

The Legal framework for the Protection of Working Children in Algerian Law

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Abstract:

Many international conventions and national legal texts aiming at protecting the child rights have been issued as he needs care and life in a safe environment so that he grows up correctly. However, the difficult social circumstances, crises, wars, and other reasons pushed the child into leaving the school and getting into the labor market to help the needy family. This has negative effects and deprives him from his rights due to the risks he faces in the workplace. Therefore, the working child protection has been taken into consideration through issuing international conventions and legal texts aiming at protecting him in his workplace and keeping him far from being economically exploited or hired in illegal domains. This is through determining the conditions of admitting the child into any job, and imposing inspection on the bosses; in case of any violation, the boss gets sanctioned according to the applicable law.

Keywords: Labor; working child; labor inspection; occupational medicine; job autorisation

INTRODUCTION:

All countries give children care a great importance by providing guarantees in order to protect their rights either on the international or national level through issuing declarations and conventions to provide them with the legal protection and all their rights. Like the other countries, Algeria has issued many laws that include effective techniques to protect the children relying on the international conventions and texts.

On another side, the Algerian Legislator seeks to promote the child life and to prepare him to live a decent life that ensures his psychological and social equilibrium and his preparation for professional life later. Despite the care about children rights and legal

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protection providing, child labor is one of the complex issues that faces societies due to the rising numbers in the last years especially because of wars, economic fluctuations, and social changes that resulted since the last decade leading the purchasing power to deteriorate. There are also other reasons such as family disunion and parental violence.

The importance of this study lies within the fact that child labor is increasing and impacting the children rights negatively by depriving them from education, decent family life, making them victims of aggression and economic exploitation, dangerous diseases, low wages...etc. The complex issue triggers opposing views: there are those who support it and others who denounce it. Thus, international organizations intervened in order to organize child labor, be it regular or irregular, through imposing an international protection thanks to legal texts providing for their protection from all kinds of exploitation during their shift to guarantee their rights, and ensuring equality in having a decent life like other children.

The International Labor Organization ILO took child protection as one of its priorities through issuing international conventions to protect the working children. It obliged the member states to abide by its laws, enact national regulations based on their content, and to sanction any breach. In the same context, Algeria ratified the international conventions and enacted laws that regulate child labor from one side, and that fight it from another side since it is a concern for all countries.

The Legislator accepted children labor with conditions that guarantee their rights. Thus, we find ourselves obliged to grapple with a paramount question that is:

To what extent is the legal protection imposed by the Algerian legislator effective in regulating child labor?

To answer this question, we relied on the analytical-descriptive method through studying the texts that organize and show child labor conditions.

We also analyzed their effectiveness in providing the necessary protection for the working child and ensuring his rights in his

workplace. We divided the study into two chapters in order to cover the legal sides of the study: chapter I tackles the legal principles for child labor protection, and chapter II tackles the effective protection devoted to working children .

Chapter I: The Legal Principles for Child Labor Protection

Algeria gave children rights protection and promotion a priority and a strategy through which it applies many plans. It gave the social protection of the child¹ a great importance since its ratification of international conventions through protecting him from the risks that may face him, or any kind of economic exploitation in his workplace especially at an early age. To implement its policy in this domain, it put some mechanisms such as enacting laws that provide for the necessary techniques that provide protection for the working child.

These laws are the basis of this protection; that is why we will discuss this in two subsections; the first is about the provided protection in the general legislation, and the second is about the special legislation.

First subsection: The Provided Protection in the General Legislation:

The legislator provided the necessary protection for the child through ensuring his rights in all the domains such as health care, education, job...etc through enacting many laws despite he did not ratify all the international conventions issued by the ILO.

Therefore, we shall discuss this protection as it is in the constitution in first part and in Labor Code in second part.

First Subtitle: The Provided Protection in the Constitution:

Since independence, the Legislator gave a special importance to child labor and made many provisions that guarantee children protection. Article 69/4 and 5 of 1996 constitution, amended in 2016², provides for: “punishing employment of U-16 children. The state works to promote apprenticeship and sets policies that help creating new jobs”. Thus, the constitution determined the legal work age as 16. Any employer who does not respect this shall be sanctioned. The state works to create new jobs; which is in fact not implemented due to high rates of unemployment and school drop-out at an early age.

Article 73 provides that: “the life circumstances of the citizens who are under the legal working age, or who are not able to work, shall be guaranteed”. Thus, the Legislator confirms again that the citizens who are under the legal working age, or unable to work have their rights guaranteed by the state, including children. On another side, the Legislator confirms the children protection and their necessary rights in article 72/1 and 2 of the constitution which provide that: “the family shall have the protection of the state and the society. The family and the society protect the children rights”. Article 77 of the constitution provides that “everybody enjoys his liberties in the light of the rights of the others recognized by the constitution, especially respect of the right to honor, intimacy, protection of family, young persons, and children”.

Second Subtitle: The Protection Provided in the Labor Code

Labor Code is one of the most important legal texts that regulate job relationships³ and the worker's rights; it is the Law 90/11 about job relationships. Through this Code, we can see that it gave child labor a big importance and regulated it according to special rules and procedures. It relied on the previous constitutional principle which determined 16 as the legal work age. It also added it to the principles of the Labor Code 90/11 in Article 15 which provides that “the work age can never be under 16 save for apprenticeship. It is also forbidden to employ the minor in risky jobs or that may affect his health or morals”. Through this article, we see that the Legislator gives an importance to the protection of the working children in compliance with the international conventions through determining the legal working age as 16 in both the constitution and the Labor Code.

However, there are exceptions such as apprenticeship that is regulated by special law. In addition, the working minor cannot be economically exploited in risky jobs that may affect his health or morals such as pornography, drugs, or others.

To guarantee this, the Legislator issued sanctions against any individual who may hire a minor according to Article 100 of the Labor Code “Anyone who employs a minor under the legal working age shall be fined 1000 to 2000 Algerian Dinars save for apprenticeship

that respects the applicable law. If committed again, the sanction may be from 15 days to two months of detention, in addition to the fine that may double”.

We notice that the imposed sanctions against anyone who employs a minor are simple and do not foster children protection; it is just a simple fine of 1000 to 2000 Algeria Dinars or the double if the breach is recommitted. The Legislator regulated discrimination between the workers based on the wage, working hours, work circumstances, age, sex, and social and familial state. Thus, He placed the working minor with the adults concerning the working hours and the wage. This was confirmed by Article 17 of the Act 90/11 which provides that “all provisions of the conventions or job contracts are ineffective if they lead to discrimination between the workers, in whatever job, that may be based on the age, sex, social state, ethnicity, political affiliation, or unionism”.

Second subsection: The Protection Provided for in the Special Law

The Legislator fostered the legal protection of the child through issuing new act, Act 12/15, that provides for the children rights and their protection⁴ from all kinds of economic exploitation. It showed the children rights and the necessary ways to protect them. This fosters the legal system through new laws that protect the child from aggression and exploitation. From Act 15/12 about children protection, we find that Article 2 defined the child and the child in risk and tackled the issue of minor child labor and considered it as an economic exploitation that deprives the child from his right to education, and has a negative impact on his health, physical, and moral safety. It also considered child mistreatment as any treatment that puts him under cruelty leading to his psychological and emotional disequilibrium. Article 2 of Act 15/12 included the most important definitions as follows: This Act defines:

-The child: as any person who is U-18. The term “Juvenile” has the same function.

-The child in risk: as any child whose health, morals, education, or security are menaced or subject to, or his life conditions or behaviors

may take him into potential risk that may harm his future; or being in an environment that endangers his physical, psychological, or educational safety.

Among the cases of a child in risk we find:

Mistreatment of children especially by being subject to torture and aggression against his physical safety, kidnapping him, withholding food, or practicing any activity that includes cruelty that may impact his emotional and psychological equilibrium.

-Economic exploitation of the child especially through employing him in a job that deprives him from education, or that may affect his health, physical, or moral safety”.

Moreover, the Legislator confirmed that the state is obliged to protect the child from all kinds of harm, aggression, exploitation, or physical offence in the ordinary life: or in wars, emergencies, armed conflicts, and calamities. He confirmed this in Article 6 of Act15/12 which provided that “the state guarantees the child’s right in protection against all kinds of harm, negligence, violence, mistreatment, exploitation, physical, moral, or sexual offence. In so doing, it sets the necessary measures to protect him and provide the necessary conditions for his growth, care, safe life, and raising him in a sane and safe environment, protection of his rights in emergencies, calamities, wars, and armed conflicts”. Moreover, the Legislator sanctions anyone who exploits children economically even if it were his family relatives, or mentor according to Article 139 of Act 15/12 which provides that” anyone who exploits a child economically shall be detained 1 to 3 years and fined 50.000 to 100.000 Algerian Dinars. The sanction shall be doubled if the doer is one of his relatives”. The Legislator made the sanction more stringent than it had been in Labor Code.

Chapter II: Effective Protection Devoted to Working Children

After we had shed light on the legal basis for the provided protection for children, we have to tackle all the necessary measures and the guarantees provided by the Legislator all along with the control mechanisms and their role in protecting the working child; this is to be done in two subsections, subsection one is about the necessary

measures for admitting the child into a job, while the second is about the control mechanisms and their role in protecting the working child.

First subsection: The Necessary Measures for Admitting the Child into a Job

All the international conventions and the Algerian legislation provided for the prohibition of under the legal working age child labor. They determined the age of the working minor and regulated the measures and the procedures that must be respected in order to employ the child. Therefore, we have to go through the necessary conditions for the admission of the child into the job in first part and the protection measures in second part.

First Subtitle: The Necessary Conditions for Admitting the Child in to a Job

The Legislator set some conditions that must be met in order to consider the working minor as a worker with duties and rights as the adult ones.

Among these conditions we find:

1: The Legal Working Age

The Legislator determined the legal working age for children based on the International Labor Convention before 1973. The decision of the International Labor Conference issued in 1945 set some measures when the child joins the job or during work. These measures aim at protecting the working children from diseases or injuries in their workplace⁵. As previously mentioned, the Legislator determined the minor child working age as 16 similarly to what the French legislator did, and contrary to some other Arab countries which set 14 as the legal working age for children according to the exception of International Convention No. 138 of 1973 about the minimum employment age in the underdeveloped countries. This was applied by the Egyptian, Mauritanian, and Bahraini Legislators, while the Iraqi, Libyan, and Moroccan Legislators determined 15 as the minimum employment age; other countries did not abide by the provisions of the Convention and determined 13 as the minimum

employment age like in Saudi Arabia and 12 in Sudan⁶.

The International convention determined the minimum employment age 16 because of:

a- The Social and Economic Factors:

Child labor rates increase in underdeveloped countries where the income per capita is low leading the children to drop out of school and find a job at an early age to help the needy family. In the developed countries, the living standards and the income per capita are high; thus, the parent provides for the family members, not the children. Moreover, the state provides the necessary social, health, economic, and psychological care. Thus, the International Convention No.138 of 1973 determined 15 as the minimum employment age with the exception of underdeveloped countries where it can be 14⁷.

b- Education completion:

Education completion is one of the criteria of the international conventions and national legislations in which the legal work age is determined. The child must complete education in the fundamental levels that ensure his abilities of reading and writing i.e. completing the compulsory education; this is generally around the age of adolescence⁸.

The Legislator built on this principle in his determination of the legal work age that is 16 which corresponds the completion of the compulsory education phase. However, sometimes, the child drops out of school before this age due to the harsh life conditions, the long distance between his house and school, or the low intellectual level that does not allow him to complete his education. This pushed the Legislator to legalize child labor under the legal age in apprenticeship in vocational training centers to fight the phenomena of school dropout.

2: Work Authorization:

Article 15/2 of the Labor Code 90/11 provides that: “the minor shall not be employed unless an authorization from the mentor is granted”. Therefore, the Legislator conditioned the parents or the mentor authorization before admitting the child into a job at the age of 16. The authorization should be written and ratified and put in the

child's file. The legislator did not specify how the authorization should be; written or oral. But, it had better be written to guarantee the child rights. As a result, we can consider the authorization as a legal tool that provides the necessary protection for the child. The employer must abide by the provisions of Article 15/2 of Labor Code i.e. not employing a minor child without authorization of his parents or mentor. In return, the Legislator fines anyone who employs a minor, and detains him if the act is recommitted unless under apprenticeship contract which we previously mentioned that allows the manager to employ U-16 children according to Article 140 of Act 90/11⁹.

3: Medical Checks:

Health care is compulsory for the child. The parents are in charge of this. In order to start a job, the child must have good health and physical conditions that qualify him to do the assigned tasks. Second, the employer must provide the suitable environment that ensures health care and excludes all risks.

To keep the child's health safe, the Legislator obliges the employers to provide health care through making medical checks before admitting the child into the job. After employment, the child must undergo periodic checks according to the different legal texts such as Article 17 of Act 88/07 on the preventive health care, security, and occupational medicine¹⁰; it provides that: "any worker or trainee must undergo occupational, private, and periodic checks related to the job". The text covers all the workers even the children. Act 90/11 obliges the employer to provide suitable work conditions for the child such as not employing him in risky jobs, or dirty places that affect his health or morals according to Article 15/3 which provides that: "the minor shall not be employed in risky jobs or dirty places that may affect his health or morals".

The Legislator confirmed that preventive health care is one of the workers' rights that the employer must provide according to Act 90/11 which provides that: "all the workers enjoy the fundamental rights such as:...preventive healthcare, security, and occupational medicine".

Second subtitle: The Necessary Measures to Protect the

Working Child

In order to provide the necessary protection for the working child in his workplace, some regulations have to be followed such as:

1: the Work Hours:

The ILO and special legislations work to provide the necessary conditions for the working child because his physical make up does not support hard tasks or long working hours. According to the international labor standards, the child's working hours should not be as the adults'. The child daily and weekly working hours must be specified by the national competent authorities¹¹.

The decision of the International Labor Conference issued in 1945 determined the child's weekly working hours at no more than 40 for children who do not go to school, and this should be reduced for U-18 workers who receive an artistic education¹².

The Legislator did not specify the working hours of a minor child in the Labor Code 90/11 which explains that it is equal to the working time of an adult i.e. 40 hours in at least 5 days according to the Ordinance 97/03 which amended Act No. 90/11 on job relationships in Article 2 which provides that: "the legal weekly working period shall be set at 40 hours under normal working conditions, which shall be distributed at least on 5 days."

2: Ban on Night Shift:

Since all legislations allow a child to work, they have specified the measures to be taken when he is employed.

Since he is young, his physical make up cannot afford to work long hours and he gets tired.

This makes it impossible for children to work at night¹³ as confirmed in Article 28 of Act No.90/11 which provides that: "workers of both sexes who are under 19 years of age may not be employed in any night job." The employer must respect this requirement, which protects the health of the worker and determines the working hours for the working child. Night jobs ban covers also apprenticeship.

3 :Prohibition of Child Labor in Risky Jobs:

Risky jobs have negative effects on the health of the worker because of substances used such as radiations or the use of chemicals

that affect the worker's body if they are inhaled or touch the skin. For the working child, the Legislator has prohibited his employment in risky jobs that affect his physical and mental health. Article 15/3 of Act 90/11 states: "Nor may a minor worker be employed in a risky job, or in which there is no hygiene, or that may affect his health and morals." However, the Legislator has not explained the meaning of the risky jobs and their criteria. It would have been better if they had been included as a supplement to the Labor Code.

There are various provisions prohibiting the employment of children in hard and risky jobs such as Article 17 of Decree 05/117 on measures to protect against ionizing radiation which states: "it is prohibited to employ workers under 18 years of age to work under ionizing radiation except for practical training or apprenticeship which can be performed from 16 years of age." Consequently, it is prohibited for the employer to employ children under the age of 18 in jobs where ionizing radiation is used except for vocational and practical purposes¹⁴ where 16 years old children can.

Second Subsection: Control Mechanisms and their Role in Protecting the Working Child

In order to ensure the legal protection of working children, it is not enough to have legal provisions regulating them. Instead, bodies or mechanisms must be put in place to control compliance with the rules of such protection.

First subtitle: Labor Inspectorate as a Control Body to Ensure Protection of Working Children

All international conferences held before the First World War and even before the ILO in 1919 took care of the subject of labor inspection and issued recommendations urging states to establish special bodies with impartiality and independence between workers and employers¹⁵. The Legislator responded to international recommendations and established the Labor Inspectorate as a control body to ensure the proper application of the Labor Code. The legal system has been reinforced by new measures on the intervention of Labor Inspectorate to control employment procedures and the necessity of insurance schemes affiliation. Act 90/03 of 06 February

1990 on the Labor Inspectorate¹⁶ has been issued to determine the tasks of the Labor Inspectorate and the Labor Inspector prerogatives. Then, Executive Decree 05/05 on the General Labor Inspectorate and its conduct has been issued¹⁷.

Article 2/1 of Act No. 90/03 on the Labor Inspectorate provides that: "the Labor Inspectorate is responsible for controlling the application of the legislative and regulatory provisions on individual and collective labor relations, working conditions, health protection, and safety of workers." Accordingly, the Labor Inspectorate is obliged to control the application of the Labor Code, working conditions, health protection, and security of workers using two methods¹⁸:

*The first method is to examine the working conditions in terms of workers' rights under the law or those arising from the job contract, such as wages, working hours, breaks, and holidays.

*The second method is to examine the working conditions in terms of the working environment and the extent to which appropriate health conditions are in place to protect workers from falling into normal and occupational diseases, as well as the safety and security of machinery and buildings, and the availability of safety conditions in order to avoid the risk of injury.

The Inspectorate also carries out operations to combat clandestine or illegal labor and to protect the rights of workers in general, whether they have a regular or irregular working relationship with the employer provided that the workers or Labor Inspectors are independent towards the government or the institutions under its control. The Labor Inspectorate is therefore obliged to control the availability of legal conditions for the employment of a minor child. If the conditions are not met and regulations are not respected, the Labor Inspectorate obliges the employer to set right the wrong in a deadline of 8 days. If he does not respond to the obligations, the affair shall be drawn into courts¹⁹.

The Labor Inspectorate has also been given the task of registering working children in special registers which the employer is obliged to observe and verify through the personal information of each individual worker as stated in Article 6 of Executive Decree 96/98

which provides that²⁰: "the employer must review the workers' register on a permanent basis, clarify the movements of workers and the nature of the employment relationship, and determine the different categories of workers engaged in their jobs i.e. working children, apprenticeship, distant workers, part-time workers, and disabled workers. "

However, given the real situation, the role of the Labor Inspectorate is particularly limited in combating irregular (uncontrolled) child labor in the black market, or in industrial enterprises or shops, since the Labor Inspectorate cannot intervene and control these jobs.

On the other hand, there are some employers who illegally employ children under the legal age without notifying the Labor Inspectorate; therefore, it cannot protect them and defend their rights.

Second Subtitle: occupational medicine as a control mechanism for child labor

The environment surrounding the worker during his work is one of the most important factors affecting his daily activity. Whenever there are no health, safety, and hygiene conditions, performance of the worker decreases because the conditions surrounding him throughout the working hours affect his physical and mental health.

For this purpose, the legislator has established a special mechanism or body to control the employing body, its compliance with and application of the laws, and the provision of a healthy environment for the worker; namely, occupational medicine. Therefore, Act No. 88/07 on health protection, security, and occupational medicine²¹ was issued.

In accordance with Article 3 of Act No. 88/07, the Legislator stipulates that the employer's enterprise must ensure the health and safety of workers and that their workplaces, surroundings, and all equipments are kept clean²². (The primary task of occupational medicine is sometimes preventive and therapeutic) It is by protecting workers from the risks that may cause accidents and occupational diseases and all the damage to them.

In the case of working children, the competent health department of the occupational medicine has been tasked with conducting

periodic medical checks at least twice a year for U-18 minor workers²³.

The Legislator grants the occupational doctor prerogatives to improve the working conditions:

He works to improve the conditions of life and work in the employing organization, hygiene in the workplace, food services, reception centers and places of life, protection of workers from harm²⁴, particularly the use of risky materials, risks of work accidents and occupational diseases, and guidance of employees in the fields of health, hygiene, and security in the workers' environment²⁵.

CONCLUSION:

It is clear that the Legislator is concerned with the protection of children in general and minor workers in particular: whether in general or in private legal texts. However, this legal protection is not complete because the Legislator protects the working child aged 16 years and over by means of various articles. This is known as a regular minor worker who is registered in private books by the employer and is subject to conditions. But, children who are employed under this age, or who work informally in the black market, are not guaranteed the necessary protection.

The conditions and rules for their inclusion in the labor force were not specified.

One of the most important findings is that the Legislator has established rules and conditions for the employment of a child by setting the age of 16 years for starting a child's job, which is an appropriate age compared to other Legislations. He has also given the task of controlling the conditions of child labor to both the Labor Inspectorate and the occupational medicine; the latter is concerned with the health and psychological aspects of the working child.

As a result, we have to suggest:

- Ensuring that employers are constantly controlled and respecting the provisions of the minor child employment.
- Ensuring the respect of the legal working age (16) and those children under that age are not employed.

- Act 90/11 regulates the employment relationship between the employee and the 16-year-old (regular worker) but not the irregular working children. Accordingly, Act No. 90/11 must be amended and new rules or procedures must be established for the protection of illegal working children.
- The Legislator is obliged to draw up a special provision on child labor or to amend Act 90/11, and to highlight the protection of children at work, specifying the conditions of their work and establishing a list of risky jobs which the child is prohibited from carrying out because they are harmful to his health.
- Highlighting the role of control bodies as Labor Inspectorate and expanding their powers with full independence from any guardianship in order to ensure controlling the employing institutions.
- Imposing deterrent sanctions, whether financial or punitive, on employers in violation of conditions and procedures working child employment.
- Developing awareness-raising programs on the risks of child labor in educational institutions and giving more attention to the family, in addition to schooling children until adolescence to absorb this phenomenon.

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