of Childhood, headed by the National Commissioner for the Protection and Promotion of Childhood.

A- The role of the National Authority:

According to the Child Protection Act, a national body for the protection and promotion of childhood was created with the Prime Minister, and this body is entrusted with ensuring the protection and promotion of the rights of the child. This body, in accordance with the provisions of Article 11 thereof, has a legal personality and has an independent financial liability,

provided that the state uses all the material and human means to carry out the tasks assigned to it.

B- The role of the National Commissioner:

- Promoting children's rights⁽²¹⁾
- Receiving notifications when there is a violation of children's rights and
- Preparing reports on the status of children's rights.

5.1.2. The social Protection at the Local Level:

The social protection for children at the local level is entrusted to the services of open environment, as explicitly mentioned in Article 21 of the Child Protection Act, in coordination with various public bodies, institutions, and persons in charge of child care.

A- Establishing the services of the open medium:

The services of the open environment arise with one service per state, and in case of necessity, several services can be created in one state.

The services of the open environment are formed in accordance with the provisions of Article 21, Paragraph 3 of the Child Protection Act, from officials specializing in child protection, such as educators, social assistants, and psychologists, in addition to that specializing in sociology and law (31).

The State places at the disposal of the services of the open environment all the human and material means necessary to carry out their tasks. The public departments, institutions and persons responsible for child care must provide all facilities for the services to exercise these tasks, and also put at their disposal all the required information, while restricting the services.⁽²²⁾

It should be noted that the services were established before the issuance of the Child Protection Act remaining in force. According to Article 2 of the Child Protection Act, these services are the same as those of observation and education in the open environment that were created before the issuance of this act.

B- The role of the services in protecting children at risk:

The primary role of the services is to follow up the child's situation and assist his family through the following:

- Receive notifications of a child at risk.
- Ensuring that the child is physically in danger.⁽²³⁾
- Subjecting the child at risk to conventional measures.⁽²⁴⁾
- Notifying the juvenile judge about the situation of the child at risk.

5.1.2. The judicial protection:

The judicial protection of the child at risk is connected according to what the Algerian legislator stipulated in the Child Protection Act in the interference of the judicial authority represented by the juvenile judge. The legislator also stipulated special procedures related to the protection of children at risk victims of certain crimes and other measures represented in

the situation in childhood centers specialized in protecting the child at risk.⁽²⁵⁾

A- The juvenile judge's intervention:

- The competent juvenile judge:

The juvenile judge, at the Court of First Instance, is responsible for protecting the juvenile at risk, and jurisdiction is held in accordance with the provisions of Article 32, Paragraph 1 of the Child Protection Act: the legal representative or juvenile judge for the court that found the child in danger within the limits of its jurisdiction in the case of absence.

The juvenile judge automatically interferes to protect the child at risk, or based on a petition submitted by the child, his legal representative, the representative of the republic or the governor, or the head of the Municipal People's Council for the place of residence of the child, the services of the open environment, or the associations or public bodies concerned with childhood.

The juvenile judge can also intervene Upon notification of the child's oral provider directly.⁽²⁶⁾ What is noticeable here is the expansion of the Algerian legislator into the categories of persons legally authorized to notify the juvenile judge about the existence of a child at risk.

- The measures taken by the juvenile judge:

Upon notification of a petition that the child is in danger, the juvenile judge shall immediately contact the child and his guardian and inform them of the contents of the petition while hearing their statements regarding him; the juvenile judge can receive the views of the child and his or her legal representative on the child's status and future.⁽²⁷⁾

After that, the juvenile judge undertakes the study of the child's personality and position, and in this regard, he uses the information and reports prepared through social research, medical, mental and psychological examinations and behavior control, the interests of the open community as well as the statements of every person who sees benefit in hearing his saying. Accordingly, he decides whether or not the child will be at risk of some measure or all of them (43).

The Child Protection Act has empowered a juvenile judge to take the following measures to confront a child at risk to protect him, in particular:

- Keep the child in his family.
- Handing over the child to his father or mother, who does not exercise the right to custody over him in the event of the separation of the parents, unless he has been forfeited.
- Handing over the child to a relative.
- Handing the child over to a trustworthy person or family.
- Mandating the interests of the open community to observe the child in his family, school and vocational.

- He can also place the child temporarily in several places.⁽²⁸⁾

When the juvenile judge has finished the investigation, he sends the case file to the public prosecutor for review, and according to what is stipulated in Article 38 of the Child Protection Act, he summons the parties, the child, the legal representative, and the lawyer, according to a recommended letter, with knowledge of arrival when necessary, at least 8 days before looking.

The Juvenile Judge hears all parties, as well as every person whose statements are important in hearing.

While the case is being heard, a juvenile judge can, upon order to take one of the following measures:

- Keep the child in his family.
- Handing over the child to his father or mother who does not exercise custody rights over him, unless she has been forfeited by judgment.
- Handing over the child to a relative.

The juvenile judge may also order that the child be placed in several social places.

5.1.3. The protection from certain crimes:

The Algerian legislator has singled out the child at risk of being a victim of some crimes, with special measures included in articles 46 and 47 of the Child Protection Law. The matter is related to sexual crimes against the child or the crime of kidnapping a child.

- Measures taken to protect the child victim of sexual assault.
- Measures taken to protect the child victim of kidnapping.
- Putting the Child in Childhood Centers Specialized in Protecting the Child at risk.

The Ministry in charge of National Solidarity, in accordance with the provisions of Article 116 of the Child Protection Law, creates centers specialized in protecting children in danger. The situation in these centers is from the judicial authority represented by the juvenile judge or the juvenile judicial authority, excepting that the guardian can place the child at risk in the above-mentioned center for a period not exceeding 8 days in the event of urgency and in this case the director of the center is obliged to notify the regional juvenile judge concerned so immediately.⁽²⁹⁾

With reference to the second section of Chapter Four of the Child Protection Law, the legislator has stipulated a set of rights enjoyed by the child placed in the centers specializing in child protection, in particular:

- The child's right to education, training and care.
- Granting the child permission to leave.
- Giving the child an annual vacation.
- Allowing the child to practice a school or vocational training outside the center.

6. Conclusion:

It is evident that the Algerian legislator, through the newly introduced Act 15-12 related to the protection of children, has ensured the child extensive protection, whether he is a child at risk or a delinquent child in keeping with the international agreements ratified in this regard. With regard to the protection guaranteed to the child in danger, from a study to the special provisions mentioned in this act in particular, the following findings have been reached:

- The Algerian legislator determines the concept of the child at risk and enumerates cases in which he is at risk.
- The creation of national child protection bodies that would enhance and promote child protection.
- Activating the role of the services of the open environment and the centers concerned with childhood protection in protecting children at risk.
- Giving the judiciary, represented in the juvenile judge, wide powers in the field of taking measures to protect the child in a diversity that varies and suits the child's situation and circumstances.
- The interest of the Algerian legislator in the measures taken against the child who is the victim of some crimes.

However, obstacles remain in the implementation of the provisions of this law in the field of child protection, which must be rectified through the following:

- The necessity of taking care of the family and raising its awareness to provide better care and protection for the child through holding school days and intellectual seminars specifically aimed at parents and the role of the family in society.
- The need for to pay attention to the phenomenon of family disintegration and its negative psychological phenomena on the child by sociologists and legal professionals.
- Activating the role of the civil community to participate in protecting the child, and expediting the notification of cases in danger.
- The necessity of providing the physical and human structures for the various services and bodies charged with protecting the child and providing them in particular with psychologists, educators and sociologists.
- Activating the Child Protection Act by expediting the various regulatory texts that guarantee the implementation of this act.

Finally, we notice the efforts of the Algerian legislator in stipulating the Child Protection Act, which promises to enrich the legal system in the field of protecting human rights in Algeria actually embodied in reality.

End notes:

- (1)- Andrew Hall, Definition of Child Protection, May 31st, 2013, on: <https://www.safeguardingschools.co.uk/definition-of-child-protection/>, last update February, 15th, 2020.
- (2)- See Mohammad Rasool Ahangaran and Zahra Abbasi, The Age of Criminal Responsibility in Children: some of Islamic Views, Int J Pediatr, Vol.3, N.4-1, Serial No.19, Jul 2015, p.777-786.
- (3)- The Convention on the Rights of the Child, approved by the United Nations General Assembly on November 20, 1989 and ratified with explanatory declarations by Presidential Decree No. 92-461 of December 19, 1992.
- (4)- The African Charter on the Rights of the Child was adopted in Addis Ababa in July 1990 and ratified by Presidential Decree No. 03-242 of July 8, 2003.
- (5)- This law has been repealed according to the text of Article 149 of the Child Protection Law.
- (6)- See Patrick J. Flood, Does International Law Protect the Unborn Child?, Life and Learning conference XVI, 2006, p.09, on: <http://www.uffl.org/vol16/flood06.pdf>, last update, february 16th, 2020.
- (7)- See Mahesh Sharma, difference between minor and juvenile, october 31st, 2007, on: <https://www.pathlegal.in/Difference-between-Minor-and-Juvenile-blog-1367997>, last update, february 16th, 2020.
- (8)- See Kristin Anderson Moore, defining the term «at risk», child trends , USA, October 2006.
- (9)- Article 1 of Ordinance 72-03 on the protection of childhood and adolescence states that children are at risk: “minors whose health, morals, or upbringing are at risk or whose life or behavior is detrimental to their future.”
- (10)- See Ernest E. Allen, Keeping Children Safe: Rhetoric and Reality, Juvenile Justice Journal, Volume V, Number 1, May 1998, p.01-06.
- (11)- The right to education is a recognized constitutional right for the child, as stipulated in Article 53 of the Constitution.
- (12)- See Education of Homeless Children & Youth The Guide to Their Rights, The National Law Center On Homeless & Poverty, June 2011, p.07-22.
- (13)- Karen K. Peters, Commission on Parental Legal Representation Interim Report to Chief Judge DiFiore FEBRUARY 2019, p.05-43.

- (14)- See Lars Lööf, children trafficked for exploitation in briefing and criminality: A challenge for law enforcement and child protection, Council of the Baltic Sea States Child Centre, Expert Group for Cooperation on Children at Risk, 2002, p.04-43.
- (15)- According to the text of Article 139 of the Child Protection Act, this crime is punishable by one to three years imprisonment and a fine of 50,000 to 100,000. The penalty is doubled when the perpetrator is one of the child's assets or the person responsible for his care.
- (16)- See United Nations Children's Fund (UNICEF), Children affected by armed conflict: UNICEF actions, MAY 2002, p.01-140.
- (17)- See Jeanette A. Lawrence et al., The Rights of Refugee Children and the UN Convention on the Rights of the Child, Laws 2019, 8, 20, pp.03-22.
- (18)- See Maud de Beur-Buquicchio, What are children's rights ?, on: http://www.eycb.coe.int/compasito/chapter_1/2_wha.html
- (19)- See Article 4 and 5 of the Child Protection Act.
- See Duncan Lindsey, Preserving Families and Protecting Children: Finding the Balance, University of California, Los Angeles, USA, 2005, p.01-10.
- (20)- See Barbara Bennett Woodhouse, A Delicate Balance: The Role OF Governmet IN Protecting Children's Rlights Within The Family Keynote Address, international conference on children's rights, Ministry of education Tokyo, Japan, November 1999, p.01-12.
- (21)- See the text of Article 13 of the Child Protection Act.
- (22)- Article 31, Paragraphs 1 and 2 of the Child Protection Act.
- (23)- Article 22 last paragraph.
- (24)- Articles 27 and 28 of the Child Protection Act.
- (25)- See Muriel Eglin, Judicial child protection in France and England : a comparative approach, association francaise des magistrats de la jeunesse et de la famille, 2011, p.01-20.
- (26)- Article 32 of the Child Protection Act.
- (27)- In this case, the child may seek the assistance of a lawyer, in accordance with the provisions of Article 33, paragraph 2.
- See Tamara Walsh et al., Lawyers, Advocacy and Child Protection, Melbourne University Law Review, Vol.35, 2011, p.621-650.
- (28)- Article 36 of the Child Protection Act.
- (29)- Article 117 of the Child Protection Act.