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JUDICIAL PROTECTION OF THE CHILD IN SITUATIONS OF RISK: BETWEEN A PREVENTIVE ORIENTATION AND PENAL SPECIFICITY

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Abstract:

Children are the foundation and future of society, yet their delinquency poses a serious social problem exposing the limits of preventive efforts. Hence, modern criminal policy emphasizes protecting this group through judicial intervention to address risk factors and apply preventive measures safeguarding their rights. Under Law N°. 15-12, the Algerian legislature established a special judicial protection system for children at risk, adopting preventive-oriented measures while retaining penal aspects when necessary to ensure a balance between the child's best interest in care and rehabilitation and society's interest in maintaining public order.

Keywords: child at risk, judicial protection, best interest of the child, penal specificity, preventive measures

Introduction:

Childhood is the nucleus of society and the foundation of its future, as the stages of childhood and adolescence play a decisive role in shaping an individual's personality and determining subsequent behaviour. Hence, the care of the family and of childhood represents the cornerstone of any society seeking to achieve balanced development free from deviation and social ills. However, juvenile delinquency is one of the most serious phenomena threatening the cohesion of society and obstructing its progress, particularly given that children constitute the most

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significant proportion of the population. Their delinquency thus signals the inadequacy of efforts devoted to crime prevention.

Contemporary criminal policies have accordingly attached paramount importance to confronting child delinquency, either by addressing the conditions that predispose individuals to such behaviour or through preventive measures directed towards children in normal circumstances, protecting them from the danger of deviation. Children in situations of risk are not offenders as much as victims of dire social, familial, and economic conditions, which calls for extending support to them rather than stigmatising them as delinquents. The legislature has therefore designated a special system of judicial protection for children at risk, founded on early intervention through preventive measures that safeguard their rights and protect them from criminal behaviour. These measures may occasionally assume a penal character when necessary, thereby ensuring a balance between the child's interest in education, rehabilitation, and reorientation and society's interest in maintaining public order.

Accordingly, the study of the judicial protection of children in situations of risk requires addressing both the issue of prescribed preventive measures on the one hand and, on the other hand, the question of the interrelation between judicial protection and penal specificity for children at risk when circumstances necessitate it. This is to be undertaken within the framework of examining the effectiveness of the state's criminal policy, which seeks to protect the rising generation and guarantee the security of society. On this basis, we raise the following central problem: How is judicial protection of children in situations of risk realised, given its inherent link to penal specificity?

SECTION I: JUDICIAL PROTECTION OF THE CHILD AT RISK

The distinctiveness of juvenile justice lies not only in its judicial function of issuing rulings aimed at reforming and rehabilitating delinquent minors but also in its commitment to

strengthening its preventive role toward children at risk, in line with the philosophy of modern criminal justice, which seeks to counteract delinquency by prioritising prevention over punishment.

Subsection One: Juvenile Judge's Engagement with the Case of a Child at Risk

In reality, a child in a situation of risk is a victim of powerful social circumstances that they are unable to withstand alone due to intellectual immaturity and limited awareness, which renders the child vulnerable to the negative influence of their environment. As the saying goes, "man is the child of his environment." Such a child is, on the one hand, not delinquent, for he or she has not committed any act criminalised by the Penal Code or its supplementary laws. On the other hand, however, the persistence of the surrounding conditions may lead to delinquency.

To grasp the essence of judicial protection of the child in such circumstances, it is necessary to define the "child at risk" and to clarify the responsibilities or jurisdiction of the juvenile judge in addressing cases of risk, as follows:

First: Definition of the Child at Risk

The child at risk may be defined on the basis of Article 1 of Law N°. 15-12 on Child Protection (Law N°. 15-12, 2015) as "any minor who has not reached the age of criminal responsibility and who is found in circumstances or situations that endanger his or her physical, psychological, or moral integrity, or that may lead to delinquency." The Child Protection Law specifies situations that constitute such a condition, including threats to the child's health, morals, upbringing, or security, as well as conditions of life or conduct that could expose the child to imminent or potential danger detrimental to their future. A child may also be considered at risk if it is found in an environment that imperils their physical, psychological, or educational welfare.

Moreover, the cited text includes several situations in which a child may be exposed to risk, such as "the case of a child losing his or her parents and remaining without family support; the case of subjecting the child to neglect, vagrancy, or deprivation of the right to education; the case of begging with the child or exposing the child to begging; the inability of the parents or guardians to control the child's behaviour in ways that may affect his or her physical or educational well-being; apparent and continuous neglect in upbringing and care; mistreatment of the child, particularly by subjecting him or her or her to torture or attacks on physical safety, detention, deprivation of food, or any other act of cruelty that may affect the child's emotional or psychological balance; if the child is the victim of a crime committed by his or her legal representative; or if the child is the victim of a crime committed by any other person when the child's protection so requires; the sexual exploitation of the child in all its forms, including exploitation in pornography, prostitution, and involving the child in sexual performances; or the economic exploitation of the child, particularly by employing him or her.

The legislature has thus delineated instances in which a child may be deemed at risk, for example, rather than limiting itself to identifying the most significant situations that are often encountered. This leaves the judge with the discretion to assess any circumstances that may place a child at risk, even if not explicitly listed in the statute.

A considerable number of psychologists, sociologists, and jurists have devoted attention to studying children's behaviour prior to delinquency, especially that of homeless children, those in contact with habitual offenders, those deprived of care, and children suffering from mental, psychological, or physical illness, as well as children who are victims in other situations, all of which are indicative of the potential for deviation (Driass, 2006, pp. 3–4).

A child who exhibits deviant behaviour, marked by impulsiveness and resistance to guidance, struggles to adapt and achieve harmony within both family and society. His or her conduct reflects rebellion against social norms and prevailing values, demonstrating indifference to evaluating such behaviour or considering its consequences. Such a child is frequently involved in quarrels with others and tends to withdraw into isolation from the group, resulting in an abnormal state of being and a disturbed psychological condition (Dhiyab, 2002, p. 178).

A child's exposure to delinquency or vagrancy, as termed in some legislation, represents a state of disconnection and lack of trust between the child, the family, and society. This condition may originate within the family or the surrounding environment and then be transmitted to the child through their association with that familial context (Abd al-Latif, 2009, p. 16). For this reason, some have considered that a child's exposure to delinquency constitutes an indicator of the potential presence of criminal dangerousness (al-Shuwwarbi, 1991, p. 67). The distinction between moral dangerousness and criminal dangerousness lies in the fact that the latter is inferred when a person commits an offense prescribed under the Penal Code and is subject to punishment. In contrast, moral dangerousness is derived from the circumstances surrounding the juvenile prior to the commission of a crime and results in the imposition of an appropriate measure (ʿAbd al-Latif, 2009, p. 17). Since exposure to delinquency is addressed through measures developed by social specialists, these include rehabilitative programs and educational guidance for each juvenile, with a focus on the pedagogical and instructional dimensions of the child to protect them from hostile environments (al-ʿAwji, n.d., pp. 216–217). Such measures address the latent social risk within the child, aiming at the child's best interest and not at inflicting punishment, for they do not imply accountability for the situation into which the child has fallen (Harb, 1999, p. 19).

In reference to the provisions of Laws No. 15-12 on child protection, it is apparent that the statute combines both preventive and deterrent characteristics, rendering it an independent law containing measures specifically designed to safeguard children at risk on the one hand and procedural rules applicable to criminally offending minors on the other hand. In drafting this legislation, the Algerian legislature drew upon the development of comparative laws, which accorded paramount importance to early intervention to rescue minors before they succumbed to the grip of crime. This reflects the shift in criminal policy from merely deterring criminal behaviour to adopting preventive mechanisms aimed at both protecting minors and ensuring societal security.

Second: Jurisdiction of Juvenile Judgment in Cases of Children at Risk

Most comparative legislation has accorded juvenile justice with a preventive and educational rather than penal role, particularly with respect to minors in a state of moral risk, as this category requires special care. For this reason, contemporary criminal policies have increasingly focused attention on this group, most significantly through the establishment of specialised juvenile courts.

Nevertheless, this raises the crucial issue of the training of competent judges, which constitutes a fundamental guarantee for both delinquent children and those at risk of delinquency. The judge must be capable of understanding the child and striving to grasp the child's personality, which itself requires thorough study, to exercise proper discretion with respect to the appropriate measures. Moreover, attentiveness to the problems of childhood and knowledge of approaches to dealing with minors constitute among the most important concerns for the juvenile judge (Driass, 2006, pp. 127–128). To that end, judges are expected to receive training, similar to other judicial officials, in all relevant fields, including the sciences, social studies,

psychology, criminology, and criminal law, in their capacity as specialists in juvenile matters.

The preventive role of juvenile justice represents a significant achievement realised by the criminal sciences within Algerian legislation, as it highlights the preventive dimension of this legal framework (al-ʿAwji, 1987). Its preventive orientation seeks to adopt measures designed to prevent minors from falling into delinquency.

Acknowledging the preventive role of juvenile justice reinforces the consideration that children belong to society and the state before they belong to their families. Thus, protecting children from delinquency occupies a primary position in the interests of the state, which aims to achieve crime prevention as part of its broader strategy to combat criminality.

Juvenile justice constitutes a distinct form of jurisdiction, combining both judicial and protective functions. In its protective aspect, it grants the authority to adopt preventive measures that safeguard minors at risk and distance them from delinquency (al-ʿAwji, n.d.). Since social dangerousness constitutes a condition requiring the intervention of judicial authorities to rescue the minor and prevent delinquency, juvenile justice has acquired a social and preventive dimension that transcends the purely judicial mission (al-ʿAwji, n.d.).

On this basis, the Child Protection Law assigns competence over cases involving children at risk to the juvenile judge sitting alone, in a manner consistent with the preventive character of such cases and to avoid a repressive approach, ensuring the confidentiality of proceedings. Article 80, paragraph 2, of Law Nos. 15-12 stipulates that the juvenile judge adjudicates cases after the close of the investigation in chambers, with only the parties concerned present.

According to Article 32 of Law N°. 15-12 on child protection, the juvenile judge holds local jurisdiction over cases arising within the territory encompassing any of the following elements:

- The place of residence or dwelling of the child at risk.
- The place of residence or dwelling of the child's legal representative.
- The location where the child was found was not the same.

The manner in which jurisdiction is invoked is through a petition submitted to the judge. The legislature did not specify a time limit for submitting the petition, given that risk exposure is an ongoing condition that, once discovered, must be immediately reported to the juvenile judge for verification of the situation.

The persons entitled to submit such petitions under Article 32 of the same law are exhaustively listed and include the following:

- The child or his or her legal representative, namely, the child's father or mother, legal guardians, or the person entrusted with custody of the minor.
- The public prosecutor.
- The wali (governor).
- The president of the local popular municipal council where the child resides.
- Open-environment services, associations, or public bodies concerned with child welfare.

Moreover, the juvenile judge may intervene ex officio upon becoming aware of a relevant file or investigation. The child is also among those permitted to notify the juvenile judge orally to request protection.

The judge may intervene in his own initiative and consider the minor's presentation to the judiciary as merely a notification to the judicial authorities of a state of moral risk. Likewise, other individuals, such as the minor's family, relatives, neighbours, friends, or other persons close to them, may also submit or report the case to either the public prosecutor or the juvenile judge.

Subsection Two: Powers of the Juvenile Judge to Protect the Child at Risk

Once the juvenile judge assumes jurisdiction over the case, he or she convenes a hearing that concludes with the adoption of all necessary measures to assist the child and removes them from circumstances conducive to delinquency. Laws No. 15-12 assign the juvenile judge the task of investigating the presence or absence of moral risk, granting the judge the authority to conduct the necessary investigative procedures and to impose interim measures pending final resolution of the case, as follows:

First: Investigation and Assessment of the Child's State of Risk via Juvenile Judging

The judge opens the case after immediately notifying the child or the legal guardian of the petition, filed if they are not the petitioners themselves, as stipulated in Article 33 of Law No. 15-12. If necessary, the judge hears them and records their views regarding the child's condition and future. The judge summons the parties, the child, and the legal guardian to inform them of the case's initiation, provided that such notification is made only when neither the child nor the legal guardian has submitted the petition on their own behalf.

The legislature has granted juveniles a range of tools, enabling them to ascertain the child's actual situation. In this context, Article 34 of Law No. 15-12 specifies that the juvenile judge is to study the child's personality through social investigation; medical, mental, and psychological examinations; and behavioural observation. The judge retains discretion to employ all or some of these methods. For example, the judge may use other means to verify the risk by receiving statements from anyone deemed credible, including assistance from open-environment services. This investigative process requires a diagnosis of the child's personality and circumstances to enable the formulation of an appropriate treatment plan, as the diagnostic process essentially illustrates the interaction of factors

that have combined to create a situation that threatens delinquency and influences the child's personality formation (Ramadan, 2013, p. 210).

Among the most important tools mentioned in Article 34 are as follows:

1. **Social and behavioural investigation of the child:**

Social investigation serves as a means to understand the child's living conditions within their family and how the child interacts with the surrounding environment through habitual behaviour. This investigation collects information about the family's material and moral circumstances, the child's temperament, attendance at school, behaviour in school, and the conditions in which the child was raised and brought up, as stipulated in Article 68, paragraph 3 of Law No. 15-12 on child protection.

Article 34 of the aforementioned law delegates the social investigation either to the juvenile judge himself or entrusts the procedure to open-environment services, namely, persons holding social work certificates qualified for this purpose (Qawasmiya, 1992, pp. 184–185). Owing to their expertise and familiarity with dealing with children and their sufficient connection and knowledge of the field of childhood.

2. **Medical Examinations**

The juvenile judge may order medical examinations to ensure the child's safety from any assault or harm affecting his or her physical, psychological, or mental integrity, especially if the report concerns damage to the child's health or if adverse familial environmental conditions influence the child. It is scientifically established that a child's behaviour, in both type and degree, often depends on body structure, health status, and the surrounding environment in general (Ramadan, 2013, p. 200).

These examinations include the following:

- The diagnosis of a child’s mental state encompasses the processes of awareness, perception, thinking, and imagination (Ramadan, 2013, p. 202). Alternatively, the

presence of certain mental illnesses or deficiencies in intellectual capabilities may impact a child's inclination toward delinquency.

- Psychological testing: This is one of the most important fields of research in criminology, as it penetrates the child's psyche to assess their internal faculties and determine their perceptions, feelings, and will, which are decisive factors in the child's behaviour and delinquency (Thurwat, 2013, p. 35).
- **Biological examination:** If the juvenile judge determines that the child suffers from physical constitution issues or from consumption of toxic or narcotic substances, he may order an examination by a specialised physician, utilising various analyses and imaging techniques to confirm such conditions.

Second: Preventive Measures of the Judgment During the Investigation Phase:

To protect the child at risk, the juvenile judge may take temporary preventive measures (Law No. 15-12, 2015, art. 35) aimed at ensuring the child's safety pending completion of the investigation. The judge may issue an order for temporary custody when there is a reasonable cause to be convinced of a danger that threatens the child's safety. These measures include the following:

- Keeping the minor within their family.
- The child is delivered to their father or mother, who does not exercise custody rights, unless a court ruling has terminated such rights.
- Delivering the child to a relative, although the law does not specify whether this delivery follows the custody transfer rules.
- The child should be delivered to a trustworthy person or family.

The judge may also assign open-environment services to observe the child in their family, school, or workplace settings, as appropriate, especially when temporary custody measures are imposed, as noted above.

These measures are considered not excessively severe, as the persons entrusted with custody are natural persons connected to the child's natural family environment. This contrasts with the provision in Article 36 of the same law, which applies when the aforementioned measures are deemed unsuitable to protect the child, such as in cases where the child is abandoned or homeless. In such circumstances, where the child's environment is unsuitable for protection, the legislator grants the judge the authority, in addition to the prior measures, to temporarily place the child in one of the institutions specified in Article 36 of the Child Protection Law.

- A specialised centre for the protection of children at risk.
- A department responsible for child welfare assistance.
- A centre or medical institution provides healthcare or psychological care if the child requires such attention.

Notably, these measures are directed towards institutions and services concerned with child protection, which are considered exceptional or extraordinary measures taken by the judge out of necessity owing to the severity of the child's situation. The decision to implement such measures remains at the judge's discretion, as the law stipulates their permissibility, allowing the judge to adopt or refrain from adopting them. In both cases, the duration of the temporary measures prescribed in Articles 35 and 36 does not exceed six (6) months. The juvenile judge must also inform the child or his or her legal representative of any temporary measures taken within forty-eight (48) hours of their issuance, by any means.

Third: Final Procedures for Investigating the State of Risk:

01. Holding the Judgment Hearing: Upon completion of the investigation and pursuant to Article 38 of the law, the juvenile

judge submits the case documents to the public prosecutor for review and summons the concerned parties, namely, the child, the parents or legal guardian, and the child's lawyer if applicable via a registered letter with acknowledgement of receipt at least eight days before the hearing date.

Upon completion of the notification procedures, the judge convenes the hearing on the scheduled date to listen to the parties present, beginning with the child, then the parents or legal guardian, and any other person the judge deems necessary to hear. A specialised centre for the protection of children at risk.

- A department responsible for child welfare assistance.
- A centre or medical institution provides healthcare or psychological care if the child requires such attention.

These measures are directed towards specialised institutions and services as exceptional procedures taken by the judge out of necessity, considering the severity of the case. Thus, the decision to implement such procedures remains at the discretion of the judge, who may adopt or refrain from them according to the situation. In all the cases, the duration of the temporary measures prescribed in Articles 35 and 36 should not exceed six (6) months. The juvenile judge must notify the child or their legal representative of any temporary measures taken within forty-eight (48) hours of issuance, by any means.

Third: Final Procedures for Investigating the State of Risk:

01. Convening Judgment Hearing:

After the juvenile judge completes the investigation, and in accordance with Article 38 of the law, the case papers are sent to the public prosecutor for review. The concerned parties, including the child, parents or legal guardian, and the child's lawyer (if applicable), are summoned by a registered letter with acknowledgement of receipt at least eight days prior to the scheduled hearing.

Once the notification procedures are complete, the judge holds the hearing on the set date, hearing the parties present,

starting with the child, then the parents or legal guardian, and any other person the judge deems necessary to hear.

If the child's best interest requires nonattendance at the hearing, the judge may exempt the child from appearing or order the child's withdrawal from the judge's chamber during the discussions or parts thereof. During these discussions, as part of determining the appropriate measure, the judge takes all necessary steps to secure the family's consent to the intended measure. However, the law does not specify whether the family's consent is needed. Unlike French legislation, which requires the family's consent for alternative protective measures, stating, "…des measures d'assistance éducative ou de placement des enfants. Ces mesures ne peuvent être mises en place qu'avec l'accord des titulaires de l'autorité parentale…" (Delagrange, 2004, p. 142). Is it mandatory to adopt the measure or merely advisory?

2. Determination of Final Measures to Protect the Child at Risk:

After the judge concludes the hearing of the parties, he or she issues a ruling adopting one of the measures provided for in Articles 40 and 41 of the law, depending on the severity of the child's situation. If the juvenile judge concludes that the child's situation involves a minor level of risk, the order may be as follows:

- Keep the minor within their family.
- The child is delivered to the father or mother, who does not exercise custody rights, unless a court ruling has terminated those rights.
- Deliver the child to a relative.
- The child is then delivered to a trustworthy person or family.

In all cases, the judge may assign open-environment services to monitor the child and submit periodic reports on the child's condition to provide necessary assistance for upbringing, education, and care.

Suppose that the juvenile judge determines that the child's situation involves a significant degree of risk. In that case, he or she may order placement in one of the centres listed in Article 41 of Law No. 15-12, which are as follows:

- A specialised centre for the protection of children at risk.
- A department responsible for child welfare assistance.

The duration of these measures should be two years, renewable for an additional period (Law No. 15-12, 2015, art. 42). Moreover, in no case shall they extend beyond the age of criminal responsibility. However, if necessary, the juvenile judge may extend this period until the child reaches the age of twenty-one, either on his own initiative or at the request of the entity entrusted with the child's care or the child himself. The judge may also terminate these measures before their expiry by order issued upon the child's request when it is established that the child has become capable of self-care.

The judge has the right to modify any of these measures at any time, whether on his own initiative or at the request of the child, legal representative, or public prosecutor, provided that the judge decides on the review request within one month from the date of its submission (Law No. 15-12, 2015, art. 45, para. 2).

It is clear from the foregoing that the preventive essence of these measures lies in ensuring the child's continued care in a safe environment until reaching sufficient maturity to assume responsibility. However, the issue of placing the child in specialised centres and the possibility of extending placement beyond the age of criminal responsibility, even up to the age of twenty-one, raises questions as to whether these measures remain purely preventive or increasingly approach a punitive nature, given that they restrict the child's freedom and impose obligations analogous to specific penalties. Thus, Article 42 clearly embodies the idea of overlap between preventive protection and penal specificity in juvenile justice, as the extendibility of these measures and their restriction of the child's liberty bring them closer in effect to a punitive character,

highlighting the intersection between preventive and penal protection within juvenile justice.

SECTION II: THE SPECIFICITY OF JUDICIAL PROTECTION FOR THE CHILD AT RISK AND ITS CONNECTION TO THE PENAL CHARACTER

Judicial protection for children at risk is characterised by a particular specificity that may cause it to transcend its preventive appearance and encompass features akin to penalties, despite their fundamental and clear distinction. This will be explored through an examination of the overlap between preventive measures and the penal character, as well as the manifestations of their indirect relationship.

Subsection One: Principal Overlapping Characteristics between Preventive Measures and Penal Specificity

Both judicial protection measures for children at risk and the penal characteristics established in the special judicial system for children share several similar features, which can be deduced from an analysis of Law Nos. 15-12 and the Penal Code. Among the most important of these are the principles of legality, judicial authority, and their underlying purpose.

1. Principle of Legality: The requirement that a penalty or measure be based on a specific legal provision previously established by the legislature confines the judge's authority strictly within the bounds of the law, prohibiting the imposition of any precautionary measure or punishment outside the prescribed legal texts. This principle serves as a fundamental safeguard against arbitrariness or excessive application, creating a significant similarity between penalties and measures in this regard (Mansour, 1991). From this standpoint, any action taken against a child at risk that is not grounded in legal rules and justice provisions constitutes an infringement of legal legitimacy rather than protection of the child's rights and interests (Foda, 1997). Accordingly, legislators view such actions as violations of the principles of justice and contradict the purpose of these

measures, emphasising that children should be treated within an educational and rehabilitative framework, which is distinct from the logic of criminalisation and punishment. Unlike Egyptian legislators, who adopt a broad concept of delinquency, considering social dangerousness as an infringement in legal texts when defining social dangerousness in Article 2 of Law No. 31 of 1974 (repealed by Law No. 12-1996), an individual is considered socially dangerous if they exhibit behaviors such as begging, collecting waste, engaging in prostitution or vice versa, lacking stable residence, associating with delinquents, running away from educational institutions, rebelliousness against authority, or lacking lawful means of livelihood (Foda, 1997).

The legislature, in addition to what has been mentioned, has stipulated that for the principle of legality to apply in security measures, a prior crime must have occurred for the measure to be imposed on the person, as is the case with penalties. However, an exception is made for children in situations of risk, where the law does not require a prior crime but rather anticipates a high likelihood of future commission (Tahannont, 2025). This is based on the consideration that the state of risk itself is treated as a punishable condition, reflecting the legislator's significant concern for this category. Consequently, intervention for such children occurs within procedures that have a preventive nature and fall within the administrative control domain, culminating in the adoption of preventive measures aimed at protection and care rather than punishment (Harb, 1999).

The penal policy for juveniles relies on educational standards that consider the specificity of this group by combining legislative individualisation, predetermined by the legislature, and judicial individualisation, exercised by the judge when interpreting the texts in accordance with the child's personality and the circumstances of the offence, reflecting a policy aimed more at correction than punishment (al-Kabbabseh, 2015). This is based on the understanding that a child's behaviour results from the interaction of multiple biological, psychological, and

social factors; therefore, its treatment requires activating mechanisms of social control within the community (Ibrahim, 2004).

2. Judicial Characteristic: One of the features of modern criminal policy concerning juveniles is the establishment of a specialised judiciary characterised by a social and corrective nature rather than a punitive one. This consists of judges who are trained and knowledgeable in social and psychological sciences, enabling them to understand the child's behaviour and circumstances and apply the most appropriate measures for their situation (Ma'touq, 2015).

One of the mentioned characteristics is that a penalty falls within the exclusive jurisdiction of the criminal judiciary, ensuring protection of the child from any arbitrariness by authorities and the resulting infringement on rights and freedoms, with the type and extent of the penalty required to be clearly stated (Tahannont, 2025). This is similar to the measures imposed on a child at risk, where no action may be taken except by a decision from a competent judicial authority, guaranteeing legal legitimacy and safeguarding the child's interests.

An essential foundation of the juvenile justice system is the application of mitigated penalties, implemented as exceptions after the juvenile judge confirms the ineffectiveness of other measures in addressing the child's situation or due to the child's dangerousness, constituting a fundamental safeguard in the penal treatment of this group (Penal Code, 1966/2014, art. 49, para. 3). Article 58, paragraph 2 of Law No. 15-12, enshrined this principle by prohibiting the placement of children aged 13-18 in penal institutions, even temporarily, unless necessary and no alternative measures are possible. Article 72 of the same law further emphasises that imprisonment must be exceptional.

To reinforce this protection, the legislature links the judiciary's intervention with penalties or measures to the commission or attempted commission of a crime, as mentioned previously in the principle of legality. In other cases, and to

preserve public order, the application of these measures becomes the responsibility of administrative authorities. However, an exception to this condition grants the juvenile judge authority to intervene with preventive measures when the child is in a situation of risk (Tahannont, 2025).

3. Purpose Characteristic: Algerian legislators, in establishing penalties and measures specific to children, have relied on preventive and rehabilitative roles similar to those of other legislation. This aims to protect and reintegrate the child within society, primarily focusing on safeguarding, reforming, and disciplining the child rather than punishing. This is clearly reflected in the elements underpinning the special legal system for children, which is based on the educational and social nature of mitigated penalties, considering them alternatives and exceptions to protection and disciplinary measures.

This specificity is further demonstrated in the close connection between penalties and preventive measures, as the purpose of penalties in juvenile justice is to protect society and serve as a tool for reintegrating the child into their family and social environment. The juvenile penal system is characterised by a high degree of flexibility, allowing for the modification or substitution of penalties once the child's behaviour improves and they respond to reform programmes, a feature shared by measures for children at risk. Therefore, judicial intervention is conceived as prior protection aimed at rescuing the child from a delinquent environment through measures such as placement in specialised centres or supervision.

The purpose of a penalty or measure, as well as its means of implementation, remains governed by human rights principles, which are considered natural rights inherent to the child from birth, representing the minimum threshold that must not be violated to preserve dignity and humanity (Lakhmisi, 2008).

On this basis, modern criminal policy has sought to maximise effectiveness in protecting society from various forms of criminal behaviour by prioritising preventive measures,

considering them the most effective means to reform society from factors that lead to crime. If these preventive measures prove ineffective or fail to achieve the intended purpose, the judge may then replace them with and activate punitive measures (Tahannont, 2025).

This overlap is further highlighted by the specificity of the legal system applied to this category and the foundations on which it rests, notably educational and social standards. Like penalties that do not escape their social and educational dimensions, penalties transform from mere punitive sanctions into means of protecting, reintegrating, and reforming the child rather than merely punishing them. Likewise, the protection and preventive measures prescribed for the child at risk carry an educational and corrective dimension, providing specialised centres dedicated to their care and rehabilitation while ensuring that these measures do not turn into a form of disguised punishment that would strip them of their preventive purpose and diminish their rehabilitative value.

Subsection Two: Manifestations of the Indirect Relationship between Judicial Protection Measures for the Child at Risk and the Penal Character

Both the protection and preventive measures for children at risk, as well as the penal character specific to juvenile justice, constitute two complementary components of juvenile criminal policy. The former aims to prevent delinquency, whereas the latter intervenes after it has occurred. Although their natures differ, an indirect relationship exists between them, manifested in the consequences resulting from their application, as outlined below:

1. Restriction on the child's freedom: Although the measures prescribed for a child at risk are essentially preventive and rehabilitative, they may entail restrictions on the child's freedom owing to their coercive nature and legal binding effect (Tahannont, 2025). Among the most prominent preventive

measures legally authorised to protect the child from risk is placement in a specialised centre for children at risk, which, despite its preventive character, imposes a punitive aspect by restricting the child's freedom of movement and interaction, depriving him or her of exercising individual freedoms such as playing with friends of their choice whenever desired. Additionally, separation from the family subjects the child to a state of isolation that may resemble the effects of liberty-depriving penalties.

Referring to Articles 36 and 41 of Law No. 15-12 on child protection, the Algerian legislature granted the juvenile judge broad authority to issue measures of a social nature serving the best interest of the child, even if such measures entail removing the child from an environment that poses a threat, such as placement in a specialised centre for children at risk or in a department responsible for child welfare. Although the child at risk has not committed a crime, these judicial measures carry a punitive character, as they sometimes restrict the child's liberty, in contrast with penalties where the legislator seeks to narrow their scope when they involve serious infringement of the child's freedom. Article 58, paragraph 2, of Law Nos. 15-12 prohibits placing children aged 13-18 in penal institutions, even temporarily, unless the measure is necessary and all other options are exhausted. Article 72 of the same law emphasises this by stipulating that detention is only to be used exceptionally.

Both the measures specific to children and the penalties prescribed for them share the characteristic of being modifiable when necessary, reflecting the flexible nature of enforcement in the juvenile justice system. The legislature reinforced this in Articles 45 and 70(3) of Law Nos. 15-12, recognising the child's changing personality and susceptibility to reform programs, which allows adapting measures according to the child's evolving condition rather than adhering to fixed procedures that may no longer suit the new situation (Tahannont, 2025).

2. Restriction and Obligation of the Child to Follow Specific Programs:

The measures prescribed to protect a child at risk, despite involving certain restrictions and obligations such as educational, training, or treatment programs for harmful habits, resemble penalties in that they impose these obligations upon the child regardless of their will or consent, thereby constituting a form of legal restriction (Yamina, 2019). Although formulated within a preventive framework aimed at protecting the child and shielding them from delinquency, these measures bear features of a penal nature owing to the constraints they impose, which resemble the effects of criminal sanctions.

In this context, the measures do not depend on the child's wishes but are imposed for the benefit of society to prevent crime rather than solely for the individual's interest. However, if these measures are preventive or rehabilitative, they serve a dual purpose, benefiting both the individual and society (Tahannont, 2025). Despite their compulsory nature, such measures should not be regarded as penalties in the strict legal sense, as they are not intended to be punitive in nature. However, they may contain a reformative objective, primarily aiming to inflict pain on the offender and make them aware of their responsibility for the criminal act.

The specificity of these measures lies in affirming the preventive nature of judicial protection for the child at risk while indirectly connecting, in terms of their effects, to the penal aspect. This reflects the overlap between protection and care on the one hand and deterrence and restrictions on the other hand. Thus, judicial intervention in the presence of a threat to the child is not in itself a punitive procedure but rather an initial step that may pave the way for reformative measures or even penalties of a punitive nature, such as in cases where a child lacking discernment is exposed to drug or hallucinogen addiction.

3. Risks of Social Stigmatisation Resulting from Preventive Measures:

Although placing a child at risk in specialised protection centres is a preventive and reformative measure, it may overall lead to adverse effects extending even beyond reaching adulthood, alongside deterioration in the child's psychological state resulting from compliance with these measures (Ma'touq, 2015).

This is known as social stigmatisation, one of the most prominent indirect punitive effects that may result from applying preventive measures to the child at risk. Despite their preventive nature, subjecting the child to such measures may lead to them being negatively labelled within social and school environments, viewed as deviant or abnormal. This feeling of discrimination undermines the child's self-confidence. It intensifies feelings of isolation and social rejection, which negatively impact the effectiveness of the preventive measure itself, hindering the goal of protecting the child and preventing criminality.

Conclusion:

It is evident from the study of judicial protection for children at risk that the Algerian legislature has given special attention to this category by establishing a preventive legal framework based on early intervention aimed at caring for the child and reducing the likelihood of delinquency. However, an analysis of these measures reveals certain common aspects shared with the legal system applicable to juvenile offenders, particularly in terms of their content and effects. For example, the possibility of restricting a child's freedom through placement in a specialised centre imposes obligations that resemble criminal penalties, especially if these measures extend until the child reaches adulthood or involve actions that restrict the child's liberty or impose specific programmes or obligations. This illustrates the close interrelation between judicial protection and penal protection for the child at risk, with the former being preventive and the latter being rehabilitative.

Accordingly, judicial protection for the child at risk embodies two integrated dimensions: on the one hand, it represents a preventive policy aimed at protecting and socially and psychologically rehabilitating the child; on the other hand, it is not entirely separable from the penal character, which remains present as a deterrent and punitive tool directed both at the child and others alike. Thus, juvenile criminal policy is based on the principle of balancing the best interests of the child with the need to protect society.

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