



THE DISTINCTIVENESS OF PROCEDURAL PROTECTION FOR JUVENILE OFFENDERS PRIOR TO TRIAL UNDER THE CHILD PROTECTION ACT

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Abstract:

In view of the seriousness of penal proceedings instituted against minors, the legislature has laid down a set of measures that operate as procedural safeguards for the protection of this category, in line with contemporary criminal policy on juveniles. This policy remains distinct from that applicable to adults, since it establishes special principles and rules grounded in the need to remove the juvenile offender from the punitive sphere. At the procedural level, this protective approach takes the form of a procedural prerogative that derogates from the application of ordinary procedural rules, whether by substituting one procedural rule for another, suspending the application of a rule subject to a condition or restriction, or modifying its substance.

Keywords: Procedural protection; juvenile offender; investigation; mediation

Introduction:

Against the backdrop of the transformations experienced by modern societies, the care and protection of juvenile offenders have assumed increasing importance. They are no longer viewed solely through the lens of deviance, but rather as children shaped by particular circumstances that have diverted them from proper conduct and sound social behavior (Arbouz, 2017, p. 272).

Modern criminal policy therefore accords children a distinct legal treatment, based on rules and measures appropriate to their age, personality, and prospects of rehabilitation. This development is neither incidental nor merely technical. It reflects a broader

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humanitarian and rational orientation, one that seeks to keep the juvenile offender outside the ordinary framework of punishment in order to protect both the child's interests and those of society. It is now widely accepted that punishment, even where mitigated, remains unduly harsh for a child who is still in the course of physical and psychological development. More than that, it often proves ill-suited to the objectives of criminal justice, since it may reinforce criminal tendencies at a stage when character formation is still incomplete (Ghardaniya, 2017, p. 186).

The child's right to protection is not simply a matter of legislative policy. It is a right affirmed by international instruments and conventions, and equally recognized in domestic legal systems (Ajoud, 2016, p. 444). Within this framework, the Algerian legislature, through the Child Protection Law, has sought to establish a distinct legal regime governing the treatment of minors, particularly those in conflict with the law (Law No. 15-12, 2015).

The significance of this paper lies in its focus on the safeguards and exceptional procedures introduced by the legislature to protect the juvenile offender, especially during the stages preceding trial. These preliminary phases are among the most consequential, given their likely impact on the child's psychological well-being and future social trajectory. The study thus seeks to assess the extent to which domestic legislation gives effective precedence to the best interests of the child under the provisions of the Child Protection Law.

The central research question may therefore be formulated as follows: what are the principal forms and mechanisms of procedural protection established by the Child Protection Law for the benefit of the juvenile offender during the pre-trial stages?

To address this question, the study adopts a descriptive-analytical method. It reviews the legal provisions applicable to juvenile offenders and examines the extent to which they effectively secure the intended protection. Accordingly, the paper is divided into three parts covering both the substantive and procedural dimensions of juvenile protection. The first part examines the concept of penal protection for juvenile offenders. The second considers the mechanisms available to protect the child during the stages of inquiry and preliminary investigation. The third analyses the protection



afforded to the juvenile offender during the judicial investigation stage.

1- Definition of Penal Protection of Juvenile Offenders

Any serious account of penal protection for juvenile offenders must begin with the legal and conceptual framework that governs this category. This section therefore proceeds through four closely related points. It first defines the child as the subject of legal protection, since the scope of the regime depends on identifying, with precision, the persons to whom it applies. It then turns to juvenile delinquency itself, examining both the notion and the legal character of the conduct in question. The discussion then moves to the substance of penal protection afforded to juveniles. It concludes by delineating the scope of the juvenile offenders criminal liability and the graduated stages through which that liability is structured under the legislative scheme.

1-1. Definition of the Child as the Subject of Protection

The term *child* refers to the newborn or young human being. It may also designate the youth from birth until the elements of maturity are complete through discernment, namely the ability to direct one's conduct toward a given act or to abstain from it (Abada, 2017, p. 806). In a broader sense, it refers to the minor from birth until the attainment of social and psychological maturity, when the constituent elements of personality and selfhood are fully formed upon reaching the age of majority, without making that status dependent on a fixed minimum or maximum age threshold (Fakhar, 2015, p. 22).

At the level of international law, the 1989 Convention on the Rights of the Child defines the child in Article 1 as “every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier” (Presidential Decree No. 92-461, 1992).

Within Algerian child law, the legislature adopts a clear age-based criterion. A child is any person who has not reached the full age of eighteen, irrespective of whether that child is a juvenile offender or a child in danger. Article 2 of Law No. 15-12 further indicates that the term *juvenile* carries the same meaning as *child*. Yet the legislature does not expressly define the juvenile offender as a distinct legal category. It instead fixes the minimum age of criminal prosecution and, on that basis, treats as a juvenile offender any child who has

committed an act classified by law as an offence, provided that the child is not under ten years of age (Abada, 2017, p. 806).

1-2. Juvenile Delinquency

Sociologists commonly regard delinquency as a mode of conduct shaped, to a significant extent, by the surrounding social environment. On that view, juvenile offenders are often seen less as autonomous wrongdoers than as products of particular conditions marked by insecurity, social instability, and material deprivation. The juvenile offender, in this sense, is the individual whose deviant behavior results in a socially disapproved act, one that offends the community's moral sensibilities and provokes a collective reaction (Abdelkarim, 2020, p. 61). Delinquency has also been described as a condition arising whenever a juvenile manifests antisocial tendencies of such seriousness that they render him, or are liable to render him, the proper subject of formal intervention (Al-Najjar, 2013, p. 63).

Even so, the notion of juvenile delinquency must be confined within narrow limits. It should extend only to conduct that demonstrably harms interests of the child or of society that are worthy of legal protection. This position is reflected in paragraph (h) of Principle 5 of the United Nations Guidelines for the Prevention of Juvenile Delinquency, known as the Riyadh Guidelines, adopted in December 1990. That provision requires delinquency prevention policies, the systematic study of their causes, and the measures designed to prevent them to avoid criminalizing or penalizing a child for conduct that causes no serious prejudice to the child's development and no injury to others (Abdelkarim, 2020, p. 62).

From a legal standpoint, juvenile delinquency consists in the commission of an act classified as an offence and punishable by law by a person belonging to the juvenile age group. Once such conduct is established, the individual assumes the status of a juvenile offender and, by reason of that status, becomes entitled to care and legal protection (Ben Sheikh, 2017, p. 645). In the same direction, Article 2, paragraph 3, of Child Protection Law No. 15-12 defines the juvenile offender as "the child who commits a criminalized act and whose age is not less than ten (10) years, age being determined by the date of commission of the offence."



1-3. Penal Protection of Juveniles

Juvenile justice occupies a distinct place within the broader criminal justice system. It represents an advanced formulation of the penal function of the courts, because criminal policy in relation to juvenile offenders does not rest on punishment alone. Rather, it seeks to combine the penal dimension with a protective and rehabilitative one, while taking due account of the juvenile's personal circumstances and specific needs. Within this framework, the juvenile continues to be viewed as a person affected by personal and environmental factors that have shaped his conduct, factors he is often unable to resist because of intellectual immaturity and insufficient discernment (Houari&Chabha, 2017, p. 180).

The normative basis of this protection lies in the child's inherent vulnerability. Owing to mental and physical fragility, the child may be unable to defend his interests effectively or safeguard his rights, particularly where discernment is absent or only partially formed. That vulnerability may facilitate the commission of offences against the child, and may equally expose him to the risk of entering the sphere of delinquency. For that reason, the State is under a legal and institutional obligation to secure special protection for this category (Abdelkarim, 2020, p. 66).

Penal protection may therefore be understood as the body of legal rules enacted by the criminal legislature to protect the child generally, whether as an offender or as a victim. It thus embraces both substantive and procedural protection. At the same time, it entails the establishment of a distinct legal regime for juveniles, one that departs from the regime applicable to adults in both reach and operation. That distinction appears not only in the rules governing criminal liability in all its dimensions, but also in the procedural framework regulating prosecution, investigation, and trial.

1-4. Scope of the Juvenile Offender's Criminal Liability

Criminal liability is premised on a person's legal capacity to bear penal consequences. Since a child's discernment and understanding fluctuate, by reason of age, between absence and incompleteness, unlike the position of an adult, the Algerian legislature has subjected juveniles to a specific legal regime and to procedures tailored to their successive stages of development.

To that end, Article 49 of the Algerian Penal Code, as amended, distinguishes between three age brackets through which the juvenile passes (Law No. 14-01, 2014). Across these stages, criminal liability develops gradually. It begins at a very limited level, then expands progressively with age in line with the child's growing capacity for discernment and understanding.

a. The Under-10 Age Stage

This is the stage of early childhood. At this point, the child is not subject to any criminal penalty or preventive measure. Article 56 of Law No. 15-12 provides that a child who has not completed ten years of age may not be the subject of criminal prosecution, regardless of the nature of the offence committed. This is, in effect, the stage of non-discernment, during which the child falls outside the scope of criminal proceedings.

b. The 10-13 Age Stage

This stage is marked by attenuated responsibility. Although the child may, in principle, be subjected to criminal proceedings, no penal sanction may be imposed. Penal punishment is replaced by protective or rehabilitative measures, as confirmed by the relevant statutory provisions. Article 49 of the Algerian Penal Code states that a minor between ten years of age and under thirteen may be subjected only to measures of protection or educational rehabilitation. In matters classified as contraventions, moreover, the child may be exposed only to reprimand, in accordance with Articles 57 and 87, paragraph 2, of Law No. 15-12 relating to Child Protection, previously cited.

c. The 13-18 Age Stage

This is the stage of discernment. It gives rise to partial, or mitigated, criminal liability. At this stage, the child has passed beyond the category of absolute non-discernment. Even so, liability is neither wholly excluded nor fully assimilated to that of an adult. The child may therefore be subjected either to measures of protection or rehabilitation, or to mitigated criminal penalties. This is the rule laid down in the final paragraph of Article 49 of the Algerian Penal Code, which provides that "a minor between the ages of 13 and 18 shall be subject either to measures of protection or educational rehabilitation, or to a mitigated penalty."



2- Protection of the Juvenile Offender at the Inquiry and Preliminary Investigation Stage

This stage comprises a set of preliminary measures undertaken outside the formal framework of criminal proceedings (Mahdah, 1999, p. 34). It precedes the initiation of the public action and is intended to ascertain whether an offence has occurred, identify its perpetrators, and gather the evidence and factual elements required for the investigation (Kasir, 2008, p. 126). These functions are ordinarily carried out by judicial police officers in the exercise of their statutory powers.

2-1. Protection of the Juvenile Offender During Police Custody

Police custody constitutes one of the most significant, and at the same time one of the most intrusive, measures entrusted to judicial police officers at the stage of inquiry and fact-finding. It is imposed on a suspect for the purpose of clarifying the circumstances of the offence and verifying the relevant facts.

Because of the seriousness of this measure, the legislature has surrounded it with a number of safeguards that judicial police officers must observe where the person concerned is a child. Articles 48 to 55 of the Child Protection Law set out these guarantees, which may be summarized as follows (Sedi, 2018, p. 298):

- The child must be at least thirteen years of age.
- The Public Prosecutor must be informed immediately of the grounds justifying police custody. In principle, the duration of custody may not exceed twenty-four hours, which is half the period prescribed for adults. Any extension is subject to the conditions and procedures laid down in the Code of Criminal Procedure.
- Police custody is permissible only in cases involving felonies, or misdemeanors that constitute a manifest disturbance of public order, as well as offences punishable by a maximum term exceeding five years' imprisonment, pursuant to Article 49 of the Child Protection Law.
- The assistance of counsel is mandatory. The presence of a lawyer constitutes an essential safeguard for the child suspected of having committed, or attempted to commit, an offence. Exceptionally, the child may be heard within the first two hours

from the commencement of custody, provided prior authorization has been obtained from the Public Prosecutor.

- The child's legal guardian must be notified immediately upon placement in custody, and his or her presence is required. This guarantee has a protective function of its own, particularly from the child's psychological standpoint.
- A medical examination must be carried out at both the beginning and the end of the custody period.
- The child must be held in premises appropriate to his dignity and specifically designated for that purpose.
- Access to inquiry records remains confidential. The acts of inquiry may be consulted, viewed, or heard only by the parties concerned and only pursuant to an order issued by the trial judge, the Public Prosecutor, or the investigating judge. The purpose is to preserve the confidentiality of the proceedings and to shield the child from the adverse psychological and social repercussions that might otherwise arise (Bouhlit, 2018, p. 214).

2-2. Protection of the Juvenile Offender Through Mediation

Consistent with contemporary criminal policy, which increasingly favors alternative dispute-resolution mechanisms, particularly those associated with restorative justice, the Algerian legislature expanded the scope of juvenile protection through the introduction of penal mediation as an amicable means of resolving disputes between the parties. This mechanism may be employed after the commission of a contravention or misdemeanor and before the institution of public proceedings. Once the parties approve the mediation report, the juvenile offender is spared appearance before the criminal courts.

Mediation has been defined as “a non-judicial procedure decided exclusively by the Public Prosecution Service before the institution of criminal proceedings, with the aim of compensating the victim and bringing criminal prosecution to an end” (Bouguera & Ababsa, 2018, p. 565).

Compared with the response traditionally associated with judicial proceedings, mediation offers a more constructive and participatory framework. It allows the parties to assume an active role



in managing the dispute, opens a space for dialogue and negotiation, and facilitates agreement on appropriate forms of reparation. At a broader level, it contributes to restoring a more conciliatory social environment. In that sense, it provides a social response to crime while avoiding the burdens and rigidity of ordinary trial proceedings (Nin, 2019, p. 277).

The Algerian legislature incorporated this consensual mechanism into Child Protection Law No. 15-12 and regulated its operation in Articles 110 to 115. Article 2 of that law defines mediation as “a legal mechanism aimed at concluding an agreement between the juvenile offender or his legal representative, on the one hand, and the victim or his or her beneficiaries, on the other, with a view to terminating prosecution, repairing the harm suffered by the victim, putting an end to the effects of the offence, and contributing to the child’s reintegration.”

The legal framework governing mediation may be considered from several interrelated perspectives.

a. Scope of application

This concerns the material field within which mediation may operate, that is, the category of offences for which the legislature permits recourse to mediation as an alternative to criminal prosecution. Under Algerian law, mediation is confined to contraventions and misdemeanors; it does not extend to felonies. It must also take place before the institution of the public action, as provided in Article 110 of Law No. 15-12. In that respect, mediation constitutes an important safeguard for preserving the interests of the juvenile offender at a stage prior to the formal commencement of criminal proceedings (Drissi, 2019, p. 225).

b. Scope of mediation in terms of the parties

Mediation may be conducted only with the participation of the principal parties to the process: the mediator, the juvenile offender and his legal representative, and the victim or the victim’s right-holders (Nin, 2019, p. 279). The function of mediator may be performed by the Public Prosecutor, one of his deputies, or, where appropriate, a judicial police officer (Drissi, 2017, p. 102). This is consistent with Article 111 of the Child Protection Law, which provides that “the Public Prosecutor shall conduct the mediation himself or entrust it to

one of his assistants or to a judicial police officer.” Mediation may thus be initiated at the request of the child, his legal representative, or his counsel, or it may be set in motion *proprio motu* by the Public Prosecutor for the purpose of reaching an agreement with the victim or the victim’s beneficiaries.

c. Temporal scope of mediation

Mediation may be requested by the child, his legal representative, or his lawyer, and it may equally be initiated on the Public Prosecutor’s own motion. Where the latter decides to resort to mediation, he summons the child, the child’s legal representative, and the victim or the victim’s right-holders in order to ascertain the position of each party. If the mediation process has been conducted by a judicial police officer, that officer must transmit the mediation report to the Public Prosecutor.

Under Article 110, mediation may be pursued at any time prior to the institution of the public action in order to secure an amicable settlement. In practical terms, this means before the case file is referred to the juvenile judge for investigation, or before the child is directly summoned to appear before the juvenile division in cases involving a contravention (Cherroun, 2019, p. 108).

d. The mediation report and its legal effects

Where the parties reach agreement, the Public Prosecutor draws up a mediation report recording the terms of settlement. If mediation has been conducted by a judicial police officer, the report must be submitted to the Public Prosecutor for approval by endorsement.

Beyond compensation to the victim, the mediation report may impose certain obligations directed at the child’s reintegration, as set out in Article 114 of the Child Protection Law. These obligations may include medical supervision or treatment, continuation of schooling or enrolment in specialized training, and abstention from contact with any person likely to facilitate the child’s relapse into offending.

Viewed in this way, mediation emerges as a particularly protective mechanism in matters involving children. This distinguishes it from the mediation regime applicable to offences committed by adults, which is primarily concerned with restoring the previous state of affairs through reparation of damage. In the juvenile



context, by contrast, the legislative approach gives more explicit weight to reintegration and to the child's best interests.

3- Protection of the Juvenile Offender at the Investigation Stage

The Algerian legislature, through the Child Protection Law, has laid down a specific procedural framework governing juvenile offenders and the manner in which investigations are to be conducted when the acts attributed to them constitute a contravention, a misdemeanor, or a felony. A proper account of this stage calls for attention to three closely connected matters: the authorities vested with investigative jurisdiction, the procedures applicable to the investigation of the juvenile offender, and the measures and orders that may be issued by the competent investigative authorities (Khelifi, 2019, p. 140).

3-1. Competent Investigative Authorities

The power to conduct investigations involving juvenile offenders has been entrusted by the Algerian legislature to the juvenile judge and to the investigating judge assigned to juvenile matters. The Child Protection Law further provides that investigation is mandatory in cases involving felonies and misdemeanors, whereas in matters of contravention it remains optional, pursuant to Article 64 of the same law.

The allocation of jurisdiction depends on the legal characterization of the facts imputed to the child. Where the acts alleged constitute a misdemeanor or a contravention, the matter falls within the jurisdiction of the juvenile judge. Where, by contrast, the facts disclose a felony, jurisdiction passes to the investigating judge assigned to juvenile matters.

One of the more distinctive features of the juvenile judge's status is that he combines investigative and adjudicative functions in the same office. This constitutes a derogation from the ordinary rule of criminal procedure, under which a judge who has acted in an investigative capacity may not later sit in judgment in the same case. As regards personal jurisdiction, the juvenile judge is competent to investigate cases involving juvenile offenders accused of misdemeanors or contraventions, whereas the investigating judge assigned to juvenile matters has jurisdiction over felonies committed by children (Articles 59(2), 62(2), 79, and 82(5) of Law No. 15-12).

3-2. Procedures for Investigating the Juvenile Offender

As a matter of principle, the competent investigative authority is seized by the Public Prosecutor. Exceptionally, seisin may also occur through a civil claim brought by the injured party, in accordance with Articles 62 and 63 of the Child Protection Law.

The investigation of juvenile offenders is governed by procedural rules that depart in important respects from those applicable to adults. The underlying purpose is clear enough: to confer on the judge a wider discretionary margin, enabling him to secure the greatest possible degree of legal protection for the child in conflict with the law (Mestari&Rouahna, 2017, p. 73). The protective logic of the system is reflected in a number of guarantees, the most significant of which are the following:

- notification of the juvenile and his legal representative of the initiation of judicial proceedings;
- the conduct of a social inquiry, intended to assist in establishing the truth and to illuminate the child's personal, familial, and social circumstances;
- the right to be assisted by defense counsel;
- the submission of the juvenile to medical and psychological examination in order to assess his physical and mental condition, particularly where such factors may have contributed to the delinquent conduct in question (Khelifi, 2019, p. 147).

3-3. Measures and Orders Issued by the Investigative Authorities

During the investigation stage, both the juvenile judge and the investigating judge assigned to juvenile matters are empowered to issue a number of orders in respect of the child in conflict with the law:

3-3.1. Temporary Reformative Measures

The legislature has vested the competent investigative authorities, whether the juvenile judge or the investigating judge assigned to juvenile matters, with the power to impose a range of temporary measures during the investigation. These measures are educational and corrective in character rather than punitive. Article 70 of the Child Protection Law provides the legal basis for them and



allows the competent authority to order one or several measures, depending on the circumstances of the case. They are not immutable. On the contrary, they remain open to review, adjustment, or replacement whenever the child's situation or the needs of the investigation so require.

3-3.2. Coercive Penal Orders

Alongside those reformative measures, the juvenile judge and the investigating judge may issue orders of a more restrictive nature. These include, first, an order placing the child under judicial supervision, pursuant to Article 71 of the Child Protection Law. They may also order remand in pre-trial detention where the reformative measures prove inadequate, in accordance with Articles 58 and 72 to 75 of the same law. In addition, an order to compel appearance may be issued where the child fails to comply with a summons, pursuant to Articles 184 and 185 of the Algerian Code of Criminal Procedure. A warrant of arrest may likewise be issued where the juvenile offender absconds, pursuant to Article 193 of that Code.

Conclusion

This study has sought to identify the principal forms of penal protection, in their procedural dimension, available to the juvenile offender during the stages preceding trial. What emerges is that the Algerian legislature, through Child Protection Law No. 15-12, has devoted considerable attention to the issue of juvenile delinquency. The extent of the legislative provisions dealing with both its substantive and procedural aspects make that concern unmistakable.

It is equally apparent that the legislature was largely successful in incorporating the legal regime applicable to juvenile offenders into Child Protection Law No. 15-12, even though the title of the statute may initially suggest that it is concerned primarily with child victims and children in danger. In substance, the law is not directed chiefly towards punishment. Its orientation is corrective and integrative. It aims, above all, at reforming conduct and facilitating the child's reintegration into society. That legislative choice is reflected throughout the criminal process, where the safeguards afforded to juveniles exceed those granted to adults, precisely because age, discernment, and psychological vulnerability have all been taken into account.

Yet the procedural guarantees granted to the juvenile offender, important as they are, remain incomplete in certain respects when measured against the demands of fuller protection. This is particularly evident in the various referrals made by the Child Protection Law to the ordinary rules of the Code of Criminal Procedure; rules originally designed for adult suspects. The difficulty appears most clearly in relation to pre-trial detention and its extension under Articles 72, 73, and 74 of the Child Protection Law. For that reason, there are strong grounds for dispensing with this measure in relation to children and relying instead on judicial supervision, so as to reduce the risk of reinforcing delinquent tendencies and exposing the child to criminogenic influences during detention.

- It is also necessary to broaden the scope of judicial mediation by adopting a negotiated model of penal mediation capable of operating throughout the different stages of the proceedings, and by assigning a role in that process to child protection associations and specialized organizations rather than confining the mechanism to the Public Prosecution Service alone.
- A further requirement concerns professional training. Child protection units, juvenile brigades, and juvenile judges should all receive continuous theoretical and practical training in dealing with juvenile offenders, both from a procedural standpoint and from a psychological one, particularly in light of the growing incidence of juvenile delinquency.
- There is, moreover, a need for an express statutory sanction of nullity in respect of procedures carried out in violation of the child's rights during police custody. This should be coupled with stricter penalties for unlawful deprivation of liberty where the person subjected to custody is a juvenile.
- Finally, specialized centers for the protection of juvenile offenders ought to be established more widely across the national territory. Such centers should operate under the supervision of the ministry responsible for national solidarity and be provided with the human and material resources necessary to ensure proper care, protection, and social reintegration.



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