

## *Social protection of the child in danger according to the law 15-12*

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### **ABSTRACT:**

*The promulgation of the law 15-12 of 15 July on child protection is a very good initiative within the field of the legislation, in particular on social matters; this protection is consecrated within the field of legislation especially on social matter.*

*To being this protection, the Algerian legislator created efficient mechanisms which permitted to save and promote the child. It should be noted that the significant innovation noticed in this initiative, in fact procedural measurements, give to the judge minors effective attributions.*

**Keywords:** *Child, social protection, danger, judge of the minors, legal representative.*

### **ملخص باللغة العربية:**

إن صدور القانون 12-15 الصادر بتاريخ 15 يوليو 2015 المتعلق بحماية الطفل يعد بمثابة مبادرة تشريعية تستحق الثناء، خاصة في إطار المادة الاجتماعية، حيث كرس الدستور هذه الحماية لا سيما في ديباجته وكذا ضمن المادة 72 من القانون رقم 01-16 الصادر بتاريخ 6 مارس 2016 المتضمن التعديل الدستوري.

ولتجسيد هذه الحماية استحدثت المشرع الجزائري آليات ناجعة تسمح برعاية الطفل وترقيته، تجدر الملاحظة إلى أنه من أهم المستجدات المسجلة بخصوص هذه المبادرة التشريعية هي التدابير الإجرائية التي منحت لقاضي الأحداث صلاحيات فعالة.

الكلمات المفتاحية: طفل، حماية اجتماعية، خطر، قاضي الأحداث، الممثل القانوني.

### **Introduction:**

The legislative evolution as regards the child protection generally recognized a remarkable progress, nevertheless in the social field, while starting with the contribution of its family, because the parents do not regard the child as able to properly protect his right. This protection is consecrated in the code of the family by the mode of the

legal representation (guardianship, testamentary supervision and trusteeship).

In case of danger the Algerian legislator intervened by rigorous legal texts containing penal sanctions by the law 15-12 of 15 July 2015 on child protection<sup>1</sup>, and which requires a legal study thereafter to know the weak points as well as the strong points as for reformulation of these texts.

As the precedent, the question that we ask, at which point the Algerian legislator succeeded as regards social protection of the child in danger nevertheless after the promulgation of law 15-12? And especially with the new mechanisms create by this one.

And in order to answer this question (problem) we will distribute this study in two great parts, the first is entitled as follows: Various concepts relating to the child, and we will treat in the second part the mechanisms adopted to ensure the protection of the child in danger.

### **First part: Various concepts relating to the child**

The text of law 15-12, we notice that legislator used different definitions, which enriched the legal encyclopedia and avoided the debates in doctrines. Still the new law quoted several types of penal matter children.

#### **1- The child within the legislative and constitutional field:**

We will study within this field the definition of the child, and then the novelties in constitutional matter related to the children.

##### **a. Definition of the child:**

The child definition in Algerian right is concretized only after the promulgation of the Law n° 15-12, exactly in article 2 which enacts

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*1 Official Journal n° 39 of July 19, 2015.*

that the child is any person not having reached eighteen years completely, the same meaning as well as minor term, this formulation is not sufficient to determine the significance of the child, because the Algerian legislator doesn't have to specify the sex of the person.

Unlike the previous definition, the French legislator defined the minor According to the Article 388 of the French civil code as follows: "the minor is the individual of one or the other sex who still does not have the eighteen years age accomplished".

Besides, the legislator indicated that the representatives of the child are: his tutor or his testator or the person who collects him like his curator or the person who has his custody.

Particularly let us note that article 149 of law n° 15-12 repeals all contrary dispositions with this one, the disposition of ordinance N° 72-03 of February 10, 1972 relating to the adolescence and child welfare as well as the dispositions of ordinance N° 75-64 of 26 September 1975 about creation of the establishments and services in charge of the safeguard of childhood and adolescence; also articles 249 (paragraph 2) and 442 to 494 of ordinance N° 66-155 of June 8, 1966 about code of penal procedure.

And with regard to the transitional dispositions the texts of application of the repealed laws remain in force until the publication of the texts of application of the law relating to the child protection of the child except those which are contrary to them.

#### **b. Novelties of the constitutional revision as for the child:**

The family, the company and the State protect the rights of the child, it is a disposition enacted by the law n° 16-01 of March 6, 2016

about the constitutional revision<sup>1</sup>, and this protection must be the responsibility of the State, the latter which must take in load the abandoned children or without affiliation. This law repressed violence against the children; it is in theory a considerable advance as regards the safeguard of childhood.

Moreover, the family also profited from the protection of the State as well as company, and it is another protection with the profit of the child. It is necessary to quote also that the State works to facilitate for the categories of vulnerable people having specific needs, and if the child suffers from this insufficiency which means that one is entrained of a double protection thus the pleasure of the rights recognized to all the citizens and their insertion in the social life.

The generating cause of this protection goes up with the vulnerability, which allows the prolongation of this safeguard to the old people, who are still protected by the family and the State<sup>2</sup>. But only, it should be retained that the obligations are correlative, because the parents have the obligation to ensure the education of their children, and on the other hand the children have the duty to ensure help and assistance for their parents<sup>3</sup>, and all that under penalty of prosecutions<sup>4</sup>.

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*1 Official Journal N 14 of March 7, 2016.*

*2 See Article 72 of law n° 16-01.*

*3 See Article 72 of law 16-01. Noting that article 7 of the International Convention of the nation's plain enacts that the child must in more possible measurement know his parents. See Florence Laroche, Les droits de l'enfant, Dalloz, 1996, p. 57.*

*4 It should be known that article 69 of the law 16-01 du of March 6, 2016 about the constitutional revision enacts that the employment of the children of less than sixteen years is punished by the law, knowing that the public authorities adopt strategies of prevention and fight against the child work, it's installed in 2003 the*

## 2- Notions of various classifications of children according to the law 15-12:

Article 2 of law 15-12 evoked several definitions of terms relating to the child nevertheless the child in danger, the delinquent child and the taken refuge child.

### a. The child in danger:

The legislator begins these notions with the definition of the child in danger, this last of which his health, his morality, his education or his safety is in danger<sup>1</sup> or likely to be, or whose living condition and behavior are likely to expose him to a probable danger or damaging his future, or whose environment reaches his physical or psychological wellbeing but educational with the danger.

This article enacts the various situations which expose the child to the danger and which are as follows:

- The loss of the parents of the child who remains without family support;
- The exposure of the child to the abandonment and vagrancy;
- The attack with its right to teaching;
- Begging with the child or his exposure to the begging;

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*intersector commission of prevention and fight against the work of the children subdivided in several government departments and of the trade-union organization. See : BOULENOUAR Azzemou, Journée d'étude du 29 novembre 2011 organisée à la faculté de droits, Université d'Oran, p.30.*

*1 Measurements procedural of the child in danger are controls by particular dispositions, and this allows to improve the situation of the young victim. See Daniel GADBIN, Le statut juridique de l'enfant dans l'espace européen, BRUYLANT, Bruxelles, Belgique, 2004, p. 327.*

- When the parents of the person charged are unable to ensure the safeguard of the child to control his behaviors which harm its physical wellbeing, psychological or educational;
- The failure proven and uninterrupted with education and the safeguard;
- the bad treatment of the child and particularly by his tender with torture, the attack with his physical integrity, his sequestration, his deprivation of food or any act of brutality likely to influence the emotional and psychological balance of the child;
- When the child is victim of an infringement made by his legal representative;
- When the child is victim of an infringement made by any other person if the interest of the child requires his protection;
- Sexual exploitation of the child in all his forms; to exploit him in particular in the pornography and the vice and implicate him in sexual exposures;
- Economic exploitation of the child in particular, his employment or his obligation with a work preventing him from continuing his studies or vermin with his health and his physical and/or moral wellbeing;
- The child victim of the wars or any other case with disorder and insecurity;
- The taken refuge child.

**b. Delinquent child:**

The delinquent child is the one who made a fact of charge and whose age is less than ten years, the age desired is that of the day of the commission of the infringement.

**c. Taken refuge child :**

It is the child who was obliged to flee his country while passing by international borders and by requesting the right of asylum or any other form of international protection<sup>1</sup>.

**Second part: mechanisms adopted in order to ensure the child protection of the in danger.**

The role of the national organ of the protection and the promotion of childhood is such as its name indicates, it means to support the children in danger with actions and being useful of the companies, and attributions of services of the open environment are indicated in articles 21 and following.

**1- The national organ of the protection and the promotion of childhood:**

The institution of a tool protecting the child is realized by law n°15-12, this instrument is chaired by a national delegate of child welfare which one must know his attributions.

**a. The creation of this organ:**

The creation of the national organ of the protection and the promotion of Childhood is made to the Prime Minister; this structure is chaired by the national delegate with of child welfare.

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*1 Articles 1 and 52 of the European convention of the humans right which oblige the States to guarantee to any person who raises of their jurisdiction the pleasure of the rights recognized by convention, so. it exerts a permanent control in this question while being useful of the Council of Europe that must be informed of the measurements taken by a State condemned to conform to the returned decision. See Laurence Gareil, L'exercice de l'autorité parentale, Laboratoire de droit civil de l'université Panthéon-Assas(Paris II), Paris, p.400-401.*

This organ is charged to take care of the protection and the promotion of the right child, as it enjoys the legal entity as well as financial autonomy. Moreover it's envisaged in article 11 of the law the 15-12 that the state is charged to place at the disposal of this organ the entire human means and materials which are necessary for him in order to achieve its missions. This article returns the conditions and procedures of organization and operation of the national organ of the protection and the promotion of childhood to the regulation.

**b. The national delegate of the child welfare:**

The appointment of the national delegate of the child welfare is indicated by an order from the council, he must be among the national personalities which enjoy an experiment and famous for the interest of the children. And according to article 13 of the same law, this delegate is charged to promote the rights of the child nevertheless to set up the national and local program of protection and promotion of the rights of the child in collaboration with various administrations and the institutions like establishments, this delegate is also charged to evaluate these programs systematically.

Moreover, the national delegate of the child welfare is entrusted to follow the actions started on the ground as regards the child welfare and coherence between the various speaker. Moreover, this delegate starts information and publicity campaigns as well as communication; he is still for mission of supporting research and teaching as regards the rights of the child in order to conceive the economic and the cultural reasons of abundance, the brutality and the exploitation of the children. In addition to that, the development of the corresponding policies for their protection.



The national delegate of the child welfare can also make the formulation of the opinions on the national legislation related to the rights of the child in order to improve it, as it charged to support the participation of the civil company in the follow-up and favoring the rights of the child, like it has the role of setting up the national system of information on the situation of the children in coherence with the administrations and interesting institutions.

The national delegate of the child welfare is charged with:

- to visit the services from which the mission is to protect the child and present any proposal able to improve their organization or their operation (article 14).
- to transmit the denunciations relating to the attacks to the rights of the child to the service of the qualified open environment when it is seized by any child, his legal representative or any person or entity in order to start the investigation and take suitable measurements according to payments' determined by the law in force.
- To transmit the denunciations of which they cover a penal qualification with the Minister of justice which seize the qualified Attorney General in order to put moving the public action if necessary.

The administrations as well as the public institutions moreover any person in charge of the safeguard of childhood must facilitate the work of the national delegate and put at its services all the explanations which it asks with the provision of not revealing them with the others. This prohibition does not apply to the legal authority. It is necessary to quote in this context and according to

article 18 of law 15-12 that the professional secrecy cannot be opposed to the national delegate of the child welfare<sup>1</sup>.

- To contribute to the development of the reports related to the rights of the child whom the State submits to the international and regional institutions specialized (article 19).
- To elaborate an annual report on the situation of the rights of the child and the state of execution of convention on the rights of the child, this report must be submitted, then published and popularized in the three months which follow the notification.

## **2- Services of the open environment:**

The social protection of the children at the local level is entrusted to the services of the opened environment, in coherence with the various institutions and publicly-owned establishments as well as the people in charge of the safeguard of childhood.

### **a. The creation and the role of the services of the open environment:**

These services are created at as one service in wilaya. However, it can be created several services in the wilaya with strong density of population.

The services mentioned above must be made up civil servant specialized mainly in the educators<sup>1</sup>, psychologists, welfare officers,

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*1 The physical people and morals which revealed information denouncing of the infringements of the rights of the child to the national delegate and which acted in good faith are released from any responsibility (administrative, civil or penal) even if the investigations do not have to give any result.*

sociologists and lawyers according to article 21 of law n° 15-12, this last returned us to the regulation in force as for the conditions and the methods of application.

Moreover, the services of the open environment supervise the situation of the children in danger and support their families. And according to article 22 of law n°15-12 these services are seized by child and/or his legal representative, the Criminal Investigation Department, the Wali, the president of the communal assembly popular, any association or the public or deprived institution exerting in the framework of the protection of the child. The welfare officers, the teachers, the doctors, or any other person or entity of all that can form a danger to the health of the child or his physical or moral integrity.

The services of the open environment can moreover intervene ex officio. They cannot refuse the assumption of responsibility of a child who resides apart from their jurisdiction rationed; notwithstanding, they can in this case ask the assistance of the service of the open medium of or the place residence of the child residence and/or carry out his transfer. They should not show the identity of the person who seized them except if the latter declares its assent.

The services of the open medium must make sure of the effective existence of a situation of danger, and this while being useful of a social investigation, and to do it, it is necessary to move on the place

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*I It is necessary to organize measurements of educational welfare in open medium to possibly take of them measures of placement in family. See: Brigitte Hess Fallon, Droit de la famille, Edition DALLOZ, 6<sup>ème</sup> édition, Paris, France, 2006, p. 199.*

where is the child and to audition the latter then his legal representative on the facts question of notification, for the determination of the situation of the child and in order to take measurements which are corresponding for him.

In the event of pressing need the services of the open environment move immediately with the place where the child is, the services of the open environment can if possible require contacting the public prosecutor's department or of the judge of the minors.

**b. Measures to be taken in a situation of danger:**

The services of the open environment must make sure that the case of danger does not exist; they inform the child and his legal representative. And if the situation of danger exists, they must contact the legal representative of the child to lead to an agreement to the most corresponding measure to the needs for the child and his situation and which makes it possible to draw aside him from the danger.

At last, the thirteen years old child must be associated the catch of any measurement concerning his interests, the services of the open environment must necessarily warn at least the thirteen years old child and its legal representative of their right of refusal as for the agreement, this last is mentioned in an official report duly signed after reading by all the parts.

And according to article 25 of law n° 15-12 the services of the open environment are obliged to leave the child in his family while proposing one of following conventional measurements:

- To oblige the family to take agreed necessary measurements to draw aside the child of the danger within the given periods of time by the service of the open environment;

- To give necessary assistance to the family of coordination with the institutions in charge of social protection;
- To seize both the qualified wali and the president of the communal popular assembly or any social institution for the catch in social contribution of the child;
- To take the essential precautions in order to prevent the contact of the child with any person who can threaten his health, physical or moral integrity.

In addition, the services of the open environment can of office or on request of the child or on behalf of his legal representative to revise the conventional measurement in a partial or total way.

**c. The relation of the services of the open environment with the judge of the minors:**

Article 27 of law n° 15-12 enumerates the various cases whose the services of the open environment must seize the competent judge of the minors and who are as follows:

- When no agreement was reached within ten day as from the notification;
- When the child or his legal representative retracts;
- In the event of failure of conventional measurement in spite of the revision.

Then the services of the open environment must at the moment seize the competent judge of the minors in the event of imminent danger where whenever it is impossible to leave the child in his family, mainly when the child is victim of an infringement made by his legal representative. As they must inform the judge of the minors in a periodic way of the children of which they had the load and of the measurements taken in their connection.

**d. Denunciations relating to the protection of the child in danger:**

According to paragraph 2 of article 29 of law n° 15-12, the services of the open environment must inform the national delegate of the actions taken on the denunciations that it transmitted to them and to forward to him a detailed quarterly report on all the children of which they had the load.

And in order to realize its missions, the State places at the disposal of the services open environment all the human means and materials which are necessary for them for the realization of their missions.

The administration, the public institution and any person in charge of the safeguard of childhood are held to allot all the facilities to the services of the open environment and must place at their disposal all information which they ask<sup>1</sup>, and with obligation not to reveal them with the thirds, except enacted prohibition does not apply to the legal authority. Knowing that the physical and moral people which denounced infringements of the rights of the child to the service of the open environment are released from any responsibility (administrative, civil and penal), even if the investigations led to no result, but take into account the principles of the good faith.

And with regard to the penal provisions, law n° 15-12 envisages sanctions to any person making of the infringement such as it is

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*1 It is necessary to say that the child enjoyed particularly a reliable legal statute through legal texts created by law n° 15-12 and especially as regards information, but there remains the concretization of these rules in the with dimensions one practices, he appears that the right of the information of the child yet actually did not receive in the national law of formal dedication. See Daniel GADBIN, op.cit., p. 333.*

envisaged in article 133 of this law which imposes punishment of a fine of 30.000 DA up to 60.000 DA, any person preventing the national delegate or the services of the open environment to complete their missions or prevents the well run of research and investigations that they achieve. And in the case of repetition the incurred sorrow is the two months' imprisonment up to six months and the fine of 60.000 DA up to 120.000 DA.

### **Conclusion:**

In order to answer the problems posed in the introduction as regards social protection of the child in danger, it is necessary to say that the succession of the laws in this direction before the promulgation of the law n° 15-12 is a period characterized by contradiction as for the contexts of preceding laws in this question as well as the insufficiency concerning the formulation of the legal texts, they are critics emanating of the doctrines in form of the remarks.

These observations make it possible to the legislator to re-examine and revise the legal texts, nevertheless as regards social protection of the child; the latter is concretized by borrowing mechanisms adopted by the law.

Lastly, there appears that the Algerian legislator has to realize an appreciable advance within the field of the social protection of the child in danger, it remains only the rigorous application of these texts in a way which ensures a best protection of the rights of the child and an adequate way to the international laws related to protection of the child.

**Références :****1- Books :**

- BOULENOUAR Azzemou, *Journée d'étude du 29 novembre 2011 organisée à la faculté de droits, Université d'Oran.*
- Brigitte Hess Fallon, *Droit de la famille, Edition DALLOZ, 6<sup>ème</sup> édition, Paris, France, 2006.*
- Florence Laroche, *Les droits de l'enfant, Dalloz, 1996.*

**2- Legal texts :**

- *Ordonnance N° 75-58 of September 26, 1975 about the civil code, Official Journal n°44 of June 26, 2005, modified and supplemented by law 05-10 of June 20, 2005.*
- *Law n° 15-12 of 15 July 2015 relating to the protection of the child, Official Journal n°39 of July 19, 2015.*
- *Law n° 16-01 of March 6, 2016 about the constitutional revision, Official Journal N 14 of March 7, 2016.*
- *French civil code.*