

The Distinctive Features of Measures for Keeping and Entrusting a Child at Risk under Algerian Legislation

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Abstract

Measures for keeping and entrusting a child at risk are among the most important protective measures ordered by the juvenile judge, either during the investigation into the child's case, when they are temporary and may not exceed six months, or following the investigation, when they are imposed for two years, subject to renewal. These measures have distinctive characteristics compared with placement measures, since they allow the child to remain with their family or extended family, or to be entrusted to a trustworthy person or family. The legislature has arranged these measures in a sequence preceding placement in centres and services designated for child protection. They should therefore be given priority unless the child's best interests require otherwise, as they reconcile the need to protect the child and avert danger with the child's right to live in a family environment.

Keywords: child at risk; measures for keeping a child with their family; measures for entrusting a child.

Introduction

Children at risk are among the most vulnerable groups and require immediate protection to remove the danger facing them. Because threats to children are numerous and varied, the Algerian legislature, like modern comparative legal systems, has identified the most serious situations without providing an exhaustive list. Rather, it has specified them by way of example so as not to restrict the scope of protection afforded to this group, leaving competent judicial authorities free to recognise other situations where necessary.

The legislature has not merely identified situations of risk; it has also stressed the need to afford these children special protection, implemented through social and judicial protection mechanisms according to the nature of the risk. This involves urgent measures to protect the

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child and remove the danger, even where the child's best interests require separation from their family.

Measures for keeping or entrusting the child are among the principal protective measures ordered by the juvenile judge, whether provisionally during the investigation or after its completion. Their distinctive nature lies in their position at the head of the legislatively prescribed measures and their priority over other measures unless the child's best interests require otherwise.

These measures are important because they effectively protect the child while preserving the conditions necessary for healthy personality development. They keep the child within their family environment or entrust them to a family resembling their own, whether relatives or a trustworthy person or family. The child is not a party to the judicial dispute but a victim of family, social, economic, health-related or educational circumstances that threaten their safety or healthy development or prejudice their future.

This study examines the role of keeping and entrustment measures in balancing the need to protect a child from existing or anticipated danger against the need, as far as possible, to preserve the child's stability and family ties. It also identifies the main obstacles to implementation and the potential misuse of such measures.

The research addresses the following question: To what extent are measures for keeping and entrusting a child effective in providing comprehensive protection to a child at risk in accordance with their best interests?

To answer this question, the study is divided into two parts. The first examines the legal foundations of measures for keeping and entrusting children at risk, while the second addresses the rules governing their application under Algerian legislation.

Part One: The Legal Foundations of Measures for Keeping and Entrusting a Child at Risk

Keeping a child at risk with their family or entrusting them to another person constitutes one of the principal measures ordered by the juvenile judge to protect the child and remove danger. Accordingly, the legislature sets out these measures in sequence in Articles 35 and 40 of the Child Protection Law, without specifying whether their listed order establishes priority or whether the juvenile judge may depart from that formal sequence.

This part therefore considers the definition of a child at risk (first section), followed by the legal characterisation of measures for keeping and entrusting a child at risk (second section).

Section Two: Definition of a Child at Risk

Although international and domestic legal instruments agree on a comprehensive system combining preventive and punitive protection for children whose fundamental rights are violated, they differ in one respect: international conventions do not expressly adopt the term 'child at risk', whereas many national legislatures, including those of Algeria and Egypt, have incorporated and defined it. Accordingly, this section examines the legislative definition (first subsection) and the doctrinal definition (second subsection).

Subsection One: Legislative Definition of a Child at Risk

Identifying a legislative definition of a child at risk requires examining international and national instruments protecting children's rights, including those that expressly define the concept and those that laid the groundwork for such a definition. The discussion therefore examines the Convention on the Rights of the Child (first) and Algerian legislation (second).

First: Definition of a Child at Risk under the Convention on the Rights of the Child

The Convention on the Rights of the Child does not expressly define 'child at risk'. Nevertheless, it adopts a comprehensive approach to protecting children from dangers threatening their physical and moral integrity, thereby safeguarding their stability and healthy

personal development. It therefore requires States Parties to take the measures necessary to protect children from all forms of violence, harm, ill-treatment, neglect, exploitation and other violations, as well as to guarantee their rights to upbringing, education, security and other rights conducive to their preparation and healthy development.¹

It follows that the Convention does not provide a separate, explicit definition of a child at risk. Instead, Article 1 defines the child, while other provisions address violations of children's rights and oblige States Parties to adopt the measures necessary for their protection.

Second: Definition of a Child at Risk under Algerian Legislation

Article 2 of the Child Protection Law states: 'A child at risk is a child whose health, morals, education or security is endangered or exposed to danger; whose living conditions or conduct may expose them to a probable danger or one harmful to their future; or who lives in an environment that endangers their physical, psychological or educational integrity.'²

A reading of Article 2 shows that, unlike international child-protection instruments, the legislature did not confine itself to defining 'child', but established a separate definition of a child at risk. This is not an exact abstract definition; rather, it adopts an objective approach by describing circumstances that place a child at risk, including threats to health, morals, education or security, living conditions and behaviour that may pose future danger, and an environment threatening physical or psychological integrity.³

The legislature can therefore be said to have adopted a broad conception intended to prevent dangers threatening the child's well-being and to enable both categories of protection mechanism to intervene before harm occurs. Thus, the term extends beyond children whose fundamental rights have already been violated to encompass children whose life, health, education, security or future may be endangered by their circumstances.⁴

Ultimately, the legislature did not formulate an exhaustive and precise definition of a child at risk, instead linking the concept to dangers that threaten or infringe the fundamental rights underpinning healthy development. More precisely, the definition rests on three principal criteria. The first concerns imminent interference with essential rights such as health, moral development, security and education. If those rights are violated or at risk, the child is regarded as being in danger: actual danger and exposure or foreseeable exposure to danger are placed on an equal footing, consistently with the Convention's protective philosophy.⁵

The second criterion concerns the possibility that the child's living conditions or behaviour may expose them to a potential danger or prejudice their future. These broad expressions admit various interpretations. Difficult living conditions may threaten rights through neglect, begging or school dropout, while unusual behaviour, including delinquency, poor conduct or deficient upbringing, may individually or collectively constitute circumstances that potentially endanger the child or their future.

The final criterion relates to the environment in which the child lives and the failure of that environment to fulfil its obligations towards them. Danger may arise from threats to the child's material or moral well-being, including their physical, psychological or educational integrity. These expressions are likewise broad and imprecise: harm to physical or psychological integrity may include physical or psychological violence, domestic violence between spouses that affects children, torture and other harmful practices.⁶

This last question raises several difficulties associated with practices entrenched in Algerian society, where physical and psychological punishment are sometimes used as disciplinary methods. The expression 'endangering educational integrity' is similarly open-ended, making it difficult to determine its meaning or the degree of danger. Upbringing differs between families: that of a conservative household is not the same as that of a more liberal one. This raises questions about when an upbringing may be considered so deficient as to place a child at risk.

Although the legislature has attempted to define a child at risk, as have many legal scholars and commentators, these definitions remain imprecise. The legislature employs legal terminology reflecting the seriousness of infringements of children's rights: actual or foreseeable interference places the child in danger or exposes them to it, whether the interference results from an act or an omission.⁷

The use of broad wording may be intended to leave substantial room for child protection in line with the comprehensive approach of the Convention on the Rights of the Child. By protecting fundamental rights essential to the child's personal development—such as upbringing, health and education—and addressing family or alternative-care environments and living conditions while prohibiting harmful practices, the legislature leaves social and judicial protection mechanisms latitude to recognise other circumstances that endanger children.

Subsection Two: Doctrinal Definition of a Child at Risk

The expression 'child at risk' appears in domestic legislation, including Algerian law, which draws upon the protection envisaged by the Convention and sets out a particular definition and a non-exhaustive range of circumstances in which a child's rights may be infringed or endangered.

Exposure to danger is defined as an act or omission capable of producing a harmful result for a right or interest protected by law. In other words, it is a stage preceding harm and directly connected with its occurrence: the conduct has not yet actually injured the legally protected interest.⁸

Danger facing a child thus comprises factors and influences that may lead the child away from normal patterns of behaviour and affect every aspect of life, leaving them vulnerable to delinquency, particularly while their personality is still developing and their understanding remains incomplete. A difficult social situation may place a child in abnormal circumstances that, if prolonged, could lead to criminal conduct. Although the child has not committed a crime, these circumstances may predispose them to delinquency and place them in a state of danger compared with other children, calling for preventive protection and support.⁹¹⁰

Some legal commentators understand a child at risk as one whose well-being is threatened by one or more imminent dangers, or who is likely to encounter such dangers, with a direct adverse effect on normal personal development. The child may consequently come to be regarded as presenting a social risk and may move towards criminality if not protected and cared for. In this view, existing or potential social danger creates abnormal circumstances which, if allowed to persist, undermine development and may encourage offending.¹¹

The child's exposure to danger is an indicator that unfavourable social, psychological and moral conditions surround them, potentially signalling a tendency towards delinquency and reflecting social risk. Most modern systems of child legislation have accordingly adopted concepts and categories concerning children exposed to danger, seeking the broadest possible protection against threats to healthy upbringing.¹²

Associating the child's difficult circumstances with social danger and a possible progression towards delinquency stems from the serious adverse effects such conditions may have on the child's personality, physical or psychological state, educational conduct and schooling. These effects suggest that the child's social circumstances may inevitably deteriorate into a state of danger.

A child living in circumstances indicating danger to themselves, or who may become a source of danger to others, is regarded as being exposed to factors leading towards delinquency. Situations of danger are therefore viewed as conditions preceding deviant behaviour, even if the child has not yet committed any offence. Exposure to those conditions may adversely affect the child's psychological balance and social upbringing and, consequently, make them more susceptible to criminal behaviour than children not facing such circumstances.¹³¹⁴

A child at risk may ultimately be defined as a person under eighteen years of age who is subjected, or is likely to be subjected, to one or more particularly dangerous situations directly threatening health, morals, education or security; whose living conditions or conduct indicate threats to their future; or whose environment seriously infringes their physical and psychological integrity. Such circumstances directly affect healthy personality development and require immediate intervention by social or judicial protection mechanisms, or both, according to the nature and gravity of the danger, to protect the child, remove the threat and improve their situation so as to prevent future delinquency.

Section Two: Legal Characterisation of Measures for Keeping and Entrusting a Child at Risk

Measures for keeping and entrusting a child at risk are among the main protective measures recognised within the judicial child-protection system. The juvenile judge may order them during the investigation or upon its completion to protect the child and remove the danger.

This section considers the legal nature of these measures (first subsection) and the legislature's approach to their formal sequence (second subsection).

Subsection One: Legal Nature of Measures for Keeping and Entrusting a Child at Risk

Under Articles 35 and 40 of the Child Protection Law, the legislature empowers the juvenile judge to protect a child at risk by ordering that the child remain with their family; be entrusted to a parent who does not exercise custody and has not been deprived of it by a judicial ruling; or be entrusted to a relative or a trustworthy person or family. Orders made during the investigation are temporary and cannot exceed six months. Orders made after the investigation last for two years and may be renewed, provided the child has not reached the age of criminal majority.¹⁵

A reading of Articles 35 and 40 shows that these are judicial, not administrative, measures undertaken exclusively by the juvenile judge. They are protective and preventive rather than punitive: no criminal liability is attributed to the child, since their purpose is to safeguard and care for the child until the danger disappears or is averted.

These measures share certain characteristics with punitive judicial measures, including legality and their personal nature. They are also precautionary and may be imposed compulsorily where the child faces a present danger that cannot tolerate delay, in accordance with the child's best interests. Their purpose nevertheless differs, since they do not constitute a deprivation of liberty but a means of securing protection in an appropriate environment, even if this requires separation from the family.¹⁶

Subsection Two: The Legislature's Position on the Formal Sequence of Measures for Keeping and Entrusting a Child at Risk

Examining the legal provisions governing these measures, particularly Articles 35 and 40 of the Child Protection Law, reveals that keeping the child with their family is listed first, followed by three forms of entrustment in sequence: entrustment to a parent who does not exercise custody and has not been deprived of it by a judicial ruling; entrustment to a relative; and finally entrustment to a trustworthy person or family.¹⁷

The legislature thus lists the measures sequentially without specifying how the juvenile judge should select the most appropriate option or expressly requiring progression from the least intrusive to the most intrusive measure. Does the judge have absolute discretion to choose any measure regardless of its place in the list, or must the sequence be respected?

This ordering reflects a legislative philosophy consistent with the protective nature of intervention. Although the legislature does not expressly state that gradual progression is mandatory, the measure's purpose and the child's right to live in a family environment lend the ordering a degree of binding force unless the child's best interests require otherwise. The juvenile judge should, wherever possible, keep the child with their family, giving effect to the principle of non-separation. If the child's interests require another solution, the judge should move to the

next measure, maintaining the child within the extended family to preserve psychological and emotional stability. If that is impossible, the child may be entrusted to a trustworthy person or family.¹⁸

From this perspective, respecting the sequence is obligatory in order to safeguard the child's rights. The next measure should be considered only where the preceding option cannot be applied: the child should remain with their family where possible, otherwise be entrusted to an extended-family member, and ultimately to a trustworthy person or family. The measures can subsequently be reviewed and replaced by a less intrusive option.¹⁹

However, treating adherence to the sequence as strictly mandatory could obstruct the protection the child requires or, at worst, delay selection of the most suitable measure. The legislature therefore lists the measures without expressly imposing gradual progression, leaving the juvenile judge some flexibility to choose a measure appropriate to the child's circumstances and best interests. Those interests remain the governing criterion, even if the judge selects the last measure immediately. The central objective is protection and, as far as possible, preservation of family relationships, not punishment or the attribution of criminal liability.

Part Two: Rules Governing the Application of Measures for Keeping and Entrusting a Child at Risk

When a juvenile judge receives a petition reporting a child at risk, receives an oral notification from the child concerned, or becomes aware of the danger and acts on their own initiative, the judge begins the necessary procedures and adopts suitable measures to address the child's circumstances and provide protection.

As discussed above, measures for keeping and entrusting children take precedence among protective measures because they differ from institutional placement. They allow the child to remain within their own family or with a substitute family undertaking equivalent care obligations while protecting them from danger. The legislature has therefore made these measures subject to procedural rules and safeguards which the juvenile judge must follow. This part examines the rules governing keeping a child with their family (first section) and entrusting a child at risk to others (second section).

Section One: Rules Governing the Keeping of a Child with Their Family

An examination of these rules requires consideration of the requirements governing a juvenile judge's decision to keep a child with their family under a temporary care order (first subsection), followed by the application of this measure after the investigation (second subsection).

Subsection One: Procedural Rules for Keeping a Child with Their Family During the Investigation

The family is the social nucleus in which the child grows, interacts with other members and receives care for their physical, intellectual and emotional needs. It safeguards the child's right to survival and development, especially as children's physical and intellectual immaturity makes them dependent on support, guidance and direction to develop their personality and prepare for life consistently with the customs and traditions of society.²⁰²¹

The Convention on the Rights of the Child accordingly recognises that the full and harmonious development of a child's personality requires growing up in a family environment characterised by happiness and love. The Algerian legislature follows this approach by regarding the family as the natural environment for the child's development and prohibiting separation unless the child's best interests require it, in which case removal must be ordered by a court.²²²³

In implementation of this principle, Article 35 of the Child Protection Law empowers the juvenile judge, while investigating and considering the case of a child at risk, to issue a temporary care order keeping the child with their family.²⁴

During the investigation, the juvenile judge should therefore use this measure whenever possible, provided that the danger does not require separation and the child's best interests support continued family residence. Even where the family has contributed to the risky situation,

that fact alone does not justify removal if the child's interests do not require it, especially where the family is otherwise stable and continued residence does not threaten the child's life, safety, health or upbringing. Conversely, removal may adversely affect personal development.

This measure seeks simultaneously to protect the child and preserve parental care, given the substantial influence of parents on social, psychological and emotional behaviour through family socialisation. It thus gives full effect to the child's right to live in a family environment.²⁵

Once the juvenile judge issues a provisional order keeping the child with their family, the child and/or their legal representative must be notified by any means within 48 hours. The measure may last no longer than six months. The judge may also require open-environment services to observe the child within the family. Such observation is an ancillary procedure rather than a separate temporary care measure, since the latter are exhaustively enumerated. Its purpose is to inform the judge of the family's compliance with directions and measures and the child's response.^{26,27}

Subsection Two: Procedural Rules for Keeping a Child with Their Family after the Investigation

After completing the investigation into a child at risk, the juvenile judge sends the file to the public prosecutor for examination and summons the child, their representative and, where appropriate, their lawyer by registered letter with acknowledgement of receipt at least eight days before the hearing. The judge may also hear anyone whose evidence may be useful. If attendance at all or part of the hearing is contrary to the child's interests, the judge may excuse the child or direct them to withdraw during all or part of the proceedings.²⁸

Following the hearing, the juvenile judge determines the child's case. If the judge decides that the child should remain with their family, a final, non-appealable order is issued for a renewable two-year period, which may not ordinarily extend beyond the age of criminal majority. The measure may, however, be extended until the age of 21 upon a request from the parent or guardian, from the person concerned, or on the judge's own initiative. The order must be notified to the child and their representative by any means within 48 hours. Although it is not subject to appeal, the juvenile judge may review or revoke it at any time on application by the child, their representative or the public prosecutor, or on the judge's own initiative, within one month of receiving the application.²⁹

This measure may also be accompanied by arrangements for assessing the child's circumstances within the family. The judge may instruct open-environment services to monitor the child and provide necessary protection, particularly assistance with upbringing, training and care, and to submit periodic reports on developments in the child's situation.³⁰

Section Two: Rules Governing Measures for Entrusting a Child at Risk

The legislature regulates the procedures governing entrustment and removal from the family. This section therefore examines the procedural requirements for entrustment during the investigation (first subsection), followed by those applicable after the investigation (second subsection).

Subsection One: Procedural Rules for Entrusting a Child at Risk During the Investigation

Where the juvenile judge considers that the child's best interests require removal from the family, the judge may order one of the entrustment measures listed in Article 35 of the Child Protection Law. As far as possible, priority is given to preserving a family environment: entrustment to a parent who does not exercise custody (first), to an extended-family member (second), or to a trustworthy person or family (third).

First: Rules Governing Entrustment to a Parent Who Does Not Exercise Custody During the Investigation

Under Article 35 of the Child Protection Law, the juvenile judge may order the child to be entrusted to a parent who does not exercise custody, provided that parent has not been deprived

of custody by a judicial ruling. The child and/or their legal representative must be notified within 48 hours of the order, which may not remain in force for more than six months.^{31,32}

These provisions apply to children from families affected by divorce, where custody has been awarded to one parent by a judicial decision. If the custodial parent is a principal cause of the danger facing the child and the child's best interests require removal, the juvenile judge may entrust the child to the other parent, provided the latter has not been judicially deprived of custody. The juvenile judge may therefore make an order inconsistent in practical effect with a family court custody order where the child's interests so require.³³

This raises the question of consistency between the juvenile judge's order and the family judge's judgment awarding custody. Implementing an order to entrust the child to the non-custodial parent removes the child in practice from the person who was awarded custody by a family court judgment that remains in force. Must fresh proceedings be brought before the family judge to terminate custody, or may the juvenile judge intervene directly to remove the child from the custodial parent and entrust them to the other parent for protection? This question is particularly important because such cases increasingly come before juvenile judges and some parents use the procedure as a means of obtaining the child from the custodial parent.

The matter must be determined under the Child Protection Law, which grants the juvenile judge authority to protect children at risk. Entrusting the child to the non-custodial parent does not mean that the juvenile judge has set aside the family judge's judgment or re-determined the substantive entitlement to custody. The intervention instead rests on the requirements of urgent judicial protection, which oblige the juvenile judge to safeguard a child at risk and remove them from the custodial parent where the child's best interests demand it, particularly if that parent creates the danger or is unable to protect the child against it.³⁴

The legislature has therefore not empowered the juvenile judge to award custody to the other parent; it has authorised temporary entrustment where required by the child's best interests. This does not alter the legal custody status determined by the family judge. Rather, it provides urgent protection for a child endangered while in the care of the custodial parent, whether or not that parent caused the danger. The child's best interests are the decisive factor in determining whether removal and entrustment to the other parent are appropriate.³⁵

A custody judgment cannot consequently be regarded as conferring absolute immunity from the juvenile judge's intervention where a child is at risk. The particular danger confronting the child requires the judge to exercise protective authority and, where the child's best interests so require, to entrust them to the parent who does not exercise custody, as an exceptional protective measure notwithstanding the subsisting custody judgment and its consequences.

To this end, the juvenile judge must establish that the child is at risk through available legal mechanisms, including a social inquiry conducted by open-environment services, hearing the child or using other appropriate means. If the judge determines that the child is endangered in the custodial parent's care, the child should be entrusted directly to the other parent, provided custody has not been judicially withdrawn from that parent.

The legislature excludes parents deprived of custody by a judicial judgment to avoid conflict with the order terminating their entitlement and, in other words, to avoid undermining the child's best interests, which formed the basis for the loss of custody.³⁶

Entrusting the child to the parent who does not currently exercise custody and has not been deprived of it is intended to protect the child from danger while preserving parental care as far as possible. By avoiding complete removal from the family environment, the measure maintains family links and provides a degree of stability and psychological and emotional balance.

Second: Rules Governing Entrustment to a Relative During the Investigation

During an investigation into a child at risk, the legislature authorises the juvenile judge to order entrustment to a relative where removal from the biological family is required by the child's best interests and the relative can offer protection and the care necessary for healthy upbringing

in a safe environment. The judge must notify the child and/or their legal representative within 48 hours of the order, and the measure may not exceed six months.³⁷³⁸

This arrangement reflects the child's best interests, assessed by reference to emotional, intellectual and physical needs, the family environment and other relevant aspects of their circumstances. It enables removal from a biological family that is the source of danger or has lost control of the situation while keeping the child within the familiar extended family, thereby supporting psychological and emotional stability. For a very young child in particular, separation from parents may be psychologically traumatic; residence with extended family can help preserve conditions for healthy upbringing.³⁹⁴⁰

It should be noted that the legislature neither specifies which relatives may receive the child nor establishes priority according to degree of kinship, unlike the rules governing the award of custody. This reflects the special nature of judicial protection for children at risk, which should not be unduly restricted. The juvenile judge must retain broad discretion to determine which relative can protect the child, in accordance with the child's best interests.

One criticism of the powers available to the juvenile judge when selecting an entrustment measure is the failure to give the child an opportunity to participate and to be heard regarding where they will live. The child is the victim of particular circumstances and the measure is intended for protection rather than punishment. It would therefore be preferable to allow children to express their views about the persons or environment with whom they wish to live, at least as a matter of consultation, especially since Article 12 of the Convention obliges States to hear the child in judicial proceedings affecting them.⁴¹

Whatever the degree of kinship of the relative receiving the child, the juvenile judge may instruct open-environment services to observe the child in the new family setting in order to remain informed of the child's circumstances and needs and of the environment's suitability for eliminating the risk. As with other measures, entrustment does not prevent contact with the parents where this is consistent with the child's best interests.⁴²

Third: Rules Governing Entrustment to a Trustworthy Person or Family During the Investigation

The family environment may sometimes be characterised by deviant or harmful conduct that threatens the child's healthy upbringing, or by serious disturbances and divisions. Removal from such an unstable environment may then serve the child's best interests. Accordingly, the legislature empowers the juvenile judge to issue a provisional order entrusting a child at risk to a trustworthy person or family. This is the last of the provisional care measures. The judge must notify the child and/or their legal representative within 48 hours, and implementation may not exceed six months.⁴³⁴⁴⁴⁵

This measure is used only when entrustment to a parent or relative is impracticable under the preceding measures, which seek to preserve the family setting and uphold the principle that a child should not be separated from their parents unless their best interests demand it. Reasons may include incompatibility of those measures with the child's interests or the absence of available relatives.⁴⁶

To ensure appropriate protection for a child entrusted under this measure, the Child Protection Law refers the requirements applicable to trustworthy persons and families to implementing regulations. Executive Decree No. 19-70 accordingly lays down the conditions for a trustworthy individual or the applicant acting on behalf of a trustworthy family: Algerian nationality, good character and conduct, enjoyment of civil and political rights, physical and mental capacity, and sufficient financial means to meet the child's needs. If the child's best interests require it, a trustworthy individual may also have to be of the same sex as the child.⁴⁷⁴⁸

Trustworthy persons and families are required to be entered on a list drawn up, maintained and regularly updated by the juvenile judge within each judicial jurisdiction. Applications may be submitted directly to the judge or through state institutions and services responsible for social protection, the National Body for the Protection and Promotion of Children, or civil society

representatives active in child protection. Nevertheless, the judge may entrust a child to a person or family not included on the list where the child's best interests so require, provided the prescribed conditions are met.⁴⁹

The legislature is to be commended for allowing prospective trustworthy persons or families flexibility in applying for registration, either directly to the juvenile judge or through state social protection services, the national child protection body or associations active in child protection, which forward applications to the judge. Such bodies often work in the field and are familiar with children's needs and with the capacity of prospective carers to meet them, thereby increasing the likelihood of placement in a trustworthy and capable family setting.

To protect a child entrusted to a trustworthy person or family, the juvenile judge may order open-environment services to conduct a social inquiry into the circumstances of the person or family, their readiness to receive the child and their capacity to provide care and the conditions necessary for the child's development and well-being.⁵⁰

This inquiry is of great importance because it enables the juvenile judge to assess the suitability of the individual or family to receive and care for the child, particularly whether their financial, social, psychological and educational circumstances are adequate to provide the necessary care in accordance with the child's best interests.

Although the legislature requires trustworthy persons and families to satisfy a number of conditions, it has not specified the criteria by which the juvenile judge should assess their actual suitability. This raises questions: on what basis should trustworthiness be assessed? Is compliance with the prescribed legal requirements sufficient to demonstrate fitness to care for the child, or must further considerations relating to the child's personality and needs be taken into account?

Genuine trustworthiness should not be judged solely by compliance with the formal statutory conditions. It should be based primarily on the child's interests rather than those of the applicant. The applicant must show a sincere wish to care for and protect the child in good faith, without concealed benefits or reciprocal interests. This presents a difficult practical issue in Algeria and many other Arab countries, particularly when the applicant's interests become intertwined with the protective purpose of entrustment.⁵¹

Practical experience suggests that most applicants seek to care for newborn infants and decline to receive an older child at risk on the ground that they may be unable to manage the child's behaviour or upbringing. This raises the possibility that the interests of the applicant are given priority over those of the child, especially where childless families are motivated more by their desire to have children than by the child's welfare. It also raises the question whether compliance with legal requirements is sufficient or whether a genuine readiness to receive a child at risk, regardless of age, should be considered.⁵²

True trustworthiness and suitability cannot therefore be measured solely by the formal conditions prescribed by the legislature. They also require verification of genuine readiness to receive a child at risk without any concealed or reciprocal benefit. Even childless families must not place their own interests ahead of those of the child; they should be prepared to receive any child and provide the attention needed to improve the child's behaviour and ensure appropriate care.

Refusal to care for a child older than a newborn reveals that the applicant's interests may take precedence over the child's, even where formal legal suitability is established. Actual readiness to care for a child at risk, and genuine trustworthiness, may thus be absent or only partially present.⁵³

Juvenile judges should consequently consider not merely compliance with the formal conditions but also whether the applicant genuinely intends and is prepared to care for a child at risk. Such readiness is a substantive indication of trustworthiness, and child-protection associations and services should draw the judge's attention to this matter.

To introduce this criterion progressively in Algeria, institutions, services and associations concerned with children should encourage educational activities and awareness campaigns. These

could shift the outlook of individuals and families wishing to care for children at risk from seeking newborns specifically towards accepting children at risk irrespective of age, thereby safeguarding the best interests of this vulnerable group.

Subsection Two: Procedural Rules for Entrusting a Child at Risk after the Investigation

The procedural rules applicable to entrusting a child at risk after the investigation are the same as those governing the measure of keeping a child with their family after the investigation, discussed above. They are subject to the same formalities and procedures, may be accompanied by the same ancillary arrangements, and can be amended and reviewed in the same manner.

When the juvenile judge orders an entrustment measure following the investigation, the judge is not bound by the provisional measure previously ordered during the investigation, but retains broad discretion to adopt the measure considered most appropriate to protect the child at risk in accordance with their best interests.⁵⁴

Conclusion

Although the legislature lists measures for keeping and entrusting children at risk in a sequence, it gives the juvenile judge broad discretion to select the measure most suited to the child's best interests. These measures therefore have distinctive characteristics and take priority over placement measures, combining the protection that the child requires with the preservation, as far as possible, of family care and direct contact with the family environment. This helps secure the child's welfare, stability and healthy personal development.

The study has reached the following findings:

- The legislature lists keeping and entrustment measures sequentially before placement measures, while granting the juvenile judge discretion to choose the measure most suited to the child's situation and best interests.
- The legislature has overlooked the child's right to participate and to be heard in selecting the measure to be applied to them.
- Keeping and entrustment measures are judicial measures intended to protect a child at risk and remove them from danger, not to punish the child or establish criminal liability.

Although the legislature regulates procedures for keeping and entrusting children, certain shortcomings remain. The following recommendations are therefore proposed to strengthen the national legal framework:

- Children at risk should be given an opportunity to express their preferences regarding the measure most suitable for their protection. Juvenile judges should take their views seriously, particularly where the child has sufficient discernment.
- The legislature should clarify whether gradual progression through the listed measures is mandatory, so as to prevent possible abuses of discretion affecting children at risk.
- More stringent conditions should be established for assessing the genuine trustworthiness of individuals and families, rather than relying solely on formal criteria demonstrating legal eligibility.
- An express provision should establish that measures for keeping and entrusting children at risk take priority over placement measures, with recourse to the latter only where keeping or entrustment is impossible.

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