

The legal safeguards for juvenile offenders during trial and the execution of penal measures

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Abstract:

The legal safeguards afforded to juvenile offenders are based on the principle of protecting the minor and providing opportunities for reform rather than focusing on punishment. This begins at the stage of arrest with the obligation to immediately inform the legal guardian and to enable the juvenile to seek the assistance of a lawyer who ensures the right to defense. Investigative authorities are also required to apply special treatment that takes into account the juvenile's age and prohibits any pressure or coercion that may influence their statements. During the trial, hearings are held in camera to preserve the juvenile's privacy and future, and priority is given to educational and social measures instead of custodial penalties. In the event that a penal measure is imposed, it must be carried out in reform institutions specifically designated for juveniles and subject to judicial supervision to ensure respect for their human rights. The execution stage includes educational, rehabilitation, and counseling programs aimed at correcting behavior and enhancing the juvenile's reintegration into society after the completion of the measure, thereby achieving a balance between protecting society and caring for the minor.

Keywords: juvenile offenders, trial proceedings, right to defense, reintegration.

Introduction:

The legal protection of juvenile offenders within the penal environment is considered one of the most prominent concerns of modern legislation, as international awareness has increased regarding the importance of guaranteeing the rights of juvenile offenders within reform and correction institutions. In this context, the Algerian legislator, within the framework of its international commitments, has sought to establish a set of legal mechanisms that ensure the rights of juvenile offenders during the period of execution of penalties or reform measures.

The primary objective of these mechanisms is not so much to punish the juvenile as it is to seek their reform and reintegration into society as an active member. Accordingly, efforts have been made to develop approaches that go beyond traditional punitive methods and propose alternative solutions that focus on the educational and psychological rehabilitation of juvenile offenders within penal institutions. These mechanisms also aim to ensure the provision of a safe and healthy environment for juveniles within these institutions, thereby enhancing their chances of reform and their sound

return to society. Within this chapter, we will examine the legal mechanisms established by the Algerian legislator to protect juvenile offenders in the penal environment, through the following two sections: legal safeguards for juvenile offenders during trial and the execution of penal measures in the first section, and alternative penalties and their role in reforming juvenile offenders in the second section. Through these two sections, we will present the most important legal texts, legislation, and reform programs adopted in Algeria to ensure the protection of juvenile offenders, with a focus on the legal standards that guarantee a fair trial and reform-oriented penal execution in line with children's rights and humanitarian principles.

The juvenile offender constitutes a special category within the legal system, which requires the legislator and the judiciary to establish rules that ensure distinctive treatment taking into account their age, psychological and social condition, and their right to sound development within society. Therefore, modern legislation, foremost among it Algerian legislation, has attached great importance to establishing legal safeguards that guarantee juvenile offenders a fair trial that respects their rights and is suited to their situation, whether during the trial stage or during the execution of penal measures. Moreover, the Algerian legislator, in line with international conventions, particularly the Convention on the Rights of the Child of 1989¹, has worked to adapt the juvenile justice system in a manner that guarantees fundamental principles such as the presumption of innocence, protection from arbitrariness, the right to defense, and humane treatment free from all forms of violence or abuse. This is in addition to adopting integrated reform programs during the execution of penalties aimed at the social and psychological reintegration of juvenile offenders.

Based on the foregoing, the following issue is raised:

To what extent has the Algerian legislator succeeded in providing effective legal protection for juvenile offenders in a manner that achieves a balance between the requirements of criminal justice and the principles of social care?

Accordingly, this research paper seeks to address the guarantees of a fair trial for juvenile offenders and the treatment of juvenile offenders within penal institutions.

First: Guarantees of a Fair Trial for the Juvenile Offender

The right to a fair trial is considered one of the most fundamental rights that must be guaranteed to every litigant; however, it acquires heightened importance when it concerns a juvenile offender, given their psychological and social particularities and young age, which necessitate the adoption of special measures that provide the necessary protection during trial. Accordingly, the Algerian legislator has been keen to establish a set of procedural and substantive safeguards capable of ensuring a fair trial for juveniles, in harmony with the principles enshrined in international conventions, particularly the Convention on the Rights of the Child, as well as the international standards governing juvenile justice, such as the Beijing Rules and the Riyadh Guidelines. This approach was embodied in Law No. 15-12² relating to the protection of the child, which laid down the foundations for a trial adapted to the nature of the juvenile, through the establishment of specialized bodies and the adoption of non-traditional procedures, with an emphasis on the educational and reformative dimension rather than punishment. Accordingly, this section will address the most important legal guarantees established by the Algerian legislator during the trial stage, through two main branches: special litigation procedures for juveniles in the first branch, and the juvenile's right to legal and judicial assistance in the second branch.

First Branch: Special Litigation Procedures for Juveniles

Juvenile justice enjoys a distinctive character in terms of its objectives, which are not limited to uncovering and proving the crime, but extend to identifying the causes and surrounding circumstances that led the juvenile to commit the offense, and subsequently adopting appropriate measures to address those causes and circumstances in order to prevent the juvenile from falling under their influence again. In this regard, Islamic Sharia is considered one of the earliest legal systems to have differentiated between the treatment of juveniles and adults, as it established the principle of gradation in criminal responsibility, based on the rule “the pen is lifted from the child until he reaches puberty.” Islamic jurisprudence also paid attention to determining the age of discernment and the age of puberty as decisive stages separating moral and legal responsibility, which constitutes the theoretical foundation of the contemporary juvenile justice system. Moreover, Sharia-based sanctions took into account “the best interest of the juvenile” and prioritized reform over deterrence³.

Furthermore, the philosophy of juvenile justice is based on a central idea that the juvenile offender is not a criminal in the full sense of the word, but rather a victim of social, economic, and educational circumstances beyond their control. Consequently, purely punitive deterrence loses its effectiveness unless it is accompanied by reformatory measures. This philosophy is grounded in criminological studies that confirm that custodial penalties often lead to counterproductive results, especially for minors, which necessitated the establishment of a justice system based on the principle of the best interests of the child and educational intervention rather than deterrence⁴. Accordingly, the Algerian legislator has established judicial bodies entrusted with adjudicating juvenile cases, whether at the level of the court, first, or the judicial council, second.

First: At the Level of Courts and Judicial Councils

A- At the Level of Courts

The Juvenile Section at the level of the court has jurisdiction over offenses committed by juveniles who are under the age of 18 on the date of committing the offense. Juvenile courts differ from ordinary courts in terms of their composition, as the Juvenile Section is composed of a juvenile judge as president and sworn assistants appointed by the President of the competent Judicial Council for a period of three years, from among persons over 30 years of age, holding Algerian nationality, and known for their interest and specialization in juvenile affairs. As for juvenile judges, they are selected from among qualified judges due to the care they provide to juveniles at the court located at the seat of the Judicial Council, by a decision of the Minister of Justice for a period of three years. In other courts, juvenile judges are appointed by an order of the President of the Judicial Council for a period of three years, provided that they hold at least the rank of Vice-President of a court. The Juvenile Section is also composed of a representative of the Public Prosecution and a court clerk.

The Algerian legislator has established several procedures relating to the trial of juveniles, which, taken as a whole, constitute legal guarantees for the juvenile and aim primarily and essentially at disciplining the juvenile's character, correcting their behavior, reforming them, and preparing them for reintegration into society⁵.

Among the fundamental guarantees established by the legislator in juvenile cases is the obligation to hold hearings in camera. Confidentiality aims to protect the juvenile from social stigma and to provide a safe environment for expression. The Algerian Supreme Court affirmed this principle in its decision No. 240387 issued in 2005, holding that the publicity of hearings in juvenile cases results in the nullity of the judgment⁶.

B- At the Level of Judicial Councils

The Juvenile Chamber at the level of the Judicial Council is composed of a president and counselors appointed by an order of the President of the Judicial Council from among the council's judges known for their interest in childhood affairs. It has jurisdiction to examine all appeals brought before it from the Juvenile Section at the level of courts or the Juvenile Section at the court of the seat of the Judicial Council when the matter concerns felonies. The Juvenile Chamber adjudicates in accordance with the procedures established for the Juvenile Section at the level of the court⁷.

Second: At the Level of the Ordinary and Exceptional Criminal Court

This court has jurisdiction to hear cases classified as felonies, in addition to adjudicating felonies, misdemeanors, and related contraventions committed by defendants, as well as acts described as terrorist or subversive.

Second Branch: Principles That Enshrine the Protection of the Juvenile During Trial

In this branch, we will address the juvenile's right to legal and judicial assistance, first; the confidentiality of procedures and the protection of the identity of the juvenile offender, second; the presence of the juvenile at trial in the presence of their civil guardian, third; and finally, fourth, the prohibition of publishing what takes place during the hearing.

First: The Juvenile's Right to Legal and Judicial Assistance

The presence of a lawyer with the juvenile is mandatory in all offenses, due to the importance of such presence in juvenile cases, especially since the juvenile is usually unable to defend themselves as an adult can, as they lack the ability to discuss evidence or examine witness statements⁸.

This relationship is governed by an important principle, namely the joint effort between the judicial system and lawyers to entrench a protective and educational juvenile justice policy. This principle was affirmed by Order No. 71/57 dated 05 August 1971 relating to legal aid⁹, Juveniles have been integrated among the persons who automatically benefit from legal aid, as provided for in Article 25 thereof with regard to juveniles appearing before the juvenile judge, thereby enabling the juvenile defendant to be immediately assisted by a lawyer appointed by the Bar Association to undertake their defense. Legal aid for children in Algeria has undergone significant development, evolving from merely the possibility of benefiting from a free lawyer to becoming a binding legal obligation on the judiciary, especially in felony cases. This development constitutes a response to international recommendations, particularly Article 40 of the Convention on the Rights of the Child, which expressly stipulates the obligation to provide legal assistance to the accused or defendant child. Law No. 15-12 on the Protection of the Child has enshrined this guarantee through Article 67, which made the presence of a lawyer mandatory at all stages of the proceedings¹⁰.

With reference to the United Nations Convention on the Rights of the Child, which was adopted by the United Nations General Assembly on 20 November 1989 and ratified by Algeria in 1992, specifically Article 12 thereof, which provides that the child shall, in particular, be given the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. The same Convention further provides, specifically in Article 40 thereof¹¹, paragraph 2(b), it provides that every child alleged as, accused of, or recognized as having infringed the penal law shall have at least the following guarantees:

- The presumption of innocence until proven guilty according to law.

- To be informed promptly and directly of the charges against them, through their parents or legal guardians, where appropriate, and to have legal or other appropriate assistance in the preparation and presentation of their defense.
- To have the matter determined without delay by a competent, independent, and impartial authority or judicial body in a fair hearing according to law, in the presence of legal counsel or other appropriate assistance and, unless it is considered not to be in the best interests of the child, in particular taking into account their age or situation, in the presence of their parents or legal guardians.

Likewise, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules, 1985) provide in Part Three, paragraph two, that the juvenile shall have the right to be represented by a legal adviser at all stages of the judicial proceedings and to request the court to appoint a lawyer free of charge, where such appointment is permitted under the law of the State.

As for Algerian legislation, although it has been previously mentioned that the appointment of a lawyer during the investigation stage before the Juvenile Section is mandatory, under penalty of nullity of the investigation procedures, reference is made to the text of Article 67 of the Child Protection Law¹², it provides as follows: “The presence of a lawyer to assist the child is mandatory at all stages of prosecution, investigation, and trial. If the child or their legal representative does not appoint a lawyer, the juvenile judge shall appoint one ex officio or entrust this task to the President of the Bar Association.”

Article 56 of the Algerian¹³ Constitution also provides that every person shall be presumed innocent until proven guilty by a competent judicial authority, within the framework of a fair trial that guarantees them the necessary safeguards to defend themselves.

In the case of ex officio appointment, the lawyer is selected from a list prepared monthly by the Bar Association in accordance with the conditions and modalities specified in the applicable legislation and regulations. The Child Protection Law also sets out a number of procedural rules during the investigation of juveniles, most notably the requirement that the legal guardian or lawful representative be present during investigation sessions, and the obligation on the investigating judge to explain the charges in simple language appropriate to the child’s level of understanding. All statements made by the juvenile must also be recorded audiovisually, in order to ensure the proper conduct of proceedings and to prevent any psychological or physical pressure from being exerted on them. These safeguards reflect Algeria’s commitment to complying with Article 40 of the Convention on the Rights of the Child¹⁴.

Furthermore, the judgment or decision issued by the Juvenile Section or the Juvenile Chamber must indicate the name of the lawyer who defended the minor and confirm their presence alongside the juvenile; otherwise, this results in annulment. Accordingly, the appointment of a lawyer for the juvenile at the hearing before the juvenile court is mandatory, whether appointed by the juvenile’s guardian, trustee, or custodian, or ex officio by the juvenile judge in coordination with the Bar Association, as this requirement is a matter of public order, and failure to appoint a lawyer entails annulment.

Second: Confidentiality of Procedures and Protection of the Identity of the Juvenile Offender

The principle of confidentiality of proceedings is considered one of the most important legal safeguards established by the Algerian legislator in juvenile cases, aimed at protecting the juvenile offender from the negative social and psychological consequences that may result from publicity.

Indeed, the disclosure of details of the offense or the identity of the juvenile may lead to stigmatization within their social environment and undermine their chances of reintegration after leaving the reform institution.

Article 471 of the Code of Criminal Procedure provides¹⁵ that It has stipulated the obligation to hold juvenile hearings in camera, under penalty of nullity, as it provides: “Hearings of the Juvenile Section shall be held in secret, and no information about the cases brought before it may be published except with the authorization of the presiding judge. Any violation of this principle shall result in the nullity of the judgment.”¹⁶

This rule is consistent with international standards, particularly Article 40 of the Convention on the Rights of the Child, which emphasized the necessity of protecting the child’s privacy during judicial proceedings, as well as the Beijing Rules of 1985, which affirmed the principle of “strict confidentiality” in juvenile cases.

The legislator did not limit protection to the confidentiality of trial hearings, but extended it to prohibiting the publication of the juvenile’s identity or image in the media, or any reference that would allow their identification. This safeguard is considered fundamental to preserving the child’s dignity and providing appropriate conditions for their psychological and social rehabilitation¹⁷.

However, practical reality reveals the existence of violations, particularly by some media outlets that publish detailed information about crimes committed by juveniles, which requires more stringent legislative and regulatory intervention to protect their privacy.

Third: The Presence of the Juvenile at Trial and the Presence of Their Civil Guardian

With reference to Article 82 of the Child Protection Law, it provides that: “Pleadings before the Juvenile Section shall be conducted in a closed session. The Juvenile Section shall adjudicate after hearing the child, their legal representative, the victims, and the witnesses, and after the pleadings of the Public Prosecution and the lawyer. It may also hear the principal perpetrators of the crime or adult accomplices for evidentiary purposes. The child may be exempted from attending the hearing if their interest so requires; in such case, they shall be represented by their legal representative in the presence of the lawyer, and the judgment shall be deemed to have been rendered in the presence of the parties.”

The same procedures and modalities apply at the second level, namely the appeal stage before the Juvenile Chamber of the Judicial Council, in accordance with Article 92 of the Child Protection Law¹⁸ the Juvenile Chamber adjudicates in accordance with the forms set out in Articles 81 to 89 of this Law. Pursuant to these provisions, the presence of the juvenile at trial is mandatory, as they are a party to the proceedings; the judge addresses the charge to them and hears their statements. It is noted that the legislator used the term “hearing” rather than “interrogation,” and in our view this reflects the adoption of special procedures, since the purpose of the juvenile judge is protection, discipline, and education rather than punishment and deterrence. Accordingly, the judge does not confront the juvenile with questions or interrogate them in the same manner as a criminal judge does with adult offenders¹⁹.

As stated, the general rule is that the juvenile attends the trial hearings, as they are considered a party to the criminal case. However, the Child Protection Law, in furtherance of protecting the juvenile and safeguarding their best interests, and as an exception to the general rules, allows the court to exempt the child from attending the trial in person if it deems that their interest so requires²⁰.

In this regard, paragraph three of Article 82 of the Child Protection Law provides: “The Juvenile Section may exempt the child from attending the hearing if their interest so requires. In such case, the child shall be represented by their legal representative in the presence of the lawyer, and the judgment shall be deemed to have been rendered in the presence of the parties. The presiding judge may, at any time, order the child to withdraw from all or part of the pleadings.”

This exemption is considered to be of significant benefit, particularly if the child’s attendance at the hearing would harm their feelings, undermine their dignity, or lead them to believe that their conduct was justified. Despite this exemption, the trial remains adversarial with respect to the juvenile, since they did not fail to attend of their own accord; rather, the court preferred their absence. Consequently, the judgment is rendered in the presence of the parties²¹.

With regard to the juvenile’s guardian or legal representative, Article 82 of the Code of Criminal Procedure, as well as Article 92 of the same law, provides for their attendance. The rationale for summoning these persons to attend the juvenile’s trial lies in the legislator’s requirement that the judge hear their statements, which, on the one hand, help to uncover the true reasons behind the juvenile’s delinquency in order to determine the appropriate reform measure for their situation, and, on the other hand, serve to defend the juvenile. Such summons is prescribed for the benefit and interest of the juvenile.

Some argue that the presence of the guardian or legal representative is a matter of public order and that the case should not be adjudicated in their absence. However, there is no text stating that this requirement is of public order. The juvenile must be tried with the judge indicating that the parent or legal representative was summoned but did not attend unlike the presence of the lawyer, which is considered a matter of public order at all stages of prosecution, investigation, and trial.

The Child Protection Law provides for the mandatory presence of the legal representative of the juvenile defendant at the hearing; however, the legislator did not specify a sanction for their absence, unlike the Syrian legislator, who addressed this situation in Article 49, paragraph (b), of the Juvenile Delinquents Law, which authorizes the Juvenile Court, when necessary, to conduct the juvenile’s trial in the absence of their guardian, trustee, or custodian, if they were summoned but failed to attend, leaving the court to assess the juvenile’s best interest in this regard.

Fourth: Prohibition of Publishing What Takes Place During the Hearing

Rule Eight of the Beijing Rules of 1985, relating to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, provides in its second paragraph that the juvenile’s right to the protection of their privacy shall be respected at all stages, in order to avoid any harm that may be caused by unnecessary publicity or by criminal labeling. As a general principle, information that may lead to the identification of the juvenile offender may not be published. The rule also emphasizes the importance of protecting the juvenile from the harmful effects that may result from the publication of information about the case in the media, such as mentioning the names of juvenile offenders, whether they are still accused or have already been sentenced.

With reference to Article 137 of Law No. 15-12, it provides as follows: imprisonment from six (6) months to two (2) years and a fine ranging from 10,000 DZD to 200,000 DZD, or one of these two penalties only, shall be imposed on:

1- Anyone who publishes and/or broadcasts what takes place during hearings of juvenile judicial bodies, or a summary of the pleadings, orders, judgments, or decisions issued by them, in books, the

press, radio, cinema, via the Internet, or by any other means. This is also provided for in Article 13 of the Jordanian Juvenile Law, which prohibits publication through books, newspapers, and cinema, and punishes any violation thereof with a fine of not less than five dinars and not exceeding fifteen dinars, while allowing the publication of the judgment without reference to the juvenile's name or surname.

In fact, the approach adopted by Algerian and Jordanian legislation constitutes an advanced step toward protecting the juvenile and preserving their future reputation, in line with the new horizons of juvenile criminal justice, particularly the presumption of innocence until proven guilty according to law.

2- To be informed promptly and directly of the charges brought against them through their parents or legal guardians, where appropriate, and to obtain legal assistance or other appropriate assistance for the preparation and presentation of their defense.

3- To have the matter determined without delay by a competent, independent, and impartial authority or judicial body in a fair trial according to law, in the presence of legal counsel or other appropriate assistance, and in the presence of their parents or legal guardians, unless such presence is considered contrary to the best interests of the child, particularly taking into account their age or condition.

Likewise, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules, 1985) provide in Part Three, paragraph two, that the juvenile has the right to use legal counsel to represent them at all stages of judicial proceedings and to request the court to appoint a lawyer free of charge, where permitted by the law of the State.

As for Algerian legislation, although it has been previously stated that the appointment of a lawyer during the investigation stage before the Juvenile Section is mandatory under penalty of nullity of the investigation procedures, reference to Article 67 of the Child Protection Law shows that it provides: "The presence of a lawyer to assist the child is mandatory at all stages of prosecution, investigation, and trial. If the child or their legal representative does not appoint a lawyer, the juvenile judge shall appoint one ex officio or entrust this task to the President of the Bar Association."

Article 56 of the Algerian Constitution of 2020 also provides that every person shall be presumed innocent until proven guilty by a competent judicial authority, within the framework of a fair trial that guarantees them the necessary safeguards to defend themselves.

In the case of ex officio appointment, the lawyer is chosen from a list prepared monthly by the Bar Association in accordance with the conditions and procedures set out in the applicable legislation and regulations. The judgment or decision issued by the Juvenile Section or the Juvenile Chamber must also indicate the name of the lawyer who defended the minor and confirm their presence alongside the juvenile; otherwise, this entails annulment. Accordingly, the appointment of a lawyer for the juvenile at the hearing before the juvenile court is mandatory, whether appointed by the juvenile's guardian, trustee, or custodian, or ex officio by the juvenile judge in coordination with the Bar Association, as this requirement is a matter of public order, and failure to appoint a lawyer results in annulment.

Second: Treatment of the Juvenile Offender Within Penal Institutions

Juvenile criminal justice is not limited to the stage preceding the pronouncement of judgment, but extends to include the manner in which the sentence itself is executed, particularly within re-education institutions designated for this category. This aspect reflects the extent of the State's commitment to

national and international standards relating to children's rights, especially with regard to the dignity of the juvenile, their right to education and training, and their protection from all forms of neglect or abuse during the execution of the sentence.

In this context, the Algerian legislator, through the Child Protection Law No. 15-12 and Executive Decree No. 16-292 relating to the organization of re-education institutions, has been keen to ensure humane and educational treatment of juvenile offenders, guaranteeing a penal environment based on reform and rehabilitation rather than deterrence or abuse. Based on this vision, this section addresses the issue of the treatment of juvenile offenders within penal institutions through two branches: the first examines the legal standards for the treatment of juvenile offenders and the guarantees provided by national law and the requirements for executing sentences in an appropriate environment; the second addresses rehabilitation programs within penal institutions, which aim to reintegrate juveniles into society through education, training, and psychological and social support.

First Branch: Legal Standards for the Treatment of Juvenile Offenders

The treatment of juvenile offenders within penal institutions constitutes a fundamental criterion for assessing the extent to which the State respects international conventions and the values of restorative justice. Algerian legislation has adopted this approach by providing for a set of principles that take into account the vulnerable situation of this category and aim to distance juveniles from manifestations of marginalization and deviance within penal institutions, while ensuring the protection of their dignity and fundamental rights during the execution of sentences.

Among the most prominent international standards guiding the treatment of juveniles within penal institutions are the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, known as the Beijing Rules, which emphasized the necessity of respecting the juvenile's human dignity, their right to education and health care, and the requirement of complete separation between juveniles and adults. Article 13 of these Rules further provides that the objective of detention shall be rehabilitation rather than punishment, and that treatment shall be carried out through educational rather than punitive methods²². Accordingly, this section will examine the educational principle in dealing with juvenile offenders, first; the legal safeguards within re-education institutions, second; the separation of juveniles from adults in detention, third; the principle of reducing the duration of detention and prioritizing alternative measures, fourth; and finally, the supervision of the specialized judge and the guarantee of judicial oversight, fifth.

First: The Educational Principle in Dealing with Juvenile Offenders

The Algerian legislator has emphasized the educational character in dealing with juveniles, considering that the primary objective of any measure taken against them is guidance and reform, rather than deterrence and punishment. This approach is reflected in Article 1 of the Child Protection Law No. 15-12, which provides that the purpose of this law is "to ensure the protection of the child at risk or in conflict with the law, and to enshrine the principle of the best interests of the child as a fundamental rule in all measures taken with regard to them."²³

Article 6 of the same law further stresses that the handling of the situation of a juvenile offender must take place within the framework of educational measures aimed at their reintegration into society, while guaranteeing their rights to education, health care, and vocational training within a closed environment²⁴. This is reflected in the legislator's emphasis on educational institutions rather than punitive ones in treatment, which demonstrates the State's intent to adapt the measures taken in a manner consistent with the particularities of the juvenile's age.

Second: Legal Safeguards within Re-education Institutions

Executive Decree No. 16-292 dated 2 November 2016, relating to the organization of re-education institutions, sets out a number of regulatory rules that ensure humane and professional treatment of juveniles. Pursuant to Article 4 of this Decree, “the institution shall ensure the educational, living, health, and psychological conditions necessary for the re-education of the juvenile.” Article 11 thereof further obliges the institution to guarantee the juvenile’s right to basic education, vocational training, and medical care, in addition to psychological and social support.

In accordance with Article 27 of the same Decree, any conduct likely to undermine the juvenile’s dignity or cause physical or psychological harm is prohibited, thereby enshrining the juvenile’s right to protection from all forms of abuse²⁵.

Third: Separation of Juveniles from Adults in Detention

The principle of separating juveniles from adults during detention is one of the most important safeguards provided for in international conventions, and it has been expressly enshrined by the Algerian legislator in the Code of Criminal Procedure. Article 138 bis provides that juveniles held in custody or sentenced must be “placed in facilities specifically designated for them, completely separated from adults.”²⁶

This measure aims to protect the juvenile from the negative influence of contact with adult offenders and to spare them exposure to violence or exploitation within the penal environment. Despite the explicit legal requirement to separate juveniles from adults, practical reality reveals challenges related to the lack of infrastructure, particularly in some inland provinces. The 2022 report of the National Human Rights Council noted that certain penal institutions do not have fully independent wings for juveniles, which may expose them to direct negative influence from adults. This issue highlights the urgent need to allocate specific budgets for the expansion of detention facilities and to train specialized staff to deal with juveniles within these wings²⁷.

Fourth: The Principle of Reducing the Duration of Detention and Prioritizing Alternative Measures

Among the fundamental principles also adopted by the legislator is the reduction of recourse to detention as an initial measure. This is reflected in Article 47 of the Child Protection Law, which enshrines the principle of giving priority to educational and reformatory measures before resorting to any deprivation of liberty²⁸, this reflects a new approach based on reform rather than repression, especially in light of field studies showing that the imprisonment of juveniles often leads to the aggravation of their delinquency rather than its correction.

Fifth: Supervision by a Specialized Judge and the Guarantee of Judicial Monitoring

In furtherance of the guarantees of a fair trial and educational treatment, the legislator has required that juvenile offenders be supervised by a judge specialized in juvenile justice, as provided for in Article 45 of the Child Protection Law²⁹. This judge is competent to examine the measures applied to the juvenile and to assess the progress of their psychological and social condition, thereby ensuring periodic monitoring of the institution’s compliance with legal treatment standards.

In light of the foregoing, it appears that the Algerian legislator has established an integrated legal framework that guarantees treatment which preserves the dignity of juvenile offenders, protects them from arbitrariness, and provides them with a genuine opportunity for reform through specialized

judicial and educational supervision. Nevertheless, the effectiveness of this framework remains dependent on the extent of its actual implementation within re-education institutions, as well as on the availability of material and human resources capable of achieving the desired objectives of this reform-oriented approach.

Second Branch: Rehabilitation Programs within Penal Institutions

In application of the new penal policy aimed at reform and social reintegration of detainees, and in order to achieve the objectives set behind placing juvenile offenders in re-education institutions, precise standards and systems have been established to regulate the conditions of detained juveniles and to determine methods of treatment that ensure proper care, the provision of necessary health and psychological support, as well as educational programs and activities, in addition to education and vocational training necessary to achieve the social reintegration of the juvenile. The methods of treatment of juvenile offenders are determined according to their age and the place of execution of the sentence or measures imposed. The Algerian legislator has also allocated specialized re-education centers and institutions for juveniles, as well as special wings for them within penal institutions, for the execution of custodial sentences and imposed measures, through a program that guarantees a set of methods and systems implemented under the supervision of the prison administration, which we will attempt to examine hereafter.

First: Education and Vocational Training

Education and vocational training programs are considered among the most important methods adopted in the treatment of juvenile offenders within re-education centers and institutions, and represent an optimal means of addressing juvenile delinquency. Lack of education and cultural deprivation are among the most significant factors contributing to delinquency, primarily resulting from school dropout among juveniles. Achieving the social reintegration of the juvenile is therefore based on returning them to the educational pathway or subjecting them to vocational training, with the aim of qualifying them to practice a trade selected from among those offered within the institution. These institutions may include workshops such as blacksmithing, automobile mechanics, central heating, plumbing, general electricity, decorative painting, hairdressing, wood processing, and agricultural activities³⁰ the right to education is considered one of the most prominent standards relied upon by modern penal systems to measure the effectiveness of their reform policies, especially when it comes to juveniles. Education is regarded as an effective means of reintegrating the juvenile offender by compensating for the educational and social gaps that contributed to their delinquency. In Algeria, the legislator attached particular importance to this right in Article 11 of Executive Decree No. 16-292, by making basic education compulsory within re-education institutions. Field studies also indicate that the provision of educational programs within these institutions significantly reduces rates of recidivism³¹.

These programs are supervised by a “Re-education Committee³²” in accordance with the juvenile’s inclinations and preferences. This approach was adopted by the Algerian legislator through Article 120 of Law No. 05-04³³. Furthermore, reference to Article 160 of the same law shows that vocational training is subject to the provisions of labor legislation and social protection, in order to ensure the health and safety of juveniles. This is consistent with Rule 74 of the Standard Minimum Rules for the Treatment of Prisoners, adopted by the Geneva Conference under the auspices of the United Nations in 1955³⁴.

Second: Re-education and Discipline Programs

The reform and rehabilitation of juveniles for life within society is fundamentally based on their re-education through disciplinary programs and methods whose primary objective is to instill the religious and moral principles and values upon which society is built. Juvenile offenders are accustomed to discipline and commitment through regular stages and pedagogical progression adapted to their personality. In the event of a violation of institutional rules, the juvenile may be subject to one of the following disciplinary measures: a warning or a reprimand; in other cases, the measure may extend to deprivation of certain recreational activities or temporary prohibition from disposing of their financial earnings. The first two measures are decided by the director of the institution, whereas deprivation or prohibition is determined only after obtaining the opinion of the disciplinary committee³⁵.

The task of moral guidance is entrusted to religious figures appointed by the prison administration for this purpose, relying on the delivery of lectures, awareness campaigns, and encouragement to observe religious rites.

Third: Health and Social Care

The legislator has been keen to ensure the physical well-being of the juvenile, whether before their placement in a penal institution, during the execution of the sentence imposed within the institution, or, when necessary, through referral to hospital institutions. Juveniles are subjected to periodic and continuous medical examinations and benefit from balanced and sufficient meals to support their physical and mental development. Health care is not limited to treating illnesses among convicted juveniles, but also extends to taking the necessary preventive measures to protect them from disease, such as ensuring personal hygiene. Accordingly, the prison administration is obliged to provide the necessary hygiene supplies and to enforce compliance with the programs it establishes.

Psychological care constitutes one of the essential pillars in the reform of juvenile offenders, as many cases of delinquency are attributable to undiagnosed psychological disorders. A study conducted at the Bab Ezzouar Re-education Center confirmed that 63% of juveniles suffered from previous family trauma, which required the intervention of psychologists through individualized programs and therapeutic support. This contributed to a reduction in recidivism rates by 22% within one year after release³⁶.

Psychological care also constitutes one of the fundamental pillars in the reform of juvenile offenders, as many cases of delinquency stem from undiagnosed psychological disorders. A study conducted at the Bab Ezzouar Re-education Center confirmed that 63% of juveniles were suffering from previous family trauma, which necessitated the intervention of psychologists through individual programs and therapeutic support. This contributed to a reduction in recidivism rates by 22% within one year after release³⁷.

Sports and recreational activities are likewise considered an effective means of preserving the juvenile's health; therefore, it is necessary to provide the appropriate spaces and equipment for this purpose. This has been enshrined by the Algerian legislator in Article 37 and the following provisions of Law No. 05-04 referred to above. However, despite all this, the juvenile's life cannot be considered normal unless it takes place within a collective environment through which their private life and their relationship with their family and others are organized. Consequently, depriving the juvenile of the social environment in which they previously lived constitutes an obstacle to reorganizing their life anew. Social care helps the juvenile to accept their new life within the institution and guides them toward rehabilitation in preparation for their return to society as a responsible citizen. Social care for

the juvenile is achieved through organizing their individual and collective life within the institution, while maintaining their connection with the outside world by allowing visits, correspondence, and temporary leave. This contributes to stabilizing their psychological state and ensuring the success of the methods adopted for their reform and rehabilitation, as confirmed by Article 131 of the Child Protection Law.

Third Branch: Challenges to the Implementation of Standards within Penal Institutions

Despite the clarity of the legislative framework governing the treatment of juvenile offenders within penal institutions, practical reality reveals significant challenges that hinder the proper implementation of these standards and affect the quality of care provided to this vulnerable category.

The first of these challenges lies in the lack of specialized training for institutional staff. Many employees working within re-education institutions lack the psychological and educational training necessary to deal with children in conflict with the law. Supervision is often entrusted to personnel with a purely security background, which results in the predominance of a punitive approach over an educational one, contrary to the provisions of the Child Protection Law.

Secondly, weak coordination between the juvenile judge and the penal institution constitutes one of the main obstacles, as the effectiveness of follow-up procedures depends on the availability of accurate and transparent periodic reports on the juvenile's behavior within the institution. Such reports are not always available due to the shortage of social workers and psychologists.

Thirdly, there is a noticeable absence of mechanisms for the regular evaluation of rehabilitation programs, as the psychological and social impact of activities provided within institutions is not measured, nor is the development of the juvenile's personality or readiness for reintegration monitored. Clear scientific indicators to determine the effectiveness of these programs are almost entirely lacking³⁸.

In its 2022 report, the National Observatory for Childhood called for the restructuring of re-education institutions and their transformation into integrated centers equipped with the psychological and educational conditions necessary for the rehabilitation of juveniles, in accordance with the principle of "the best interests of the child."³⁹

Conclusion:

In conclusion, it is evident that the legal safeguards established for juvenile offenders during both the trial stage and the execution of penal measures constitute a fundamental pillar in the protection of children's rights and the promotion of a specialized justice system that takes into account their age and needs. These safeguards ensure a fair trial characterized by confidentiality, the presence of a legal guardian or social representative, and the provision of legal and procedural assistance that prevents any infringement upon the juvenile's dignity or exploitation. The adoption of educational measures as an alternative to traditional penalties also represents a pivotal step in guiding juveniles toward reform rather than repression. The supervision of specialized judges and the guarantee of judicial oversight over care and reform institutions constitute essential safeguards against arbitrariness during the execution of sentences. Thus, it becomes clear that this integrated system of judicial and educational measures seeks to achieve a balance between protecting society and the juvenile's right to reintegration. Accordingly, the importance of developing legislation and improving implementation conditions emerges as a necessity to ensure greater effectiveness. Ultimately, the

protection of juveniles remains a shared responsibility that requires sustained judicial and societal effort.

Footnotes

1. Convention on the Rights of the Child, United Nations, adopted by General Assembly Resolution No. 44/25 of 20 November 1989, and entered into force on 2 September 1990.
2. Law No. 15-12 of 15 July 2015 relating to the protection of the child, Official Gazette of the People's Democratic Republic of Algeria, No. 39, Algeria, p. 4.
3. Decision No. 240387 of 17 December 2005, issued by the Criminal Chamber, Judicial Review, No. 2, 2006, p. 94.
4. Abdelkader Bourayou, *Juvenile Law in Algerian and Comparative Legislation*, National Office of University Publications, Algeria, 2019, p. 45.
5. Hadj Ali Badr Eddine, *Criminal Protection of the Child in Algerian Law*, Master's thesis in Criminal Sciences and Criminology, Tlemcen, 2009–2010, p. 158.
6. Algerian Supreme Court, Decision No. 240387 of 17 December 2005, Judicial Review, No. 2, 2006, p. 94.
7. Ben Arab Mohamed, *The Scope and Status of the Right to a Fair Trial in the European Convention on Human Rights*, article published in *Legal Studies Journal*, Issue No. 05, Algeria, 2009, p. 37.
8. Ouadah Fatima and Ben Deddouche Ghemari Nadra, *Safeguards Afforded to Juvenile Offenders During Trial Proceedings Under Law No. 15-12 on Child Protection*, Notebooks of the Child Rights Laboratory Journal, Issue One, Volume Ten, Abdelhamid Ibn Badis University, Mostaganem, Algeria, 2020, p. 42.
9. Order No. 71/57 of 5 August 1971 relating to legal aid, Official Gazette of the People's Democratic Republic of Algeria, No. 64, Algeria, 10 August 1971.
10. Youssef Ben Ayad, *Legal Protection of the Child under Algerian Law*, Dar Al-Huda, Algeria, 2021, p. 87.
11. Convention on the Rights of the Child, Article 40, paragraph 2(b).
12. Article 67 of the Child Protection Law No. 15-12.
13. Presidential Decree No. 20-442 of 30 December 2020, amending the Constitution, Official Gazette of the People's Democratic Republic of Algeria, No. 82, Algeria, 30 December 2020.
14. Khaled Zerrouki, *Special Criminal Procedures for Juveniles in Algerian Law*, Dar Al-Ma'rifa, Constantine, 2021, p. 129.
15. Article 471 of Order No. 66-155 of the Code of Criminal Procedure, dated 8 June 1966, as amended and supplemented.
16. Article 471 of the Code of Criminal Procedure, Algeria: Official Gazette of the People's Democratic Republic of Algeria, No. 15, 2020.
17. Article 8 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), United Nations, 1985.
18. Law No. 15-12 of 15 July 2015 relating to the protection of the child, Official Gazette of the People's Democratic Republic of Algeria, No. 39, Algeria, Article 92.
19. Belkacem Souigat, *Criminal Protection of the Child in Algerian Law*, Master's thesis in Criminal Law, Faculty of Law and Political Sciences, Kasdi Merbah University of Ouargla, 2010–2011, p. 44.
20. *Ibid.*, p. 45.

21. Maouane Mustafa, *The Role of the Judiciary in the Social Rehabilitation of Juveniles: A Comparative Analytical and Applied Study*, Master's thesis in Legal Sciences, Sidi Bel Abbes, 2008–2009, p. 175.
22. Article 13, United Nations, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)*, 1985.
23. Article 1 of Child Protection Law No. 15-12.
24. Article 6 of Child Protection Law No. 15-12.
25. Article 27 of Executive Decree No. 16-292.
26. Article 138 bis of the Algerian Code of Criminal Procedure, previously cited.
27. National Human Rights Council, *Report on the State of Human Rights in Algeria*, 2022, p. 37.
28. Article 47 of Child Protection Law No. 15-12, previously cited.
29. Article 45 of Child Protection Law No. 15-12, previously cited.
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33. Article 120 of Law No. 05-04, previously cited.
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35. Article 121 of Law No. 05-04, previously cited.
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37. Samia Kharraz, *Mental Health of Juvenile Offenders in Algerian Penal Institutions*, Master's thesis, University of Algiers 2, 2022, p. 78.
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39. Algerian Ministry of Justice, *Guidance Manual for the Care of Juvenile Offenders*, Directorate of Criminal Affairs, Algeria, 2021, p. 28.