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Inferring from a minor's testimony

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Abstract:

Testimony is one of the most important means of proof, and there is no doubt that the witness providing it is a key pillar. However, in reality, there are certain exceptions that must be considered to safeguard rights and achieve justice. One such exception relates to the testimony of minors given that they are not yet of legal age. Minors are an integral part of society and are present in specific places such as schools, clubs, and other public areas where they interact with adults. This exposure may lead them to become involved in disputes or serve as witnesses to them. More importantly, a minor may sometimes be the sole witness to a crime. In such cases, should their testimony be considered, or should the victim's rights be left unprotected?

Keywords: Minor, testimony, crime, judiciary, evidentiary value, reasoning.

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INTRODUCTION:

The absence or insufficiency of evidence in a case compels the judge, in pursuit of the truth and in exercise of his broad powers, to resort to indirect evidence by inferring the unknown from the known. Among the pieces of evidence that can be relied upon is the testimony of a minor, as testimony is one of the most significant and authoritative means of proof across various branches of law[1], albeit differing in value and probative force.

The testimony of a minor is subject to special provisions that have evolved in line with the international community's changing perspective on children and the transformation of human behavior over time. This evolution has necessitated amendments to legal texts to align with these developments. While historically, the testimony of a minor was deemed legally, judicially, and doctrinally valueless, **modern legal thought has shifted from a stance of skepticism to one of attentive and prudent consideration of a child's statements**. This approach has been adopted by many comparative legal systems.[2]

At the international level, emphasis has been placed on ensuring that age should not serve as a barrier to a child's full participation in judicial proceedings. It is therefore essential to treat every minor as a competent witness, subject to an assessment of their capacity. A child's testimony should not be presumed invalid or unreliable solely due to their age, as long as their maturity and comprehension allow them to provide a coherent and credible account, whether with or without supportive measures.

The significance of this study lies in the fact that, although a minor's testimony is considered the most truthful in customary understanding, it holds little legal weight. A child does not inherently know falsehood; therefore, their testimony should not be disregarded, provided they are shielded from fear or external influence that may distort their account.

This principle is reflected in Articles 12 and 13 of the 1989 Convention on the Rights of the Child, which grants minors capable of forming their own views the right to express them freely in all matters affecting them, with due weight given to their age and maturity. A similar approach is embodied in Article 8 of Law No. 15-12 of 15 July 2015 on child protection[3].

From a Scientific Perspective, This research addresses the topic of children's testimony and its role in evidence, a subject that has not received sufficient legal examination except in limited instances. This lack of attention may be attributed to the prevailing belief that .

Chapter One: The Concept of Inferring from a Minor's Testimony

International law has enshrined the principle of a minor child's right to participate and be heard at all levels, particularly in judicial proceedings. This recognition is based on its positive impact on their development, its numerous benefits for their academic progress, and their overall

[1]- Abdel-Razzak Al-Sanhouri, The Intermediate in the Explanation of Civil Law, Volume 2, Second Edition, Dar Al-Nahda Publishing and Distribution, Cairo, p. 19.

[2] Bangalore principales are annexed to the report presented to the fifty-ninth session of the United Nations Commission on Human Rights in April 2003 by the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Dato Param Cumaraswamy, and adopted by the Commission unanimously on the Resolution No. 2003/42, available at:
https://www.unodc.org/documents/corruption/Resolutions/E-CN_4-RES-2003-43.pdf

[3] Law No. 15-12 dated July 15, 2015, concerning the protection of children, Official Gazette No. 39 issued on July 19, 2015.

satisfaction. Such an approach aligns with the objectives of legal systems, which seek to resolve disputes fairly.

To properly grasp the concept of inferring from a minor's testimony, it is necessary to define and categorize this type of testimony (Section One) and subsequently outline the conditions for its admissibility (Section Two).

Section One: The Concept of Judicial Inference

A judge is required to assess the evidence presented in a case through a legal and logical analysis, ensuring a direct and personal verification of its authenticity.

Subsection One: Definition of Judicial Inference

Linguistically, inference stems from the term "evidence) "and refers to the act of seeking proof[1]. Technically, it is defined as the process of establishing proof to confirm a given claim[2]. It involves deriving a conclusion or answer based on a set of pre-existing known facts.

Judicial inference serves as the foundation upon which judges justify the legitimacy of their rulings. It is the process through which a judge reaches a verdict or decision in a given case by analyzing and interpreting legal provisions in light of the facts and circumstances of the case at hand[3]. This method aims to achieve judicial balance between the parties by ensuring the correct application of the relevant legal texts.

Judicial inference is the driving force of the judicial process, as the judge strives to uncover the true meaning and content of the legal provision upon which the ruling is based[4]. It also plays a crucial role in ensuring transparency and accountability in judicial decisions by allowing for their review and reconsideration, thereby it also ensures that no decision is made based on considerations or speculation.

Judicial inference eliminates any room for doubt or misinterpretation and allows the judge to manage cognitive uncertainty while defining the scope of discretionary powers[5]. The European Court of Human Rights, in line with the European Convention on Human Rights, applies the principle of proportionality—ensuring a balance between the rights of individuals and the interests of society. This approach was highlighted in the court's 2014 annual report[6].

Subsection Two: Elements of Judicial Inference.

As previously, mentioned, judicial inference is the process by which judges derive legal conclusions based on the facts presented in court. This is achieved through reliance on legal

[1] Lihanawi, Muhammad Ali, Dictionary of Technical Terms, Volume 2, Dar Al-Kutub Al-Ilmiyya, Beirut, 1st Edition, 1998, p. 134.
[2] Sharif Al-Jurjani, Ali bin Muhammad bin Ali, Book of Definitions, edited by Ibrahim Al-Ibiari, Dar Al-Rayan for Heritage, 2007, p. 21.
[3] R Manko, Judical Decision-Making, Ideology and the Political: Towards an Agonistic Theory of Adjudication, law and Critique, 2022, P 176.
[4] Carlos Madureira Rodrigues, Eliana Silva Pereira, Raquel Feij Delgado, the role of reasoning in judicial decisions Case of Maria Ivone Carvalho Pinto de Sousa Morais A critical analysi, Judicial Ethics and Professional Conduct,2022, p 4.
[5] Mathilde Cohen, When Judges Have Reasons Not to Give Reasons: A Comparative Law Approach, Washington and Lee Law Review Volume 72, Issue 2, Article 3, Spring 3-1- 2015, page 483 to 571.
[6] https://www.echr.coe.int/documents/d/echr/annual_report_2014.

principles, judicial precedents, and logical legal reasoning to arrive at a sound judgment. Judicial inference consists of several key elements, including:

First: The Fact to Be Proven

The fact to be proven refers to any event or occurrence, whether arising from nature or human action that has legal consequences such as establishing, transferring, modifying, or extinguishing a right[1]. It is essentially the foundational cause of the right being asserted before the court. The burden of proof rests on the claimant, who must establish the legal fact in question, while the legal provision applicable to the case does not require proof.

For a fact to be considered an element of judicial inference, it must meet specific criteria:

- **Relevance to the case**: There must be a clear connection between the right being claimed and its source[2].
- **Material impact:** The fact must be significant enough to lead the judge to conviction regarding the validity of the claimed right.
- **Definite and possible proof:** The fact must be specific and not impossible to prove[3].

Second: Evidence and Presumptions.

Evidence and presumptions encompass all means relied upon by the judge to establish or refute a fact. They play a fundamental role in judicial inference, as they contribute to uncovering the truth and issuing fair judicial decisions[4]. Evidence serves as a strong basis for substantiating the claims of the parties involved in litigation and assists the judge in forming a personal conviction in accordance with the law and required procedures.

Presumptions play an effective role in proof, particularly in the absence of direct evidence. In such cases, judges rely on presumptions to issue rulings, especially when evidence is weak or missing. Presumptions fill gaps in the evidentiary process, and in instances where conflicting evidence is presented, they are used to favor one piece of evidence over another based on rational probability[5] and legal reasoning.

Third: The Competent Judicial Authority & Judicial Conviction

The competent judicial authority is a key element of judicial inference, as it is responsible for examining and assessing the evidence presented by the litigating parties. This process involves analyzing and discussing the facts and circumstances of the case in light of legal

[1] Sabri Saadi, *Sources of Obligation in Algerian Civil Law, the Legal Fact, Volume 2, Dar Al-Huda, 1992, p. 51.
[2] Nabil Ibrahim Saad, Evidence in Civil and Commercial Matters, Dar Al-Nahda Al-Arabiya for Printing, Publishing, and Distribution, Egypt, 2001, p. 51.
[3] Article 97 of Ordinance No. 75-58 dated 26 Ramadan 1395 (corresponding to 1975), as amended and supplemented by Law No. 07-05 dated May 13, 2007, published in Official Gazette No. 31 on May 13, 2007.
[4] Yahia Bakoush, Evidence in Algerian Civil Law and Islamic Jurisprudence: A Theoretical and Applied Comparative Study, National Book Foundation, 2nd Edition, Algeria, 1988, p. 204.
[5] R Mańko, Judicial Décision-Making, Ideology and the Political, Towards an Agonistic Theory of Adjudication, Law and Critique, 2022, *p176.*

principles and procedural rules[1] to determine the applicable law and reach a fair judicial ruling. The judicial authority relies on legal texts in rendering its decisions, while also considering previous judicial precedents. In the absence of explicit statutory provisions, general principles of law may be applied.

The judge relies on evidence and presumptions to form what is known as **judicial conviction**[2] . This conviction must be grounded in logic and inference, serving as the foundation upon which judgments are issued. It represents the judge's personal and rational belief in the validity and probative value of the evidence and presumptions presented. To ensure that judicial rulings are based on certainty or strong probability, the judge applies analytical reasoning and logical deduction, linking the facts to the evidence with complete impartiality in the pursuit of truth.

Fourth: Judicial Precedent

Judicial precedent is a crucial component of judicial inference, particularly in cases where there is no explicit legal provision or where the existing law is ambiguous and open to multiple interpretations. Judicial precedent relies on the insight and expertise of judges, as well as prior rulings, drawing upon legal principles and rules of justice. It serves to fill legislative gaps, clarify ambiguous legal texts, and establish binding precedents that other judges may refer to in future cases[3]. Moreover, judicial precedent plays a significant role in developing and modernizing laws, as many contemporary legal principles initially emerged through judicial rulings before being codified into statutory law.

Fifth: Logic and Deduction

In analyzing evidence and linking facts to uncover the truth, judges rely on logical reasoning[4] to understand the relationship between evidence and the disputed fact. They use deduction to assess the validity of presented facts[5], recognizing that judicial inference is not merely the mechanical application of legal texts but a complex reasoning process that requires sound logical thinking and proper deduction .Particularly in cases where conflicting evidence arises, the judge must rely on logic to weigh one piece of evidence over another, assessing its strength and consistency in order to reach a fair and justified decision[6].

[1] Ali Rached, From the judge's personal conviction, towards a scientific theory of evidence in criminal matters , Doctoral Thesis in Law, Faculty of Law, University of Paris, 1942, pp. 40-41.
[2] Mahmoud Naguib Hosni, Explanation of the Penal Code, Special Section, Dar Al-Nahda Al-Arabiya, Egypt, 1988, p. 167.
[3] Especially in legal systems that consider judicial precedent as a primary source, where previous rulings acquire binding authority for similar cases.
[4] Maysa Abdu Ali El-Sayed, The Role of Logic in Legal Reasoning, Journal of Arts, Humanities, and Social Sciences, Vol. 12, No. 2, 2020, p. 290
[5] Hage, J., " The (Onto) logical Structure of Law: A Conceptual Toolkit for Legislators", from: Logic in the Theory and Practice of Law making, Edited by: Araszkiewicz, M.& Pleszka, K., Springer InternaϴonalPublishing Switzerland, 2015, p.45
[6] Dickson, J., " Interpretation and Coherence in Legal Reasoning", Stanford Encyclopedia of Philosophy, 2010 https://plato.stanford.edu/entries/legal-reasinterpret

Section Two: The Concept and Forms of a Minor's Testimony

There is no universally accepted definition of a minor's testimony, likely because most legal scholars do not consider it a formal testimony in the traditional sense. As a result, the subject is usually discussed only in the context of age as a requirement for valid testimony. To define a minor's testimony, we will first define "minor" and "testimony" separately (First Subsection).

Subsection one: Definition of Children's Testimony

First: Definition of a Child

1- Linguistic Definition:

The word "child" in Arabic originally refers to something soft and delicate. Linguistically, the term child (with a kasrah under the letter) refers to anything small. According to Ibn al-Haytham, a newborn is referred to as a child from birth until reaching puberty[1]. The term also signifies a newborn or offspring and continues to apply until the child reaches maturity.

2- Legal Definition:

Article 2 of Law No. 15-12 [2]defines a child as: **"A child is any person who has not yet reached the full age of eighteen years."**Similarly, Article 1 of the United Nations Convention on the Rights of the Child (1989) states: **"A child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier."**[3]Additionally, Article 2 of the African Charter on the Rights and Welfare of the Child[4] defines a child as: **"For the purposes of this Charter, a child means every human being below the age of 18 years."**

From these definitions-whether in Algerian legislation or international conventions-it is evident that the definition of a child is based on age as a criterion. The upper limit of childhood is set at 18 years, beyond which an individual is legally considered an adult capable of exercising full legal capacity and discernment[5].

Second: Definition of Testimony

1- Linguistic Definition of Testimony:

The word (testimony) is derived from the verb, which carries multiple meanings, including: To witness an event and report it based on direct observation. This is reflected in the Quranic verse: **"So whoever among you witnesses the month, let him fast it."** [6] .Furthermore The Prophet Muhammad (peace be upon him) also referred to testimony in the well-known

[1] Montaser Said Hammouda, The Protection of Children's Rights in Public International Law and Islamic Law, Dar Al-Jamea Al-Jadida.
[2] Law No. 15-12
[3] The 1989 Convention on the Rights of the Child, ratified by Algeria under the Presidential Decree dated December 19, 1991, Official Gazette No. 91 issued in 1992.
[4] The African Charter on the Rights and Welfare of the Child of 1990, ratified by Algeria under Presidential Decree No. 03-242 dated June 8, 2003, Official Gazette No. 41 issued on June 9, 2003
[5] Philippe Bonfills.Adeline Gouttenoire, Law concerning minor's, 1st edition, Dalloz.2008, p704.
[6] Surah Al-Baqarah, Verse, op.cit., p185.

hadith: **"To the witness: Do you see the sun? He said: Yes. The Prophet replied: Then testify in a manner as clear as that, or abstain."**[1]

- **Presence**: it is said as in to be present at an event; for example, he attended the gathering.

- **Knowledge**: It also signifies having knowledge of something, as in the Quranic verse:

(Allah bears witness that there is no deity except Him.) [2], meaning Allah has full knowledge of this truth.

- **Oath**: The term can also mean swearing an oath, as in I swear to it.

- **Perception**: It can also refer to witnessing or perceiving something firsthand, as in he attended and witnessed the Friday prayer[3].

2- Legal Definition of a Minor's Testimony:

The Algerian legal system, like many others, does not explicitly define testimony but instead regulates its scope, conditions for admissibility, evidentiary value, and procedural aspects. The task of defining testimony has been left to legal scholars and jurisprudence, some scholars define testimony as: **"The establishment of a specific fact through the statement of an individual regarding what they have personally seen, heard, or perceived with their senses in direct connection to the event."**[4] ,others describe it as: **"Presenting evidence before before the court through the statements of witnesses after taking an oath. Testimony consists of reporting an event that the witness has seen, heard, or otherwise perceived through their senses."** [5] ,Meanwhile, French jurisprudence defines testimony as: **"Toute déclaration orale ou écrite faite par une personne ayant la connaissance personnelle d'un fait."**[6]

(Any oral or written statement made by a person who has personal knowledge of a fact.)

Based on these definitions, a minor's testimony can be defined as:

[1] Mohammed Mahmoud Abu Leil, Ata Allah Al-Maaytah, The Testimony of Children Against Each Other in Islamic Jurisprudence and Jordanian Law, Studies in Sharia and Law Sciences, Vol. 93, No. 1, 2012, p. 73.

[2] Surah Aal-E-Imran, Verse 18.

[3] For more details and a comprehensive explanation of the various meanings of testimony, see Ibrahim Mohammed Sabri Al-Madani, Testimony and Its Role in Civil and Commercial Evidence: A Comparative Study, Master's Thesis, Faculty of Law, Al-Azhar University - Gaza, 2014, pp. 4-5.

[4] Ahmed Fathi Sorour, the Intermediate in Criminal Procedure Law, Dar Al-Nahda Al-Arabiya, Egypt, 1985, p. 498.

[5] Brahimi Saleh, Proof by Witness Testimony in Algerian Law: A Comparative Study in Civil and Criminal Matters, Doctoral Thesis in Legal Sciences, Specialization in Law, Faculty of Law, Mouloud Mammeri University, Tizi Ouzou, 2012, p. 15 .

[6] NANDRASANA Saifa, Le témoignage des enfants dans l'enceinte judiciaire pénale canadienne, Mémoire de Maîtrise en Droit, Université Laval, Québec, Canada, 2015, p. 2.

"A statement made by a discerning but non-adult individual regarding a right between two similar parties, which is admissible in court under specific conditions."[1]

Subsection Two: Forms of a Minor's Testimony

Various comparative legal systems, including Algerian legislation, have established fundamental principles governing a minor's testimony. However, they leave room for professionals, through their experience and expertise, to adapt this testimony based on each case and its surrounding circumstances. Defining the appropriate methods and means for hearing a minor is essential to safeguarding their best interests and ensuring that the truth is obtained through the information they provide.

In France, the complex *Outreau* [2]case exposed numerous deficiencies concerning children's testimony and the methods used to hear them. The children involved were repeatedly forced to recount incidents of sexual abuse and mistreatment during both the investigation and trial, often in public settings, leading them to relive the trauma each time.

Having to give testimony multiple times may cause the child to believe that their statements were forgotten or considered unimportant by those receiving them, despite their immense significance to the child. Additionally, children do not only express themselves through words; their actions and behaviors may also serve as forms of communication. These actions might be correctly interpreted, but they can also be misunderstood, leading to incorrect conclusions. Therefore, **special procedures and methods must be adopted when hearing a minor's testimony** (First) **and competent professionals must be involved to accurately interpret both verbal and non-verbal cues** (Second).

First: Use of Special Procedures and Methods for Hearing a Minor's Testimony

Hearing a minor's testimony in court is a complex matter. While some consider a child's innocence a reason to accept and legally value their testimony, others question its reliability due to the child's limited reasoning abilities and legal incapacity. Consequently, different legal systems have imposed specific conditions for accepting a minor's testimony.

Due to the unique nature of a minor acting as a witness and the involvement of multiple authorities, specific safeguards are implemented to protect the child from psychological harm and undue influence during legal proceedings. These safeguards include:

1. **Conducting Testimony in a Environment:** Testimony sessions should be conducted in a private setting[3], such as a designated room or through technological means, to protect the child's psychological and physical well-being[4]. This ensures privacy, prevents external influences, and avoids the the presence of the public or media, which could affect the child's statements.

[1] Abdulrahman bin Sulaiman Al-Rubaysh, Testimony of Children, Arab Journal for Security Studies and Training, Vol. 25, No. 50, 2017, p. 12.
[2] The case is considered one of the largest sexual assault cases (child rape and abuse). It began in 2017 when several children accused high-ranking officials in the Catholic Church in Lyon of sexually abusing them. The trial started in 2001 and concluded in 2003.
[3] Vide Amartya Sen, The Idea of Justice, The Belknap Press of Harvard University Press, Cambridge, Massachusetts, 2009, page 209
[4] Gomes Canotilho, Vital Moreira, Constituição da República Portuguesa Anotada, Volume I, 4th Revised Revised Edition, 2007, p. 339.

2. Limiting the Presence of Individuals in the Session

The individuals present during a minor's testimony depend on the nature of the case and applicable legal provisions[1]. Typically, the session includes the judge, a court clerk recording the testimony, legal representatives, the public prosecutor (in certain cases), and social workers. In specific situations, a guardian or legal custodian, an interpreter, or security personnel may also be present to maintain order, particularly when the minor's safety is at risk.

3. Avoiding Direct Confrontation with Other Parties

Confrontation[2] is a crucial legal procedure, particularly in cases involving fear-inducing disputes such as domestic violence and sexual abuse. To minimize a child's distress, testimony can be conducted in a separate room within the courthouse, away from the main courtroom. Other alternatives include using one-way glass partitions, privacy screens, or remote communication technology that allows the child to testify without physical presence in the courtroom. Additionally, questioning may be conducted through a judge or psychological/social expert to avoid direct interaction with the opposing party. In certain cases, the child's testimony may be pre-recorded and presented in court to spare them from attending in person or being questioned multiple times, reducing psychological distress.

4. Using Simple and Clear Language

When questioning a minor, legal terminology should be avoided to ensure comprehension and allow the child to express themselves freely. Questions should be phrased in simple, direct language, avoiding leading or pressuring inquiries[3]. A calm tone and reassuring voice should be used to facilitate communication. Visual aids or role-playing techniques may be employed if necessary to enhance understanding.

5. Supervision by Psychological or Social Experts

Psychologists or social workers should accompany the child during testimony to provide emotional support and facilitate communication. These professionals ensure that the child is not pressured while testifying and help create a comfortable environment that encourages free expression.

Second: Relying on Child-Specialized Professionals

Given the sensitive nature of cases involving minors and the need to protect their psychological and physical well-being, testimony procedures should involve experts familiar with child-related issues. These specialists include educators, psychologists, behavioral

[1] Mathilde Cohen, When Judges Have Reasons Not to Give Reasons: A Comparative Law Approach, Washington and Lee Law Review Volume 72, Issue 2, Article 3, Spring 3-1-2015, page 483
[2] Ben Arar Mohamed, The Scope and Status of the Right to a Fair Trial in the European Human Rights Conventions, Journal of Legal Studies, Algeria, 2009, p. 26.
[3] Mathilde Cohen, Op.cit., p 485.

therapists, and social workers[1], all of whom possess the knowledge and skills necessary to address a child's developmental, educational, and psychological needs[2].

Specialists play a critical role in assisting minors during legal proceedings by assessing the child's psychological condition and submitting reports to the court ,Providing emotional and psychological support to help the child testify comfortably,and this also helps explaining legal procedures in a simplified manner And Intervening when necessary to protect the child from distressing or intrusive questions[3].

Section Two: Conditions for Hearing a Minor's Testimony

The Algerian legislator, through Article 153 of the Code of Civil and Administrative Procedure, has permitted the testimony of minors who have reached the age of discernment as a means of guidance. Article 42 of the Civil Code defines the age of discernment as 13 years.

Subsection one: Legal Capacity to Testify as a Minor

First: Capacity Requirement for a Minor's Testimony in Civil Matters

Legal capacity is an essential condition for a witness, as the individual must possess the ability to discern and comprehend the facts of the case to interpret them accurately. The legislator has thus required legal capacity for testimony. Article 40 of the Civil Code states: **"Any person who has reached the age of majority, is of sound mind, and has not been placed under legal guardianship, shall have full capacity to exercise their civil rights. The age of majority is set at nineteen full years."**Conversely, Article 153, in its final paragraph, states: **"Minors who have reached the age of discernment may be heard as a means of guidance. The testimony of other persons, except those lacking legal capacity, shall be accepted."**

Thus, minors who lack full legal capacity may testify provided they have reached the age of discernment, set at 13 years by the legislator. Article 43 of the Civil Code further stipulates, «**Anyone who has reached the age of discernment but has not attained the age of majority, or anyone who has reached the age of majority but is mentally impaired or negligent, shall be considered as having diminished capacity in accordance with the law."**

Accordingly, the Algerian legislator allows minors to testify as long as they have reached the age of discernment but not the age of majority, and their will is not impaired by any disability that would prevent them from testifying[4]. The relevant age is determined at the time of testimony rather than at the time of the incident in question[5].

[1] Center for Training and Research on Supervised Education, Youth Offenses and Social Judgment: A Comparative International Study, Maison des Sciences de l'Homme Edition, Paris, France, 1983.
[2] Omar Al-Shabi, Protection of Juvenile Delinquents, Journal of Judiciary and Legislation, Center for Legal and Judicial Studies, Tunisian Ministry of Justice, No. 08, 2000, p. 322.
[3] MAZEAUD Henri, Léon, and Jean / CHABAS François, Lessons in Civil Law , Volume I - First Volume - Introduction to the Study of Law, 8th Edition, Librairie Les Flamboyants (Beaucaire, France), 1986, p. 595.
[4] Bernard Bouloc, Haritini Matsopoulou, General Criminal Law and Criminal Procedure, 17 th ,Dalloz , Paris, 2009، p 418.
[5] Suleiman Marqous, Principles and Procedures of Evidence in Civil Matters in Egyptian Law Compared to the Techniques of Other Arab Countries, Volume 2, 4th Revised Edition with Cassation Rulings, Dar Al-Jeel Publishing, Egypt, 1986, p. 22.

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Second: Capacity Requirement for a Minor's Testimony in Criminal Matters

Article 288 of the Code of Criminal Procedure states: **"Minors under the age of sixteen shall be heard without taking an oath, as shall individuals deprived of national rights."** Thus, the legislator permits minors under sixteen to testify as a means of guidance without taking an oath, provided that none of the parties or the Public Prosecutor objects. Additionally, younger minors may be heard in criminal cases[1] if they have the ability to comprehend and sufficiently understand the questions posed by the judge and respond accordingly[2].

Subsection Two: Exemption from Taking an Oath

Taking an oath is an essential condition for the validity and acceptance of testimony. An oath refers to the act of swearing, whereby the person taking it commits to declaring what they have perceived in terms of facts and information related to the subject of testimony[3]. An oath is defined as: **"The oath taken before the judiciary to affirm or deny a right by swearing to God upon request."**It is also defined as the confirmation by one of the disputing parties to prove or deny a right under the direction of the judge or arbitrator, invoking the name of God or one of His attributes, with a sense of reverence and fear of divine punishment, in a court or arbitration setting[4].

The witness's oath is the oath taken before giving testimony to ensure its credibility. It represents the sensory perception of what the witness has seen or heard regarding the subject matter of the testimony, as requested by the court. It is one of the guarantees that provide testimony with credibility and reliability, making it valuable as evidence. The Algerian legislator has adopted the principle of taking an oath before giving testimony under Article 227 of the Code of Civil Procedure, which requires the witness to take the legal oath before testifying, except in cases where they have a legal excuse for refusal[5].

The Algerian legislator has exempted minors from taking the legal oath when testifying before the court if they are under the age of thirteen, as explicitly stated in Article 153 of the Code of Civil and Administrative Procedure. Similarly, in criminal matters, a minor is not required to take an oath before testifying if they are under the age of sixteen, as stipulated in Article 93, paragraph 2, of the Code of Criminal Procedure. This aligns with the approach taken by the French legislator, who set sixteen as the appropriate age for taking an oath, while allowing their testimony to be considered as a means of guidance, even after taking the oath[6].

Chapter Two: The Variability in Assessing a Minor's Testimony

If accepting a minor's testimony and statements is a sensitive issue, it is because of the sensitive nature of the concept of a child itself, which involves multiple and varied realities. How

[1] JACQUES By & JOGUET-RENCORDON Elodie, op.cit.
[2] Ibrahim Saleh, op.cit, p. 42 .
[3] Henri Capitant, Legal Vocabulary, Les Presses Universitaires de France, 49 Boulevard Saint-Michel, Paris, 1930, p. 472.
[4] Abdullah bin Ahmad Salem Al-Mahmadi, The Oath of the Witness in Jurisprudence and Law, Journal of Judicial Studies, No. 87, Saudi Arabia, 2021, p. 1211.
[5] Ali Ahmad Al-Jarrah, Rules of Evidence Without Writing in Civil and Commercial Matters, 1st Edition, Edition, Al-Halabi Legal Publications, Lebanon, 2010, p. 281.
[6] Article 108 of the French Code of Criminal Procedure states: "Children under the age of sixteen are heard without taking an oath."

can a five-year-old child be subjected to the same legal system as a seventeen-year-old, even though they both belong to the same category: "minors"? Therefore, the assessment of a child's testimony between evidentiary value and inference is crucial, whether in Islamic jurisprudence (Section One) or in positive laws (Section Two).

Section One: Assessing a Minor's Testimony

Subsection One: Assessing a Minor's Testimony in Islamic Jurisprudence

Testimony in Islamic jurisprudence is considered a collective obligation[1]. It is governed by strict rules in Islamic law, as it pertains to legal capacity and the minor's ability to comprehend and distinguish. Maturity is not a condition for bearing witness but rather a condition for testifying. Even if the minor was mentally competent at the time of bearing witness and then later reached maturity[2], their testimony may still be considered, depending on the type of case and the nature of the testimony.

Islamic scholars unanimously agree on the requirement of maturity and sound mind for accepting a minor's testimony, but they differ on whether a minor's testimony should be accepted before they reach maturity if they are discerning and aware. Each school of thought has a different perspective:

- **Hanafi School**: They categorically reject the testimony of a minor, even if they are discerning. They require both maturity and sound mind, considering a discerning minor legally incompetent[3].

- **Maliki School**: They allow the testimony of a minor who has not yet reached maturity and has not shown the well-known signs of adulthood, provided they have attained the age of discernment. They particularly accept testimony in cases of injuries, under the condition that the minors testifying are all of the same age group, are male, and have not dispersed after the incident occurred[4].

- **Hanbali and Shafi'i Schools**: They require the witness to be mature, sane, Muslim, and free, but they accept a minor's testimony in cases concerning children, such as disputes or incidents that occur between them[5].

Subsection Two: Assessing a Minor's Testimony in Positive Law.

Most positive legal systems agree on the possibility of inferring a minor's testimony (Subsection One), but they differ in determining the legal age at which a minor is competent to testify. This divergence is more evident in criminal matters than in civil matters (Subsection Two).

[1] Al-Mardawi, Alaa Al-Din bin Suleiman, Al-Insaf fi Ma'rifat Al-Rajih min Al-Khilaf, Dar Ihya Al-Turath Al-Arabi, Beirut, Vol. 28, 1980, p. 256.
[2] Ali Abu Al-Basal, The Testimony of a Minor and Its Evidentiary Value in Islamic Jurisprudence, Damascus University Journal of Economic and Legal Sciences, Vol. 25, No. 1, 2009, p. 752.
[3] Abdullah bin Mubarak bin Fahad Al-Faran, The Testimony of Minors in Islamic Jurisprudence and Positive Law, Master's Thesis, Riyadh, 2008, p. 55.
[4] Khaled bin Nawar Al-Nimr, The Testimony of Children and Its Rulings in Islamic Jurisprudence, Journal of Islamic Studies, Vol. 24, No. 2, 2024, p. 171.
[5] Abdullah bin Mubarak bin Fahad Al-Faran, Op. cit., p. 56

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Subsection One: Hearing a Minor's Testimony as an Inference.

Inference is divided into two types: legal inference and judicial inference. Judicial inference is the logic used by a judge to derive a conclusion from a legal rule and apply it to the facts of a case in order to render a fair judgment. Thus, it focuses on the factual side by evaluating the evidence presented, including the testimony of a minor.

The judge listens to the minor and attempts to extract a response or conclusion based on the information or evidence presented.

First: Assessing a Minor's Testimony in Civil Matters.

A minor under the age of thirteen may only be heard as a matter of inference. If the minor is under fifteen, they provide their testimony without taking an oath, in consideration of their young age. This is known as judicial inference.

A minor's testimony in civil matters is considered only as inference, as per Article 153 of the Code of Civil and Administrative Procedure. This means that their testimony provides additional information that may assist the judge in forming their personal conviction. The value of this testimony is assessed based on the discretionary power of the judge, who considers the minor's level of maturity, ability to distinguish, the nature of the incident in question, and the circumstances surrounding the testimony. Consequently, a minor's testimony in civil matters is used for inference and does not carry the same weight as formal evidence or the testimony of an adult.

Second: Inferring a Minor's Testimony in Criminal Matters[1]

Testimony is one of the most significant means of proof in criminal cases. Judges rely on it and take it into account in forming their personal conviction to issue a just ruling. Regarding a minor's testimony in criminal cases, its evidentiary value and weight are left to the discretionary power of the judge.

Regarding the testimony of a minor in criminal matters, Article 228 of the Code of Criminal Procedure stipulates that a minor's testimony is admissible if they are under 16 years old, but it is considered **as a means of reference rather than definitive evidence, and they are not required to take an oat. However, the minor may take an oath if none of the parties or the public prosecutor objects.

Section Two: Factors Influencing a Child's Testimony

Several factors influence a child's testimony. There are two types of influencing factors: those related to the child themselves and those related to the testimony.

First: Factors Related to the Child

- **Age**: Field studies on children from different age groups have shown that the quality and credibility of a testimony depend on the child's age. The older the child, the more developed their cognitive abilities, allowing them to accurately express what they want to report

- **Psychological Factors**: Fear and anxiety can weaken a child's memory, making their testimony questionable. Additionally, a child may be subjected to punishment or external influence from adults, which may force them to change their testimony.

[1] JACQUES By & JOGUET-RENCORDON Elodie, op.cit.

- **Upbringing and Morality**: Family and social surroundings play a significant role in shaping a child's views, which can affect the credibility of their testimony.

- **Cognitive Factors**: These include comprehension, expression skills, and the ability to distinguish between reality and imagination.

Second: Factors Related to the Testimony

- **The Information Obtained**: Simple events enable a minor to form a clear idea of the incident and provide testimony about it. However, complex incidents may be difficult for them to understand and process.

- **The Type of Questions Asked**: The way questions are framed plays a significant role in a child's testimony. Some legal systems use specific methods and techniques for hearing minors, such as consulting specialists or recording testimony via video recordings.

- **The Timing of the Testimony**: The timing of when the testimony is given is crucial, especially in testimonies provided by children.

- In criminal matters, minors may testify, and those under sixteen are exempt from taking an oath.

Criminal law has served as an inspiration for allowing a minor's testimony to be used for inference.[1]

Conclusion:

The Algerian legal system has not witnessed any development regarding the hearing of a child's testimony, which has remained unchanged despite the ratification of the Convention on the Rights of the Child and the enactment of Law No. 15-12 on Child Protection. This law does not contain any provisions addressing the methods and techniques for hearing a child's testimony.

- The role of the judge is not limited to merely applying legal texts correctly to the facts before them. The legislator has granted judges the ability to exercise discretion by allowing them to adopt various solutions depending on the case and its surrounding circumstances, provided that the best interest of the minor prevails above all else.

- It is essential to designate specialized public prosecution members to investigate cases involving children and to hear their testimonies while considering the child's vulnerability and situation. This includes asking questions that align with their age, cognitive abilities, and intelligence level, while avoiding harshness and intimidation. This approach ensures accurate and fair investigative outcomes.

- Reporting of sexual abuse, maltreatment, and other crimes against children is crucial. Additionally, children's testimonies should be heard immediately without delay and without unnecessary repetition, as repeated questioning can harm the child's psychological well-being and future.

[1] Abdullah bin Mubarak bin Fahad Al-Faran, The Rulings on the Testimony of Minors in Islamic Jurisprudence and Positive Law, Master's Thesis, Criminal Justice Specialization, Graduate Studies College, Naif Arab University for Security Sciences, 2008, p. 105.

- Greater weight should be given to a child's testimony, particularly when the child is of discerning age, capable of understanding what they have seen or heard, and-more importantly-fully aware of the significance of their testimony.

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