

CRIMINAL RESPONSIBILITY OF JUVENILES IN ALGERIAN LEGISLATION

LAKLI NADIA¹, CHENAA AMINA², YAHYA BEY KHADIJA³

¹Lecturer "A" at Faculty of Law, Ain Temouchent Belhaj Bouchaib (Algeria), nadia.lakli@univ-temouchent.edu.dz

²Lecturer "A" Faculty of Law, University of Souk Ahras (Algeria), a.chenaa@univ-soukahras.dz

³Lecturer "A" Faculty of Law and Political Science (Algeria), khedidjabey@yahoo.fr

^{1,2}Laboratory "Philosophy, Science and Development (Algeria)

^{1,2,3}University of Oran 2 (Algeria)

Abstract:

Juvenile means a child who has not reached majority age, crimes committed by juveniles are among the most common phenomena at present as a result of several factors related to the child's personal and social conditions.

Most legislation, including the Algerian legislature, seeks to address this phenomenon by imposing dissuasive penalties to prevent this criminal phenomenon. However, these penalties fit with the child's age and circumstances. Therefore, it differentiates between the criminal irresponsibility stage and between the reduced penalty stage, but in a reduced form compared to those imposed on the adult criminal.

Keywords: *Child- juvenile - criminal responsibility- crime- punishment.*

INTRODUCTION:

Crime is an ancient phenomenon that pervade all societies and threatens their security and stability, which necessitated the intervention of legislation by imposing deterrent penalties for various crimes.

However, some crimes may be committed by a sensitive group in society, namely juveniles, as a result of several social and psychological factors that make them juvenile delinquents who commit crimes of various kinds. The Algerian legislature has attached great importance to this segment of society as it is at a sensitive stage of life through the introduction of Law N° 15-12⁽¹⁾. Relating to child protection, which includes all procedures relating to juvenile delinquents to remedy the legal gaps contained in the Code of Criminal Procedure in this area.

Relevance of the topic:

The importance of this study is highlighted in societies' disregard for the factors leading to the juvenile commission of various types of crimes.

The high prevalence of this phenomenon in Arab societies, in addition to the role played by the juvenile in society by reforming or corrupting it, requires highlighting this category.

Objectives of the topic:

This study aims to define the concept of juvenile and identify the factors and reasons for committing crimes of all kinds, as well as the deterrent policy devoted by the Algerian legislator to hold him criminally accountable.

Problematic:

Based on the above, we can raise the following problem: What is the punitive treatment prescribed for juvenile delinquents in Algerian legislation?

To answer this problem, we divided this study into two sections, the first of which is the concept of the juvenile and the factors of his commission of crime, while in the second we will address the stages of criminal responsibility of the juvenile, adopting the descriptive and analytical approach.

The First Topic: The Concept of the Juvenile and the Factors for Committing the Crime

The definitions of the juvenile vary between the jurisprudential and legal definitions, and there are many reasons for committing crimes of various forms, and we will address the concept of a juvenile from the jurisprudential and legal side, and then we will learn about the factors for the juvenile committing the crime.

The First Requirement: The Concept of the Juvenile

The juvenile means idiomatically the person who did not have the faculty of perception and choice because of the failure of his mind to realize the facts of things and choose the beneficial ones because of incomplete growth⁽²⁾, and psychologists define it as "the small from birth until it is psychological maturity and integrated elements of perception and maturity"⁽³⁾. While social jurisprudence defines it as "the young from birth until he is socially mature and integrates the elements of maturity represented in full awareness, that is, knowledge of the human being of the capacity and nature of his work and the ability to adapt his behavior and actions according to the circumstances and requirements of social reality"⁽⁴⁾.

As for the legal definition of a juvenile, the Algerian legislator defines it in Article 442 of the Code of Criminal Procedure⁽⁵⁾: "He is a young person under eighteen years of age, and by the time the young reaches this age, he has reached the age of criminal majority", and also defines the period of modernity as the young person reaching ten years of age and not completing the age of eighteen, according to Article 49 of the Penal Code⁽⁶⁾.

As for juvenile delinquents, some define it as: "a juvenile whose antisocial tendencies are so serious that they make him or could make him subject to official procedure due to the commission of a certain crime"⁽⁷⁾.

Delinquency generally means any aggressive behavior that causes harm to the owner and others, and some also define it as any act or behavior that can be brought before the court and in which a legal judgment is issued⁽⁸⁾. Juvenile delinquency is a legal concept as it refers to the unlawful conduct of juveniles that refer them to justice.

Jurists distinguish between juvenile delinquents who are habitual to commit immoral and criminal acts, and juveniles prone to delinquency who have not yet reached the point of delinquency but are prone to it because of the factors surrounding them.

Article II of Law N° 15-12 on the protection of children defines in its third paragraph a juvenile delinquent: "A child who commits a criminal act and who is at least ten (10) years old.

The lesson shall be to determine his age on the day of the commission of the crime."

Therefore, the age of the juvenile is a key factor in defining him, regardless of the type of crime committed by him, as age constitutes a key criterion in the specificity of the deterrent system applied to him.

The Second Requirement: Commission Factors of a Crime by the Juvenile

Societies should identify the main factors that lead juveniles to commit crimes despite their young age, to find solutions to this widespread phenomenon.

There have been many divisions of jurists regarding the factors of juvenile delinquency which can be divided into personal and social factors.

Subchapter I: Personal Factors

Delinquency in the juvenile may be born of his personality in itself as a result of psychological factors represented in the innate desire of the juvenile to follow behaviors that may reach the point of criminality subconsciously, as the goal behind his behavior aims to satisfy his instinctive rebellious desires without thinking about the consequences resulting from his behavior⁽⁹⁾.

The child may also develop a mental illness due to family factors or because of problems with his teachers at school or even with his classmates, which make him an aggressive child who tends to take revenge through prohibited behaviors.

The lack of family dialogue is one of the most important reasons that generate psychological problems in the child, which he tries to escape from through addiction to drugs or alcoholic beverages, which in turn leads to the commission of crimes. Therefore, psychologists advise leaving room for dialogue between parents and their children to listen to their concerns and problems, even if they are simple in their eyes, and not to ignore them.

Section II: Social Factors

Crime, especially by juveniles, is considered to be action resulting from various social factors.

The family may be considered the first and essential factor in creating a spirit of criminality in the juvenile, as the family constitutes the first environment in which a person finds himself and in

which he learns the principles of life. If a child grows up in an environment where the father is a thief, drug dealer, or murderer, he will inevitably follow his father's example to inherit from him criminal behaviors, or if his mother is lewd, moral principles will be shattered to become permissible⁽¹⁰⁾.

Parents can also fall into unintentional educational prohibitions that indirectly lead to the child's fall into delinquency, and the most important of these prohibitions is manifested in the exaggerated pampering of the child illogically and acquiescence to his requests, which has a wrong idea about the reality of the society in which he lives, turning into an aggressive child towards his classmates at school if they do not respond to his requests, or even towards teachers in the event of his reprimand.

However, the child may grow up in a suitable environment, but acquire criminal behaviors through contact with criminal children, due to the lack of supervision over the child by the parents due to their preoccupations, especially when the mother is a worker and leaves the task of raising her children to others. Bad companionship is the key to deviation, as most causes of behavioral and moral problems are the result of bad companionship, especially in the absence of parental control. It is not limited to monitoring the child's friends only, but parents must monitor the scenes that the child receives through cartoons and electronic games that may contain scenes of violence that the child tries to apply on the ground, it may not exceed delinquency to reach the stage of suicide, and this is what most Arab countries have witnessed as a result of the blue whale game, which claimed the lives of many children.

Family disintegration, whether resulting from continuous disputes between parents, or resulting from their separation or abandonment of one of them from the family, leads to the deviation of the child as a result of the psychological state of the child on the one hand and the lack of control over him on the other hand, and the matter worsens if one or both parents marry another husband, so the child feels insecure and lack of interest on the part of his parents and performs criminal acts to attract their attention, and family disintegration may also lead to the homelessness of the child.

Poverty and the high number of family members are common factors leading to child delinquency, and perhaps the most important crime committed in this case is theft in search of money. Chaotic neighborhoods are also considered the source of juvenile delinquency due to the density of their inhabitants and the absence of living conditions⁽¹¹⁾.

It also plays the educational role and disciplinary methods of parents within the family and teachers within the school in directing the child's behavior, if the method depends on beating, it will generate aggression in the child, which will be practiced on his classmates at school by beating or wounding them, and may even hit the student to his teacher as this phenomenon has become common in Arab societies. Therefore, psychiatrists advise against practicing corporal punishment and offensive words on the child due to the serious consequences that result from it⁽¹²⁾.

In addition to the family aspect, the school plays an essential role in directing the child's behavior, as the school is the first external environment in which the child encounters where he meets different personalities of the children, in which he receives educational teachings outside the arms of his family, so these teachings must be sound and the teacher must be the second educator who fills the child with tenderness and avoids with him all methods of violence such as beating and insulting with words.

The Second Topic: Criminal Responsibility Stages of the Juvenile

In the field of juvenile offenses, the Algerian legislature distinguishes between two stages: the stage of lack of criminal responsibility for juveniles and the stage of mitigating the criminal responsibility of juveniles.

First Requirement: The Stage of the Absence of Criminal Responsibility of the Juvenile (Before 10 years)

Article 49 of the Penal Code stipulates in its first paragraph that: "A minor who has not completed ten (10) years shall not be subject to criminal prosecution."

The period of lack of criminal responsibility of a juvenile ends as soon as he reaches the age of thirteen, and thirteen years is calculated from the day of the commission of the crime and not from

the date of initiation of proceedings against him, as expressly recognized in article 443 of the Code of Criminal Procedure.

The wisdom behind not holding the delinquent child accountable at this stage is that there is no awareness and discrimination at this age, so the person cannot estimate the results of his actions, so it was necessary to exclude the unaware juvenile from criminalization and punishment⁽¹³⁾.

Second Requirement: The Stage of Reducing The Criminal Responsibility of the Juvenile

The Algerian legislator differentiates between a juvenile between the ages of 10 and less than 13 years in respect of whom protection and discipline measures are imposed, but in the case of an offense, he is only subject to reprimand⁽¹⁴⁾, and a juvenile aged 13 to 18 years who is either subject to protection or discipline measures or is subject to penalties. Diluents⁽¹⁵⁾.

Subchapter I: Juveniles Aged from 10 to Less than 13 Years

If a juvenile between the ages of 10 and less than 13 years of age commits a felony or misdemeanor, only educational measures aimed at refining and reforming the juvenile offender shall be imposed, as the legislator treats the juvenile with special treatment because of his young age, and the purpose of the punishment at this stage is educational reform for the child and not deterrent punishment, to correct the juvenile, rehabilitate him and help him integrate into society⁽¹⁶⁾.

Article 85 of the Code on the Protection of the Child sets out the measures that may be taken against a child in the event of a felony or misdemeanor, as follows:

- The handing over of the child to his legal representative or a trustworthy person or family, and the discretion of the juvenile judge to appoint the person to whom the child is to be handed over, and the judge must determine the financial benefits necessary for the care of the child. This measure is considered one of the best means of discipline for the child, as the removal of the child from his family environment may negatively affect his psyche.
- Placing him in an accredited institution entrusted with assisting children, and this measure aims to distance the child from his family and social environment and to place him in a medium appropriate to his psychological and material situation;
- Placement in a boarding school suitable for accommodating children of school age, such as placing the juvenile in a vocational training center that has boarding accommodation. This measure aims to discipline and reform juveniles without depriving them of the right to study.
- Placement in a center specialized in the protection of child delinquents, as a certain category of juvenile delinquents may need to be placed in a specialized center because of the difficulty of applying previous measures to them.
- The application of the system of supervised freedom, which means the release of a juvenile under probation. This monitoring is carried out by permanent and volunteer delegates selected by the judge from among educators specialized in childhood affairs to monitor the material and moral conditions of the child, his health, upbringing, and good use of his leisure time, and they submit a detailed report to the juvenile judge every three months, but in the event of any emergency for the child, his legal representative must notify the juvenile judge immediately⁽¹⁷⁾.

We note that these measures are almost the same as those provided for in the Code of Criminal Procedure, but with some minor changes, as article 444 of the Code of Criminal Procedure defines these measures as:

- Handing it over to his parents, guardian, or person of trust, and the law does not require that they accept the receipt of the child because it is part of their obligations. If the juvenile cannot be handed over to his parents, he or she shall be handed over to a trustworthy person, and the judge shall have the discretion to assess this merit through his examination of his or her particular circumstances.

Article 478 of the Code of Criminal Procedure deals with probation, which stipulates that: "The supervision of juveniles placed in the probation system shall be realized in the department of each juvenile section by entrusting one or more permanent or volunteer delegates to monitor juveniles. A delegate shall be appointed for each juvenile either by order of the juvenile judge or, if

necessary, by the investigating judge competent in juvenile affairs, or by the ruling that decides on the merits of the case.

- Place him in a public or private organization or institution prepared for education or vocational training qualified for this purpose.
- Place him in a qualified medical or pedagogical institution.
- Placing it in a public service charged with assistance.
- Placement in a boarding school suitable for juvenile offenders of school age.

These measures consist of educational or therapeutic measures adapted to the juvenile's situation.

In the event of an offense, the juvenile is subject to reprimand only, which is a correctional measure through which the judge reprimands the juvenile and warns him not to return to him.

Subchapter II: Juveniles Between the Ages of 13 and 18

A minor aged between 13 and 18 years is subject either to the protection and educational measures already mentioned, or to a reduced penalty, and the juvenile judge has the discretion to impose one of the two penalties, taking into account certain criteria relating to the offender and the nature of the offense committed by him. If the judge decides to impose the penal penalty instead of the measure, it will be a reduced penalty compared to that imposed on adults.

Article 50 of the Penal Code of the Algerian legislature defines the penal penalties imposed on minors aged 13 to 18 years, which stipulates: "If the penalty imposed on him is the death penalty or the support imprisonment, he shall be sentenced to imprisonment from ten to twenty years.

If the penalty is imprisonment or temporary detention, he shall be sentenced to imprisonment for a period equal to half the period for which he should have been sentenced if he was an adult."

The sentence is carried out in special rehabilitation centers of the Ministry of Justice with a view to their reeducation and social reintegration, and juvenile delinquents in these centers receive moral training under the supervision of the Re-education Committee.

A minor who has reached the age of 16 can also be punished by working for the public benefit without pay instead of being admitted to the penal institution. The Algerian legislature has dealt with this penalty in Article 5 bis 1 of the Penal Code, with certain conditions, namely:

The person must not have a judicial precedent, attained at least 16 years at the time of committing the crime, the penalty for the crime committed should not exceed three years of imprisonment, and the operative penalty should not exceed one year of imprisonment. The period of work for the public benefit of a minor shall not be less than twenty hours and not more than three hundred hours.

If a minor between the ages of 13 and 18 commits a violation, he is reprimanded or punished with a financial penalty "fine"⁽¹⁸⁾, but the opinions of jurists differ on the imposition of a fine on the juvenile delinquent, as some oppose the imposition of this penalty on the juvenile because it will be paid by his parents, so the financial fine does not have a deterrent effect on the juvenile delinquent for not paying it personally. While some support the imposition of a fine on the juvenile delinquent, even though it falls on his parents instead, which stimulates the intensification of their control over him in the future to avoid committing other crimes⁽¹⁹⁾.

The juvenile judge may change or review the measures of protection and discipline at any time at the request of the Public Prosecution or based on the report of the open environment or his initiative, regardless of the judicial authority that ordered it, but in the case of replacing the extradition measure with the delivery measure, the juvenile judge must submit the file to the Juvenile Section⁽²⁰⁾. For a child aged thirteen to eighteen years, the adjudicator may substitute or supplement the measures with a fine or imprisonment following the modalities specified in Article 50 of the Penal Code.

Finally, we note that the Algerian legislature has introduced a procedure that allows for the conclusion of an agreement between the delinquent child and his legitimate representative on the one hand and the victim or those with her rights on the other hand with a view to reparation, ending follow-ups and reintegrating the child⁽²¹⁾.

However, a problem may arise about the real age of the juvenile, especially when the juvenile presented before the court is not registered in the civil status books or if the child is registered one

year or more after his birth, in which case the judge can appoint a specialist doctor to determine the age of the juvenile based on his physiological structure and mental maturity, and the doctor will provide the approximate age of this juvenile⁽²²⁾.

We note that exempting a juvenile from criminal liability does not exempt him from civil liability, as the juvenile is held liable for the damage suffered by others based on tort liability and is obliged to pay compensation from his own or his own or the property of the person caring for him, such as the father.

CONCLUSION:

At the end of our study of the subject of the deterrent policy for juveniles in Algerian legislation, we note the efforts made by the legislator to protect juveniles and provide a legal environment commensurate with their age and circumstances.

However, the phenomenon of juveniles committing various crimes is still very prevalent in Algerian society, so we decided to put forward some suggestions to prevent this phenomenon, including:

- ✓ Conducting awareness-raising campaigns urging families to take care of their children and to exercise control over them, especially broken families, and to provide them with family warmth instead of seeking it outside the family environment and in prohibited ways;
- ✓ Raising awareness of teachers and directors of educational institutions of the essential role they play in the child's self-development and urging them to avoid aggressive methods practiced against students, such as beating, cursing, and lack of respect towards the student, which generates in himself a spirit of revenge through criminal behavior.
- ✓ Appointment of psychologists in educational institutions at all levels because of their experience and ability to determine the behavior of pupils and prevent the commission of crimes.
- ✓ Periodic meetings in educational institutions to open a dialogue between teachers and students to listen to the concerns of students and the problems they face in their school environment, to find solutions to these problems.
- ✓ The need for State to pay double attention to social problems related to housing and unemployment as major factors in juvenile delinquency.
- ✓ Integrate juveniles with behavioral problems into various activities, whether school or social, to detect their behavioral disorders early.
- ✓ Parents should monitor the scenes of violence that their children receive in cartoons and electronic games, and try to fill their void with educational games or by practicing their favorite hobbies.

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