Legal Protection for the Juvenile Delinquent during the Stages of Preliminary Inquiry and Judicial Investigation in Light of Law No. 15–12

الحماية القانونية للحدث الجانح خلال مرحلة التحري والتحقيق على ضوء القانون 12/15

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Abstract:

The Algerian legislature has accorded particular importance to juveniles pursuant to Law No. 15–12 on child protection, distinguishing them from adults in legal treatment through special procedures that take into account their age and social circumstances. From the investigation stage to the trial stage, educational measures have been adopted as alternatives to penal sanctions. In addition, several legal guarantees have been ensured for them, most notably the right to silence, the right to the assistance of counsel, the confidentiality of hearings, and the affirmation of the principle of protecting the best interests of the juvenile, with nullity prescribed in the event of their violation.

key words: juveniles; child protection; legal guarantees; special procedures; delinquency.

ملخص:

أولى المشرع الجزائري أهمية خاصة لفئة الأحداث بموجب القانون 15/12 المتعلق بحماية الطفل، حيث ميزهم عن البالغين في المعاملة القانونية من خلال إجراءات خاصة تراعي سنهم ووضعهم الاجتماعي. بدء من التحقيق إلى المحاكمة، مع اعتماد تدابير تربوية بديلة عن العقوبات الجزائية، كما ضمن لهم جملة من الضمانات القانونية أبرزها، الحق في الصمت، الحق في الاستعانة بمحام، سرية الجلسات، تأكيده على مبدأ حماية المصلحة الفضلي للحدث، مع ترتيب البطلان عند الإخلال بها.

الكلمات المفتاحية : الأحداث ؛ حماية الطفل ؛ الضمانات القانونية ؛ الإجراءات الخاصة ؛ الجانح.

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Introduction:

The Juvenile delinquency is among the most prominent subjects occupying important positions within the fields of law and the social sciences, particularly in the modern era, which has witnessed remarkable development across various scientific and urban domains. This phenomenon has attracted the attention of researchers in psychology and sociology because of the human, social, and legal dimensions it entails. Each has focused on studying the factors leading to delinquency and analysing juveniles' personality and behaviour in light of those influences. In view of the juvenile's incomplete mental and physical maturity, he is in urgent need of special care and preventive measures that are compatible with his age and psychological characteristics. The juvenile is not a criminal in the traditional sense but rather a latent potential that should be properly invested as part of the project of building society and its future. Here, the family emerges as the first social environment in which the juvenile interacts.

This is followed by the role of the legislator, who must establish effective legal rules that provide the necessary protection for juveniles and prevent their deviance. Contemporary legislation has thus addressed this phenomenon as a social problem that requires prevention, treatment, and reform before it becomes a criminal matter necessitating deterrence and punishment.

This topic was selected because of its considerable importance, as it concerns juveniles, who constitute one of the most sensitive and vulnerable groups within society, in light of the difficult reality they face despite the legal framework purported to guarantee their protection and care.

This study aims to shed light on the various procedural legal provisions in Algerian legislation and to examine the extent to which they succeed in protecting these rights, particularly those of juveniles, in the hope of drawing the attention of responsible authorities to the necessity of seeking appropriate means and mechanisms to ensure purely legal protection for the category of juveniles.

On this basis, the following problem is posed:

What legal guarantees are established by legislators to protect juvenile delinquents during the judicial prosecution stage?

To address this problem, the treatment of this subject combines several scientific methods. The descriptive method has been relied upon within the study's conceptual framework, as well as the analytical method, through the presentation of the provisions contained in legal texts and the implementation of regulations related to this subject.

This study is divided into two sections:

Section One: Procedural guarantees for the juvenile during the search and inquiry stage.

Section Two: Guarantees relating to the prosecution of the juvenile during the stage of judicial investigation.

Section One
Procedural Guarantees for the Prosecution of the Juvenile during the Stage of Search and Inquiry

The search and inquiry procedure refers to an investigation conducted by a judicial police officer, which serves as the means by which the public prosecution is informed of offences that have occurred. It corresponds to the investigation of a flagrante delicto offence, and such investigations are simpler in terms of formalities. The judicial police officer does not have the right to employ extensive investigative measures. To avoid confusion, the legislature preferred to designate it as a preliminary investigation, distinguishing it from the initial investigation, which is the judicial investigation conducted by the investigating judge[1].

On this basis, attention is directed to the competent authority responsible for investigating the juvenile during the search and inquiry stage.

Section One: Determination of the Competent Authority for Investigating the Juvenile during the Stage of Search and Inquiry

The legislature has specified the persons vested with the capacity of judicial police officers through Article 14 of the Code of Criminal Procedure. However, no specific provisions related to juveniles during the stage of judicial police procedures have been established. Consequently, the judicial police are responsible for conducting searches and inquiries into offences committed by juveniles in accordance with the general rules.

Subsection One: The Judicial Police

The judicial police assume an essential role in cooperation with both the ordinary criminal and the juvenile judiciary. The police are the first authority to confront the perpetrator of an offence, whether an adult or a juvenile. They undertake the collection of the necessary inquiries and evidentiary indications required for the investigation of cases involving both adults and juveniles [2]

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[1] Ghai Ahmed. *A brief guide to the organisation of judicial police functions* (3rd ed.). Dar Houma; 2006, p48..

[2] Abdullah Ouaibia, Explanation of the Algerian Code of Criminal Procedure, Part I, Houma Publishing, Algeria, 2004,p168.

The police, therefore, represent the initial point of contact with the juvenile justice system and are the first to encounter juveniles upon their delinquency or exposure to delinquency. In such circumstances, preventive or corrective measures are necessary. Therefore, the manner in which the police deal with the juvenile constitutes the first stage of interaction, representing the first step in reform and correction and the first factor influencing the juvenile psychologically.

First: Judicial Police Officers with Special Jurisdictions

Officers and noncommissioned officers belonging to the military security services who have been appointed pursuant to a ministerial decision issued jointly by the Minister of Defence and the Minister of Justice are targeted under Law No. 91/120, which amended and supplemented Law No. 84/12 [1] concerning the general regime of forests. This law granted them the capacity of judicial police officers; however, it did not confer upon them the authority to order detention for questioning in general. This is stipulated in Article 62 bis, which grants the status of judicial police officers to commissioned officers belonging to a specialised body responsible for forest administration, appointed pursuant to a joint ministerial decision issued by the Minister of Justice and the Minister responsible for forests[2].

Nevertheless, the jurisdiction of this category of judicial police officers is limited to conducting investigations into offences committed in violation of the forest regime and legislation relating to hunting, for which their appointment and jurisdiction are expressly provided.

Second: Judicial Police Officers with General Jurisdiction

The composition of judicial police officers with general jurisdiction consists of the following:

1. Presidents of People's Municipal Assemblies.
2. Officers of the National Gendarmerie.
3. Officials belonging to the special corps of inspectors and commissioners of the National Security Police.
4. Noncommissioned officers and gendarmes who have served in the National Gendarmerie for at least three years and who have been appointed pursuant to a joint decision issued by the Minister of Justice and the Minister of National Defence.

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[1] Law No. 84-12 of 13 Ramadan 1404, corresponding to June 23, 1984, relating to the General Forestry System, Official Gazette, Issue No. 26.

[2] Zainab Ahmed Owein, *Juvenile Justice: A Study*, The Judicial Library, Amman, Jordan, 2003, p. 99.

5. Officials belong to the special corps of inspectors, commissioners, and police officers of the National Security Police who have served for at least three years in this capacity and who have been appointed pursuant to a joint decision issued by the Minister of Justice and the Minister of the Interior and Local Authorities after the approval of a special committee.

Since the first category has special jurisdiction, its scope of activity is limited to offences committed by military personnel. This applies to noncommissioned officers affiliated with military security services as well as to commissioned officers belonging to the specialised body responsible for forest administration. Hence, it is more appropriate to exclude them (Ouhaibia, 2004)

It is thus evident that the Algerian legislature has accorded considerable attention to children. Although a specific judicial police body for juvenile delinquents has not been established, special teams and units dedicated to juveniles have been created to protect them from danger.

Subsection Two: Particularity of the Conditions Governing the Placement of the Juvenile in Police Custody

Police custody constitutes one of the most important measures granted to judicial police officers during the search and inquiry stage. It is a measure imposed on a suspected person to uncover the circumstances and facts of the offence[1] .

Police custody may be applied to people who have reached the age of the criminal majority as well as to juvenile minors. However, the Algerian legislature has accorded this vulnerable category with special treatment appropriate for their status and provisions consistent with the nature of juveniles. This is reflected in Child Protection Law No. 15-12 [2], which constitutes a body of legal provisions intended to protect juveniles from danger. Prior to the promulgation of the law specifically applicable to children, the Algerian legislature subjected this category to the Code of Criminal Procedure without distinguishing between adults and minors. This procedure constitutes a deprivation of personal liberty and a restriction on freedom of movement.

It applies for a short period of time, which may be renewed, as determined by law, by placing the person in a designated place of custody. It is therefore a police measure ordered by a judicial police officer, whereby a juvenile under the age of eighteen is detained in police or National Gendarmerie premises for a

[1] Jabbar Abdelmadjid, Legal Studies in Criminal Matters, Houma Publishing, 2012, p 15.

[2] Law No 15-12 of 28 Ramadan 1436, corresponding to July 15, 2015, relating to Child Protection, Official Journal No 39, corresponding to 19 July 2015.

period of twenty-four hours whenever the requirements of the investigation so necessitate[1].

Pursuant to Article 49 of the Child Protection Law No. 15/12, if the requirements of the preliminary inquiry necessitate that the judicial police officer place in police custody a child who is at least thirteen years of age and who is suspected of having committed or attempted to commit an offense, he must immediately inform the public prosecutor and submit a report indicating the reasons for the placement in police custody.

First: The Juvenile Must Reached the Age of Thirteen

In accordance with the child's age, the Algerian legislature distinguishes three age groups for children. A child under the age of ten is considered incapable of discernment and awareness; therefore, he cannot be held criminally liable. From the age of ten to thirteen, the child may be subject to criminal accountability; however, he may only be subjected to protective measures and may not be placed in police custody. From the age of thirteen onwards, he may be subject to placement in police custody[2].

The rationale for not subjecting a child who has not reached the age of thirteen to the measure of police custody lies in the fact that a minor at this age lacks volition and is not criminally responsible for acts committed under the provisions of the Penal Code. For this reason, he is not subject to police custody procedures. Nevertheless, the Algerian legislature introduced an explicit exception in Article 49 of Law No. 15/12 relating to the protection of the child. This exception arises when the requirements of the inquiry compel the judicial police officer to place in police custody a child who has reached at least thirteen years of age[3].

Second: Offences in Which Police Custody Is Permissible

The Child Protection Law authorises the placement of juveniles in police custody only in cases of misdemeanours and felonies. Article 49 of the same law provides the following: “It shall only be applied in misdemeanours constituting a disturbance of public order and in those for which the maximum prescribed penalty exceeds five years’ imprisonment, and in felonies.”

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[1] Ghai Ahmed, Ibid, p 16.

[2] Merzoug Fatima Zohra, Guarantees Granted to Children During Police Custody, Master’s Dissertation, Law Department, Criminal Law Specialization, University of Mostaganem, Faculty of Law, 2019/2020, p 10.

[3] Saadoud Meriem, "Guarantees of Child Protection During Police Custody in Algerian Legislation", *Journal of the Researcher in Legal Sciences*, Issue 4, December 2020, p 06.

For a juvenile to be placed in police custody in cases of misdemeanours, two conditions must be satisfied:

a. The misdemeanour committed by the juvenile must constitute a manifest disturbance of public order.

b. The maximum prescribed penalty for the misdemeanour must exceed five years' imprisonment.

With respect to felonies, the law imposes no specific conditions. Consequently, any offence classified as a felony, when committed by a juvenile, may give rise to the application of the measure of police custody [1].

Third: Duration of Juvenile Placement in Police Custody

Article 49 of Law No. 15/12, previously mentioned, states that "the duration of police custody may not exceed twenty-four hours"[2] . This period is similar to that prescribed by the Code of Criminal Procedure. However, the legislature added in the same article that "the period of police custody may be extended in accordance with the conditions and procedures provided for in the Code of Criminal Procedure and in this Law No. 15/12." [3].

The extension may be applied only in misdemeanours that constitute a manifest disturbance of public order and in those for which the maximum prescribed penalty exceeds five years' imprisonment.

Violating the provisions governing the time limits for police custody of a juvenile exposes the judicial police officer to liability for arbitrary detention. The original duration of police custody may be extended by written authorisation from the competent public prosecutor twice in cases involving offences against the security of the state; three times in cases relating to transnational organised crime, money laundering offences, and offences relating to currency regulations; and five times in cases involving acts classified as terrorist or subversive offences. Exceptionally, such authorisation may be granted by a reasoned decision without presenting the person before the public prosecution[4].

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[1] Maarouf Hassan, *Rules governing juvenile police custody under Child Protection Law 15-12*, Master's Dissertation, Law Department, Criminal Law Specialization, University of Oum El Bouaghi, 2015-2016, P 53.

[2] Omar Seddik, "Guarantees Established for Juveniles in Police Custody under Law 15/12," *Scientific Horizons Journal*, Vol. 10, No. 2, 2018, p. 299.

[3] Article 49, Child Protection Law No. 15-12

[4] Litouni Dalila, Police custody of juveniles under Law 15-12 on child protection Journal of Human Sciences, n° 49, Algeria, 2018, p 495.

With respect to the extension of police custody, the Code of Criminal Procedure distinguishes between flagrante delicto offences and nonflagrante offences as follows:

a. In flagrante delicto offences, the time limits of police custody may be extended by written authorisation from the competent public prosecutor once; once in offences involving attacks on automated data-processing systems; twice in offences against the security of the state; three times in drug offences, organised crime, money laundering, and offences relating to currency legislation; and five times in terrorist offences.

b. In nonflagrante offences, police custody may be extended by written authorisation from the public prosecutor once in all offences; twice in offences against the security of the state; three times in drug offences, transnational organised crime, money laundering offences, and offences related to special legislation; and five times in terrorist and subversive offences [1].

Section Two: Rights of the Juvenile Placed in Police Custody

The rights granted to the child during police custody are provided for in the Constitution and the Child Protection Law. They constitute guarantees ensuring protection against all forms of abuse, harm to the child's physical integrity, torture, or violation of his dignity [2].

Subsection One: The Juvenile's Right to the Presence of Counsel

The assistance of counsel constitutes one of the guarantees established by the Child Protection Law. The law requires a lawyer to be present with the minor in police custody from the moment of placement. This is an absolute right granted to the minor throughout the original duration of police custody, without any time limit. The responsibility for appointing a lawyer lies with the prosecuting authority represented by the public prosecutor if the minor has not chosen a lawyer, as stipulated in Article 54 of the same law[3].

The juvenile in police custody should be heard in the presence of his legal representative, in accordance with the provisions of Article 55 of Law No. 15/12. The presence of his lawyer is also needed. However, if the lawyer is delayed in attending, the legislature has introduced an exception, allowing the juvenile to be heard without the presence of counsel where the minor is between sixteen and

[1] Khattab Karima, Crime and Juvenile Delinquency, Syllabus for 2nd Year Master's, Faculty of Law, University of Algiers, 2022/2023; p 60.

[2] Hamida Hafsa and Meziane Mohamed Lamine, "Protection of Children in Police Custody in Algerian Legislation", under Algerian legislation Journal of Real Estate and Environmental Law,, Vol. 11, Issue 1, 2016. P 176.

[3] Article 54, Child Protection Law No. 15-12.

eighteen years of age and where the matter concerns offences of terrorism or other offences affecting the security of the state [1].

Subsection Two: The Juvenile's Right to Receive Visits from His Family

Articles 50 and 55 of Law No. 15-12 on child protection stipulate that juveniles have the right to communicate with their families[2]. All means enabling immediate contact with his family must be placed at his disposal, and he is entitled to receive visits at specified times. Judicial police officers are required to notify the legal representative, by all available means, immediately upon the placement of the child in police custody, and the child may not be heard except in the presence of his father [3].

Subsection Three: Placement of the Juvenile in Suitable Premises

The place designated for the placement of the child in police custody must, as stipulated in Joint Ministerial Instruction No. 48 dated 31 July 2000, regulate the relations between the judicial authority and the judicial police, issued by the Algerian Ministry of Justice, be a secure and suitable place that ensures the child's safety. It must provide appropriate bedding, ventilation, lighting, and cleanliness and must include special offices guaranteeing the necessary confidentiality between the child and his or her lawyer. The investigating judge and the competent public prosecutor are required to visit these premises periodically, at least once every month, as expressly provided in Article 52, paragraph five, of Law No. 15/12[4].

The purpose of this requirement is to ensure direct and personal verification of the extent to which judicial police officers comply with the safety standards of detention facilities and with human dignity, as well as to take the necessary measures in the event of any negligence or violation[5].

Subsection Four: Juvenile Submission to a Medical Examination

The legislature has provided for the mandatory medical examination of the child through Article 51 of Law No. 15/12. This examination must be conducted

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[1] Baizid Razika and Khalil Rachid,). *Police custody in the Algerian Code of Criminal Procedure*, Master's Dissertation, Law Department, , Faculty of Law, University of Djelfa, 2020/2021, p 75-76.

[2] Arts 50–55, Child Protection Law No. 15-12.

[3] Touhami Fatima Zohra, *Guarantees of juvenile police custody in Algerian legislation*, Master's Dissertation, Law Department, University of Ghardaia, 2022/2023, p 51.

[4] Article 52, Child Protection Law No. 15-12.

[5] Saadoud Meriem, ipid, p 06.

at the beginning and end of the period of police custody. In contrast, it was previously carried out only after the end of the custody period. Medical examination certificates must be attached to the procedural file under the penalty of nullity. It is also a constitutional right of the juvenile delinquent established by Article 60 of the Constitution, which provides that medical examination is compulsory for minors.

The objective of the legislature in adopting this measure is to protect the physical integrity of juveniles from all forms of torture.

Hence, the judicial police officer is prohibited from subjecting the juvenile placed in police custody to torture to obtain the truth. The Constitution guarantees the moral and physical integrity of the individual. Article 40 of the Constitution provides that "the State shall guarantee the inviolability of the human person and shall prohibit any physical or moral violence or any violation of dignity" [1].

Section Two Guarantees for the Prosecution of the Juvenile during the Stage of Judicial Investigation

The juvenile judge constitutes the most important judicial body entrusted with dealing with juveniles. The law determines the manner of his appointment and the scope of his jurisdiction. These matters will be addressed in the following sections.

Section One: The Competent Authority for Investigating the Juvenile during the Stage of Judicial Investigation

The legislator has granted the juvenile judge exceptional status, enabling him to act simultaneously as a trial judge and an investigating judge. This arrangement is intended to protect the juvenile, respect his particular circumstances, and take into consideration his psychological condition. In this section, the principal aspects highlighting the functions of the juvenile judge are examined, including his definition, the manner of his appointment, and the powers conferred upon him by law.

Subsection One: Juvenile Judgement

The juvenile judge is among the judges distinguished by competence, experience, and an educational inclination towards addressing juvenile delinquency. For the juvenile judge to be competent to perform his duties within the juvenile division, he must possess extensive knowledge of modern educational science, child psychology, general psychology, and family sociology. He must also be proficient in criminology, particularly juvenile criminology.

[1] Khattab, Ibid, p 61-62.

Consequently, he must be more of an educator than merely a judge or an enforcer of legal provisions, especially since such provisions may sometimes appear devoid of meaning in the face of crimes committed by children.

The juvenile judge, or judges selected for their competence and the care they devote to juveniles, are appointed by the decision of the Minister of Justice for a period of three years in each court located at the seat of the judicial council. In other courts, they are appointed by order of the president of the judicial council upon the public prosecutor's request. This is in accordance with Article 449, paragraph one, of the Code of Criminal Procedure. Jurists maintain that juvenile judges should be specialised and, in addition to their legal training, possess knowledge of auxiliary sciences that assist them in appropriately dealing with juveniles[1].

The Algerian legislature has provided in Article 59 of Law No. 15/12 that each court shall have a juvenile division, presided over by a juvenile judge, who is competent to examine misdemeanours and contraventions committed by children. Article 61 of the same law further provides that one or more juvenile judges shall be appointed in each court located within the jurisdiction of a judicial council by the decision of the Minister of Justice, Keeper of the Seals, for a period of three years. In other courts, juvenile judges should be appointed by the order of the president of the judicial council for a period of three years[2].

Juvenile judges are selected from among judges who hold at least the rank of the president of a court. Therefore, a judge may not investigate juvenile cases unless he has been appointed to this position. During the investigation, the juvenile judge exercises all the powers provided for in the Code of Criminal Procedure, in accordance with Article 69 of the Child Protection Law No. 15–12[3].

Subsection Two: Powers of the Juvenile Judge during the Investigation Stage

The Algerian legislature has defined the powers of the juvenile judge in Law No. 15/12 relating to the protection of the child. These powers may be divided according to the stage.

First: At the beginning of the investigation

[1] Benmostefa Issa, Juvenile Justice, Lectures for 2nd Year Master's, Private Law Department, Family Law Specialization, 2022-2023, p 71.

[2] Saâka Khadidja and Chadli Samira, Trial Procedures in Juvenile Crimes, Master's Dissertation, Ibn Khaldun University, Tiaret, 2020-2021, p 18.

[3] Bouguendel Saida, *Juvenile studies*, 2nd Year Master's, Lecture notes Faculty of Law, University of Setif, , 2022/2023, p87.

Child Protection Law No. 15/12 grants the juvenile judges several powers, as provided in Articles 34, 38, and 39 of the same law, including the following:

1. **Hearing procedures:** The juvenile judges questions the juvenile regarding the motives that led him to delinquency and seeks to reassure him. He also hears the juvenile's father, in accordance with Article 33 of the Child Protection Law. The juvenile has the right to the assistance of counsel. This procedure is intended to provide a clear understanding of juveniles' personality, circumstances, and social situation. Hearing the juvenile's parents constitutes an essential measure for the juvenile judge in analysing the child's personality, particularly where the juvenile refuses to speak or provides false statements that may mislead the judge. The juvenile judge also receives all the information and reports related to the child's situation, as well as statements from any person the judge considers useful to hear to achieve the purpose of the investigation[1].

2. **Study of Juvenile Personality:** The provisions of Article 34 of the Child Protection Law No. 15/12 stipulate that the juvenile judge shall undertake a study of the child's personality, particularly through a social inquiry and a medical examination. However, where the judge possesses sufficient elements enabling him to form an assessment, he may refrain from ordering all such measures or may order some of them.

Second: During the Investigation Stage

This stage involves the following procedures:

1. **Social Investigation:** A social investigation constitutes an effective method for identifying a juvenile's situation within his family and social environment. It enables the juvenile judge to determine the conditions of his life, his relationship with neighbours, his educational trajectory, and other important information that guide the juvenile judge in adopting an approach to the child.

Article 66 of Law No. 15/12 also provides that the conduct of such an inquiry is mandatory in cases of felonies and misdemeanours, while it remains optional in cases of contraventions[2].

2. Conduct of Medical Examinations:

Pursuant to the provisions of the final paragraph of Article 68 of the Child Protection Law, the juvenile judge shall order medical, psychological, and mental examinations where necessary, particularly where the juvenile may be suffering from a disability or from mental or psychological disorders that led to the

[1] Mechri Radia, " The role of the juvenile judge in protecting children in situations of danger. Journal of Law and Political Sciences, Vol. 9, Issue 2, 2022, p 19.
[2] Article 66, Child Protection Law No. 15-12.

commission of the offence. When such circumstances are established and in consideration of the juvenile's best interests, the juvenile judge should issue an order to transfer the juvenile to hospitals or health centers for treatment [1] .

3. Behavioural Supervision

Under Article 34, the legislator has granted the authority to supervise juveniles. This measure is presumed to be implemented in cooperation with open-environment services and institutions specialising in the reception of children in danger. Ultimately, where the juvenile judge possesses sufficient elements for assessment, as provided in the second paragraph of the same article, he may dispense with the aforementioned measures or order only some of them.

Third: At the End of the Investigation

Upon completion of the investigation, the investigating judge, in accordance with Article 38 of Law No. 15/12, forwards the case file to the public prosecutor for review. The child, his legal representative, and the lawyer, where appropriate, are summoned by a registered letter with acknowledgement of receipt to examine the case at least eight days before the hearing.

Section Two: Orders of the Investigating Judge and Guarantees of the Juvenile during the Investigation Stage

The investigating judge responsible for conducting the investigation issues several orders during the investigation concerning the juvenile prosecuted for a felony while maintaining the guarantees afforded to the juvenile throughout the investigation. In the first subsection, the orders issued by the investigating judge against the juvenile delinquent will be examined. The second subsection addresses the guarantees granted to the juvenile during the investigation stage.

Subsection One: Orders of the Investigating Judge Issued against the Juvenile

The orders issued by the investigating judge against the juvenile constitute special legal measures under the Algerian Code of Criminal Procedure, intended to ensure the proper conduct of the investigation while taking into account the juvenile's particular status as a minor.

These orders, such as an order to appear or a provisional detention order, are issued under discretionary powers, subject to constitutional guarantees that protect the juvenile from abuse. These orders may be addressed through the following elements:

[1] Khattab, Ibid, p 71.

First: The Order to Appear and Provisional Detention

The investigative authority issues an order to appear only in exceptional circumstances and when the seriousness of the case so requires. The public force then notifies the juvenile and his guardian to appear before the investigating judge responsible for juvenile matters. If the juvenile or his guardian refuses to appear before the investigating judge, the public force compels his appearance [1].

Child Protection Law No. 15/12 also regulates the provisional detention of juvenile delinquents. As a general principle, it prohibits placing a child in a penal institution, even temporarily. Article 58 of the Child Protection Law states that a child between ten years of age and less than thirteen years of age may not be placed in a penal institution, even temporarily. Similarly, a juvenile between thirteen and eighteen years of age may not be placed in a penal institution, even temporarily, unless such a measure is necessary and no other measure can be adopted. In such a case, the child should be placed in a center for the rehabilitation and reintegration of juveniles or, where necessary, in a special wing designated for juveniles within penal institutions.

Although the principle remains that the child should not be detained, certain exceptions are permitted under specific provisions governing juveniles. These are based on the stages of juvenile delinquency established by the Child Protection Law, which recognises three stages, as provided in Articles 58, 72, 73, 74, and 75, while referring to the Code of Criminal Procedure for the application of the provisions contained in Articles 49, 50, and 51 [2].

Second: The Arrest Warrant

Article 119(1) of the Code of Criminal Procedure defines the arrest warrant as an order issued to the public force to search for the accused and bring him to the penal institution indicated in the warrant, where he shall be delivered and detained. An arrest warrant may be issued against a person accused of committing a felony or a misdemeanour punishable by imprisonment.

Since the juvenile judge may issue the arrest warrant, the juvenile judge responsible for investigating felonies committed by juveniles, or the president of the indictment chamber of the judicial council, should note that a child under the age of eighteen generally does not independently decide matters related to

[1] Louni Farida, The legal status of the investigating judge assigned to juvenile cases in Algerian legislation. *Professor-Researcher Journal of Legal and Political Studies,*, Vol. 8, Issue 1, June 2023, p 245.

[2] Abdullah Ouaibia, Explanation of the Algerian Code of Criminal Procedure, Vol I, Houma Publishing, Algeria, 2017-201? P 569.

appearance or nonappearance before the judiciary; rather, such matters are guided by his legal representative. Furthermore, a child before reaching the age of majority generally does not reside independently in a separate domicile; therefore, his address is that of his legal representative. This necessitates that the legal provision relating to children be precise. Moreover, at this age, the child rarely decides to evade justice unless assisted by his legal representative.

Consequently, the general rules remain applicable to children. The duration of detention pursuant to an arrest warrant may not exceed forty-eight hours, during which time the child must be questioned either by the judge who issued the arrest warrant or by another judge. Otherwise, he must be released, as the continued detention of the accused without interrogation constitutes arbitrary detention [1].

The Algerian legislature has accorded particular importance to juveniles through Law 15/12 on the protection of the child, distinguishing them from adults in legal treatment through special procedures that take into account their age and circumstances from the stage of investigation to trial. Educational measures have also been adopted as alternatives to penal sanctions. In addition, several legal guarantees have been ensured for them, most notably the right to silence, the right to the assistance of counsel, the confidentiality of hearings, and the affirmation of the principle of protecting the best interests of the juvenile, with nullity prescribed in the event of their violation.

Subsection Two: Guarantees Granted to the Juvenile during the Investigation Stage

Although the legislator has expanded the conduct of investigations in juvenile cases among different judicial bodies according to the seriousness of the acts committed, he has unified the guarantees and rights protecting the juvenile during the investigation stage, regardless of the competent authority responsible for conducting it.

These guarantees include the following:

First: Guarantees Established under General Rules

These guarantees include the following:

a. Presumption of Innocence:

Various criminal legislations are founded upon prioritising the presumption of innocence over the presumption of guilt. Accordingly, a person is presumed innocent until his guilt is established through conviction. The Algerian legislature has followed this approach, as the Algerian Constitution recognises this principle

[1] Drias Zidouma, Criminal Protection of Children According to Law No. 15/12, Lectures notes, Faculty of Law, University of Algiers 1,Benyoucef Benkhedda, 2022-2023, P 164-165.

and considers every person innocent unless a judicial judgement or decision issued by a competent judicial authority declares his conviction[1].

The principle of the presumption of innocence derives its legitimacy from several international instruments, including Articles 11 and 14 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as national legislation. It constitutes one of the guarantees intended to limit the abuse of criminal judicial authorities at various levels. In practice, there have been cases in which the court acquitted individuals, as well as cases in which courts of first instance convicted persons but later declared them innocent by appellate or cassation courts [2].

The application of the rule "the accused is presumed innocent until proven guilty" provides a form of protection for personal liberty and places the burden of proof upon the public prosecution. In the context of proceedings involving children, the presumption of innocence remains attached to the child, even where he has confessed to the acts attributed to him, since a confession does not negate the presumption. Moreover, the child's statements before the investigative authority are considered only indicative and rely upon merely for guidance, as they constitute ordinary information [3].

b. The Right to Remain Silent:

The right to remain silent is not confined to the investigation stage alone but precedes it and accompanies the child throughout all procedural stages. For this reason, the child may not be questioned or interrogated without being informed of his right to remain silent [4].

The legislature did not expressly address the child's right to remain silent when it appeared before investigative authorities in the Child Protection Law. However, by referring to the general rules contained in the Code of Criminal Procedure, it is evident that the accused child is recognised as possessing the right to remain silent and to refuse to answer questions addressed to him. The relevant provision explicitly obliges the investigating authority to inform the accused of

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[1] Zafaia Baghesham, *Guarantees for protecting juvenile delinquents during investigations*, Lectures notes, Ahmed Zabana University Center, Relizane, Institute of Legal and Administrative Sciences, p 104.

[2] Youssef Delanda, *A concise guide to fair trial guarantees*, 2nd Edition, Houma Publishing, Bouzareah, Algeria, 2006, p 33.

[3] Op.Cit, p 105.

[4] Rachid Khaldi, Interrogation, questioning, and confrontation. *Police Journal* Issue 47, 1991, p 17-18.

his right not to make statements while acknowledging his right to remain silent and to refuse to answer questions translates to art 100 of Criminal Procedure, The investigating authority must record this notification in the official report [1].

Second: Guarantees established under the Child Protection Law No. 15/12

The legislature, through the Child Protection Law No. 15/12, has established a set of guarantees specifically granted to the juvenile during the investigation. These guarantees may be examined as follows:

a. Right to the Presence of the Legal Representative:

This right is affirmed by Article 11 of the Code of Criminal Procedure.

b. Confidentiality of the Inquiry and Investigation Procedures

This means that the investigation is confidential from the public, while it remains accessible to the parties to the case, namely, witnesses, the accused, and victims. Articles 38(2) and 68 of Law No. 15/12 provide the following in this regard:

Article 38(2): "The child, his legal representative, and the lawyer, where appropriate, shall be summoned by *a* registered letter with acknowledgement of receipt at least eight days prior to the hearing of the case."

Article 68: "The juvenile judge shall summon the child or his legal representative in connection with the proceedings."

c. Right to the Assistance of Counsel:

Pursuant to Article 67 of Law No. 15/12, the presence of a lawyer to assist the child during the investigation stage is mandatory, whether the lawyer is chosen by the child or by his legal representative or appointed ex officio by the juvenile judge or by the juvenile judge responsible for conducting the investigation, in coordination with the Bar Association and in accordance with the list prepared in advance under the applicable legislation and regulations.

The purpose of the lawyer's presence during the investigation is to assist the child and his legal representative, to submit requests and pleadings and to appeal all orders issued in this regard. This constitutes an important safeguard for the child and ensures his right to a fair trial [2].

d. The Juvenile's Right to Be Informed of the Charges Brought against Him:

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[1] Zafaia Baghesham, Ipid, p 105.

[2] Kadadra Yousra *Investigation and trial of juvenile delinquents in Algerian legislation,* Master's Dissertation, Faculty of Law, University of Mostaganem, 2022-2023, p 26.

When the accused appears before the investigating judge for the first time, the judge verifies his identity and informs him of all the acts attributed to him, in accordance with Article 100 of the Code of Criminal Procedure translates to Article 100, Code of Criminal Procedure.

The Code of Criminal Procedure does not contain a specific provision obliging the investigator in juvenile cases to notify the juvenile of the charges against him; therefore, the general provision applies. Judges do not apply Article 40(2) of the Convention on the Rights of the Child, which provides that the child must be informed promptly and directly of the charges against him, through his parents or legal guardians where appropriate, and must obtain legal or other appropriate assistance in the preparation and presentation of his defence.

This can be attributed to several fundamental justifications, some of which may be highlighted, particularly those related to the criminal courts' lack of direct reliance on the international standards enshrined in the Convention, such as the United Nations Convention against Corruption. On the other hand, this stems from judges' primary focus on the provisions explicitly stipulated in domestic legal texts, such as the Penal Code and the Code of Criminal Procedure, which define procedures and penalties in a tangible and binding manner. Furthermore, the standards of this international convention are often not applied in practice within judicial proceedings, either due to the absence of clear implementation mechanisms in national legislation, or as a result of insufficient training for judges in integrating these standards into their interpretation of local laws, or even owing to political and administrative challenges that hinder the adoption of an integrative approach between domestic law and international obligations. This reality significantly limits the effective impact of the Convention in shaping everyday judicial practice.

Conclusion

In the field of juvenile justice, the Algerian legislature has established a set of legal guarantees that take into account the particular characteristics of this category, drawing on the principles of criminal justice and international instruments on children's rights. Investigative procedures and treatment methods have been adapted to ensure the protection, reform, and rehabilitation of the juvenile through the adoption of alternative mechanisms to punishment, including mediation and conciliation. This approach grants juvenile justice a protective and reformative character aimed at reintegrating the juvenile into society and avoiding the negative effects of traditional punishment.

This system is also based upon the mandatory nature of investigation, social inquiries, and the examination of the child's personality and circumstances while assisting both the child and his family. Priority is always given to maintaining the child within his natural environment before social protection measures are adopted within care institutions. Coercive punishment is employed only exceptionally. Judgments and decisions issued by juvenile judicial authorities are subject to appeal before a higher instance. Law No. 15–12 have also established special protection for juveniles placed in specialised centres through programmes of care, rehabilitation, education, and services that collectively ensure respect for their rights.

Among the most important findings reached are the following:

- The absence of a legal guardian may delay judicial proceedings.
- The legislature has not adopted a comprehensive code regulating the various legal aspects of the rights and protection of the child, resulting in the dispersion of relevant provisions across several legal texts.

On the basis of these findings, several proposals of both legislative and organisational natures have been formulated to strengthen the system of justice applicable to juvenile delinquents as follows:

- A legally binding time limit for the resolution of cases involving juveniles should be established to avoid the negative psychological effects resulting from delays in adjudication.
- Establishing specialised centres for the reception and rehabilitation of juvenile delinquents, particularly during the stage of detention.
- The necessity of separating juvenile courts from courts dealing with adults should be emphasised, given the differences in cases and the particularity of treatment, which focuses on psychological and rehabilitative aspects rather than solely on legal considerations, to avoid the negative effects of traditional trials that may adversely affect the psychological stability of the child.

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