

# Child labor between the international requirements and the enforcement of national laws- The Algerian law as a model-



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## Abstract

The national laws on child labor are a nexus between the international conventions that aim at ending or reducing child labor and the child that represents the most affected victim. In this context, the ratification of a specific convention by the Algerian legislator requires the enforcement of its principles, regarding either the absolute banning of child labor or the application of the rules on the child labor conditions; if work is a necessity imposed by the socioeconomic conditions of the child. The increase of this phenomenon shows the existence of activities that contradict with the international commitments and take place outside the legal frame. Therefore, it is necessary to investigate the legal texts on child labor in the Algerian law to find out more about the enforcement of the international conventions and about their efficiency in limiting this phenomenon.

## Keywords

Child labor;  
UNICEF;  
Child rights;  
Worker;  
Salary.

## الكلمات المفتاحية

عمل الأطفال؛  
يونيسيف؛  
حقوق الطفل؛  
عامل؛  
أجر.

## عمالة الأطفال بين المقتضيات الدولية وتكريس القوانين الوطنية-التشريع الجزائري نموذجاً -

## ملخص

تعتبر القوانين الوطنية المتعلقة بعمالة الأطفال حلقة الوصل بين المواثيق الدولية التي تعمل على القضاء أو التخفيف من ظاهرة العمالة وبين الطفل الذي يشكل الضحية الأكثر تأثراً بها، لذا فإن مصادقة المشرع الجزائري على اتفاقية معينة، يتطلب تجسيد المبادئ التي أقرتها الاتفاقية، سواء تعلق الأمر بمبادئ الحظر المطلق لعمل الأطفال أو تضمن القواعد الخاصة بظروف عمل الطفل، وذلك متى أصبح العمل بالنسبة إليه ضرورة حتمية تفرضها الأوضاع الاقتصادية والاجتماعية للطفل، ويؤكد انتشار ظاهرة عمالة الأطفال وجود نشاطات تتعارض مع الالتزامات الدولية وتتم خارج الضوابط القانونية المحددة، وهو ما يقتضي البحث في تقييم النصوص القانونية المتعلقة بعمالة الأطفال في التشريع الجزائري، للوقوف على مدى تجسيدها للاتفاقيات الدولية من جهة، وعلى مدى فاعليتها للحد من الظاهرة من جهة أخرى.

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## **I- Introduction :**

The child must be surrounded by material and moral care that suits his developing abilities. In this context, the difference in the material conditions among societies and families may impose some exceptions that shall have negative effects if absolutely incarnated. It is difficult to accept child labor without guarantees that protect him because the expression “child labor” is made up of two contradicting words, as the word “labor” implies the need for physical and mental abilities that suit the nature of the work, and the word “child” indicates an age category that lacks such abilities. Thus, we face a contradiction between the rights of the employers and the rights of the working child, and an oppression against the child unlike the +18 worker.

In this context, since the positive paid work in natural conditions may endanger the child, the negative work, aka child labor, where children are coerced to work in unsuitable conditions represents a hard phenomenon that the international society has been fighting. International statistics published in September 2017 state that the number of working children, aged 05 to 17, is estimated at 152 children, i.e., 01 of 10 children almost. Currently, it is estimated to decrease to 121 million in 2025( <https://www.ilo.org/beirut/media-centre/news>). Therefore, the Algerian legislator coped with these developments in the light of the ratified international commitments and the international conventions' calls to the national laws to focus on child labor as one of the millennium issues. Such issues should be reformed starting from scratch, i.e., children, through ensuring the good care and rights of children. Based on what was said, we find ourselves pushed by an urgent need to investigate the question of child labor, mainly after the change of its types, to find out more about the efficiency of the Algerian legal texts on child labor in enforcing the ratified international commitments.

## **II–Child labor according to the international requirements:**

When the phenomenon exceeds the borders of a state to reach international limits, the negative effects increase, pushing the international efforts to enact fixed laws to face it and the international organizations to move.

### **II. 1: Child labor in the international conventions:**

Enacting international laws may coincide with miserable conditions that push the child towards work to, at least, preserve his simplest rights. In this regard, the international focus on child labor is taking a double-path, as states and organizations are trying to end child labor, and at the same time, ensure suitable working conditions if the child is obliged to work. Therefore, the international conventions targeted such goals.

#### **II.1.1 Convention 138 of the International Labor Organization in 1973:**

It aims at ending child labor in the long-run, as it set the age of 15 as the minimum age for the compulsory education. Besides, it banned hiring U-18 children in works that endanger their health, safety, and ethics due to their nature or conditions(al Darbachi&Abu Torki&Abu Radjab, 2012, p.14). In general, this Convention is made up of 18 articles providing for different points, mainly:

- Making the age of 15 the minimum working age.
- Allowing the states whose economies did not reach a sufficient degree of development to set the age of 14 as the minimum working age, after consulting the employers and the workers organizations.
- The working age must not be less than the age of compulsory education.
- The age of acceptance in job must not be less than 18, and the national laws and regulations may reduce the age to 16 in such cases(Zouzou&Ben Aissa,2016,p.61).

Thus, this Convention is comprehensive for all the work sectors, unlike the previous conventions that handled each sector separately, such as Convention 05 of 1919 that set the minimum working age to 14 in industries only, leading to the issuance of Convention 59 of 1937 whose second Article banned employing U-15 children in the public and private industrial facilities and their branches. In addition, Convention 60 of 1937 included the non-industrial works, confirming it is not allowed to hire U-15 children. On the other hand, it allows employing +13 children in out-school times. Amid the disagreement regarding the minimum working age in the conventions issued before Convention 138(HadjSaoudi, 2016, p.94), and in front of the interest of each convention in a given work, Convention 183 turned into the main unified reference for determining the minimum working age, regardless the activity exercised by the child.

#### **II.1.2. The Convention on the Rights of the Child 1989:**

The UN General Assembly adopted the Convention on the Rights of the Child and presented it for ratification in 1989. It came into force in 1995 according to its Article 49 after 174 states, including Algeria, have ratified it. It is made up of 54 articles that provide for children rights and represent a giant leap in the methods of dealing with children. In this

regard, its method changed from care that aims at achieving the basic rights of children, into adopting international standards for the child rights that must be respected by the states. These rights raise the legal liability in case of their violation (Farouk, www.arabccd.org). Article 32 of the Convention provides for protecting the child from economic exploitation and early work that may be dangerous and cause harms to the child health and intellectual and mental development. Therefore, the states have to take different measures to promote this protection, mainly through:

- Determining the minimum working age.
- Setting a system that suits the work hours and conditions.
- Imposing sanctions to ensure the efficient enforcement of the Convention (Article 32, 1989).

Despite the Convention did not bring any new mechanisms to protect children from exploitation, it insisted on public rules to be adopted by the states, as it confirmed the necessity of respecting the international Conventions on child labor.

### **II.1.3. The Convention on the Worst Forms of Child Labor No° 182 in 1999:**

When the job aims at helping the family, or is a training for the child to acquire skills that allow him to socially integrate and afford responsibility, no negative effects shall be seen on the mental, physical, and intellectual development. Rather, it would help development, as it is generally “a positive child labor” (HadjSaoudi, p.100). The latter differs than the negative child labor that shall negatively affect the physical and psychological abilities of the child; what represents a focal point and a source of worries for the international society. In this regard, after years of preparation, Convention 182 on the Worst Aspects of Child Labor was issued. It includes 15 articles that were highly internationally accepted, as 54 states had ratified it since 2000. Its main points were:

- It revolves around children until the age of 18.
- It provides for taking immediate measures to ban the worst forms of child labor.
- It defined the worst aspects of child labor as prostitution, pornography, drug production and dealing, slavery, coercive work, armed conflicts, and the activities that harm their safety and ethics.
- It provided for establishing mechanisms to execute the convention.
- It provided for communication between the concerned parties, be them governments, business owners, workers, or specialized organizations (Boulifa, 2000, pp.18-19).

According to Article 03 of this Convention, the expression “worst forms of child labor” refers to:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children (Article 03, 2000)

Besides, recommendation 190 of this Convention adds other details related to the work program, and revolves around little children, children with specific needs, the application of the convention, data and statistics collection and exchange, the establishment of monitoring bodies, enacting laws, the penal criminalization of the worst forms of child labor, the international cooperation, training parents and teachers, protecting the reporters of violations, and the punishment of violators (Boulifa, p.19). This establishes an institutional diversity in executing the activities and enforcing the convention on U-18 children. This goes with the concept of human rights in the definition of children, and with all the civil and legislative laws that consider the age of 18 as the age of eligibility (Ghannam, 2010, p.119). Based on what was said, we can say that the international conventions influence and unify the national laws. Besides, the application of these conventions requires the persistent cooperation of international organizations through a set of reports and international studies.

## **II.2. The international organizations and child labor:**

Child labor is a meeting point for the aims of the international organizations that focus on children rights, work conditions and issues, and children health.

### **II.2.1 UNICEF:**

It is the outcome of the UN Children’s Emergency Fund, which was established after WWII to alleviate the sufferance of children through providing food, medicines, clothes, and shelter. Thanks to the big role of this Fund, the Assembly issued a decision calling for the continuity of the Fund. Thus, its name turned into UNICEF, which managed to make big

achievements at the international level regarding health and fighting diseases (HadjSaoudi, p.43), as it placed children at the top of its priorities in 2022. This was confirmed in its plan of 2006-2009, where it called for building an environment that protects children and for using education as a preventive method against child labor.

In addition, UNICEF had a managerial role in the exceptional session of the General Assembly on children of May 2002, which called for a new focus on children under the international cooperation, pointing to the urgent need to integrate measures on child labor in the national efforts for development and fighting poverty, mainly regarding health, education, work, and social protection (The International Labor Bureau, 2006, p.71). In its report of 2012, UNICEF confirmed that about 215 million children aged between 05 and 18 adhered to labor in 2008; 115 million of them were doing dangerous jobs. In this regard, estimations show that tens of millions of children work in streets and cities due to the demographic growth, immigration, and rapid urbanization, which subject them to violence and crimes, mainly in the big cities that ban homelessness and home evasion, what made working children subject to such criminalization (The report of UNICEF, 2012, p.33).

### **II.2.2. The International Labor Organization:**

It is an independent international governmental organization that aims at protecting the working children and improving the work conditions. It made huge efforts to protect children from the economic exploitation and child labor. Besides, it enacted different laws and measures to protect children and guarantee their rights (HadjSaoudi, p.44). It had a key role in issuing the previous conventions on child labor and worked in an international frame to end it. It helped build a knowledge base to support its role as an international center that focuses on child labor. The knowledge coming from research, data collection, and field activities evaluation contributed to changing the children situations since 2002, as research on child labor considerably developed, and the statistics and monitoring of child labor in more than 50 states witnessed an explicit advance. These states received aids since 1998.

It helped conduct research on the main issues related to education, health, and AIDS; however, the criteria used by this organization and the international society to focus on a given topic of child labor rather than another are not clear. The observable trends show an explicit correlation between the execution and influence in some fields of the worst forms of child labor (The International Labor Organization, p.38). The statements of the Organization show that 250 million children between the age of 14 and 15 work in the developing states, and that 50% of them are full-time workers, while the other half work and study simultaneously. In addition, they confirm that 70% of these children do dangerous jobs. As for the studies by the International Labor Bureau in different states, they confirm that the number of these children is continuously increasing, and that, often, these children are used by different organizations for drug dealing; what makes the issue important for the international society (Jaghdali, 2008, p.81). This is confirmed by the Chief Executive of the International Labor Organization, who confirmed that awareness about child labor is increasing in the world, and that the latter is calling for actions to stop this phenomenon and the governments recognize the existence of the phenomenon regardless its size and aspects. He adds that many governments measured this phenomenon and tried to understand and take measures against it (al Darbachi, Abu Torki, Abu Radjab, p.15). Due to the international interest, the International Labor Organization launched the World Day against Child Labor on 12 June 2002 to concentrate on the extent of this phenomenon worldwide and make more efforts to end it (<http://www.un.org/ar/events/childlabourday>).

### **II.2.3. The World Health organization:**

It had a key role in providing the healthcare to children internationally without segregation. It provides vaccines and necessary medical treatments for prevention of diseases and epidemics. As a result, it ended many diseases that threatened children during their work (HadjSaoudi, p.44) in collaboration with the international Work Organization to protect the working children from the diseases that affect their health, mainly that 111 children under the age of 15 are exercising risky jobs in the rural areas and agriculture. In this regard, child labor is dangerous when there are risks in the workplace, such as working for long hours or in the night (The World Health Organization, <http://www.who.int/ceh/risks/labour/ar/>). Consequently, child labor is one of the main topics for the World Health Organization, which issued a Convention against tobacco. This Convention is an international support to fight child labor in tobacco plantations, where work would affect children growth, as they would feel fatigue, not develop experience, get diseases due to trash collection, face the climate factors and toxic chemicals, and use sharp tools (Ghannam, p.114).

Since 2002, the Organization supported the efforts of the International Labor Organization to establish a common team that focuses on the risky child labor. In 2003, the collaborating centers of the World Health Organization identified child labor as one of the 15 priority fields. Then, in 2005, the Organization made a paper about child labor as a tool to support these developing activities (The International Labor Bureau, p.71). Hence, despite the work of organizations and the issuance of international conventions as mechanisms against child labor, child protection from labor needs national enforcement of such conventions and the criminalization of the violation of child rights.

### **III. Child labor in the national law:**

Algeria gave much importance to children through the human programs it adopted after independence, mainly regarding health, nutrition, and education. In addition, it set legal guarantees due to the nature of the Algerian society, where children and youths make up 53.3% of the total population (HadjSaoudi, p.53). In this regard, 26000 children have adhered to work before reaching the legal age, i.e., 54% of the Algerian children between 06 and 14 are working. Since schooling does not reflect the absolute reality, the real number of working children may be higher than statistics (Mebarki, 2013, p.323). In this regard, we may question how the Algerian legislator faces this phenomenon through the laws that enforce the international rules and conventions.

#### **III.1 The rules that regulate child labor conditions:**

The Algerian legislator tried to enshrine a set of texts to protect children from the economic exploitation. Some texts revolve around the phase before the child gets into a relation with the employer, and others protect the child in doing a given job to end the coercion against children.

##### **III.1.1. The rules on protecting the child before work:**

Due to the risks of child labor, and because laws try to limit it despite some children are forced to work by their conditions, the Algerian legislator set specific rules and conditions before the child gets into the labor market, namely:

###### **- Determining the minimum age for child labor:**

Unlike the public rules, the Algerian legislator did not leave any contracting freedom for the employer and the worker, mainly if the latter is a child, as the legislator set provisions that provide for considering the age of 16 as the minimum working age, as it marks the end of the fundamental education (Boukemmache & Atilia, 2018, p.446). In this regard, Article 15 of Law 90-11 on the work relations provided that it is not possible, under any situation, that the working age be less than 16 (Article 15 of Law 90-11, 1990). This was also provided for in the previous labor laws, such as Order 75/31 on the general conditions of the work relations in the private sector, and Law 78/12 on the statute of the worker. In addition, most of the collective conventions respect this age, except the collective convention in Sonatrach Company. According to the applicable law, the collective convention cannot include provisions that go against the applicable legislative and organizational laws. Thus, the age provided for in these conventions are against the law and represent a violation of the legal rights of workers (Saoudi, p. 141). According to Article 135 of Law 90-11, any work relation that goes against the applicable law is void (Article 135 of Law 90-11, 1990).

Exceptions include the cases of vocational training contracts, which are, according to chapter one of Law 81/07 on vocational training, a method of training that aims at acquiring a primary professional training during work to allow for exercising a job in the different economic sectors of producing goods and delivering services (Law 81/07, 1981). Besides, Article 12 of Law 81/07 determined the age of 15 as the minimum age of such contracts.

###### **- The employment license:**

Law 90-11 points that the employment license must include the approval of the job by the parents of U-16 children through a written permission issued by the competent authorities (the city hall) and the employer before the start of the work (Mebarki, p. 328). This is a key procedure that protects the working children, as it requires the approval of their parents or mentors, as provided for by paragraph 02 of Article 15 of Law 95/11. This approval must be written to be submitted to the legally competent authority of ratification (Boukemmache & Chaima, p. 447). In this context, we can question the effect of permission to employ on the work contract, and permission is necessary for the validity of the contract.

In this regard, the civil law provides that an employment contract without parental permission is relatively void, and can be redressed if the parents approve so. Thus, the permission in such case is necessary for the validity of the contract, not for the contract per se. As for the labor law, the absence of permission cancels the labor contract, what confirms that it is a condition for the contract itself, not the validity. Under the principle of “*lex specialis derogat generali*”, we can confirm that the permission is a condition for the contract, not the validity, and that its absence abolishes the contract.

###### **The primary medical examination:**

Often, the child is subject to the job risks, unlike the adult. Therefore, Article 15 of Law 90-11 provides that it is not legal to employ children in dangerous works that lack hygiene, harm their health, or affect their ethics. This proves that the primary medical examination is a necessary procedure with a preventive nature, not an administrative measure, as provided by Article 13 of the Executive Decree 93/120 on the work medicine (Saoudi, p. 172.).

##### **III.1.2 The rules on child protection during work:**

The child entrance into a work relation increases the required protection level, pushing the laws to give rights to children in this phase.

### - Determining the work hours:

Determining the work hours for the adult worker is a legal priority in many states, not to mention the child whose physical and mental developments are incomplete, and who are subject to the employer abuse. However, the Algerian labor law determined the working hours for all the workers to be 40 hours per week divided on 5 days at least. In this regard, the companies choose the timetable that suits the nature of their activities, provided that the daily shifts do not exceed 12 hours, with the possibility of increasing the working hours for some positions that have long breaks, and of reducing the working hours for the workers in risky and hard jobs, such as in mines (Hadfi, 2006, p. 163). In this regard, no law discusses the working hours of the child. Therefore, we deduce he is concerned with the law that determines the working hours to be 40 hours per week, showing huge difference between the working hours for the child in the Algerian law and in some other laws, such as the Egyptian that banned the employment of children for more than 06 hours per day. Hence, the Algerian legislator must enact an explicit law because adults and children do not have equal physical and mental force.

#### The night shifts

Due to the risks of the night work, children are not allowed to work in the night, unless under force majeure. The nightshift in the Algerian law starts from 09 p.m. to 05 a.m. (Article 27 of Law 90/11, 1990). In this context, Article 28 of Law 90/11 states that U-19 children of both genders must not be employed in night shifts (Boukemache & Atilia, p. 449). Thus, the legislator banned the night work for U-19 children, regardless the work conditions. The violation of this provision by employers would raise penal sanctions. It is worth noting that the legislator gave much protection to the child through determining the age of 19 as the minimum age for the night shifts in general (Saoudi, p. 53).

#### Determining the nature of the job:

Children work in different environments and under different circumstances, which may be beneficial to the mental, ethical, and physical growth and education of children, or harmful and devastating and a source for exploitation because they may deprive children of their rights. Between these two extremes, we find different sectors of child labor that may be beneficial or harmful (Zouzou & Ben Aissa, p. 53). The most harmful ones are those that expose children to chemicals, pesticides, drugs, night shifts, and armed conflicts, as confirmed by Article 15/03 of Law 90-11 on the work relations, stating that it is forbidden to use minors in risky jobs that lack hygiene standards, harm the health, or affect their ethics (Ali Jaghdali, p. 94). This goes with Article 02 of Child Protection Law 15/12 that confirms that "the child in danger" is the one whose health, ethics, education, or security are in danger or subject to danger, or his living conditions or behavior may subject him to potential danger in the future, or he is in an environment that subjects his physical, psychological, and educational safety to danger (Article 02 of Law 15/12, 2015).

Despite the legislator banned child labor in dangerous works, he did not identify these dangerous works that represent an economic exploitation to child, as the foreign laws did, mainly that he ratified the international conventions that grant the states the freedom to identify these dangerous jobs.

#### Granting breaks:

The rule has it that each worker has the right to breaks and leaves. In this regard, he stops at midday to have lunch, and at regular intervals to avoid fatigue. Besides, he has the right to two-days rest each week, mainly the child workers unexceptionally (Mebarki, p. 329). However, the Algerian law did not provide for a daily break unlike the weekly. Nevertheless, this does not imply the deprivation of workers, and children, from the necessary daily breaks during the ordinary working hours (Hadj Saoudi, p. 201).

#### Salary:

After the change of the capitalist materialistic vision to the salary, which had always been considered as the return for a job based on demand and supply, the modern vision starts from social goals and dimensions that consider the needs and living conditions of the worker, and see the salary as one of the main elements of the job contract (Hadfi, p. 133). In this context, Articles 80 and what follows of Law 90/11 show the different provisions on the salary without any specific discussion of the salaries of working children, except the vocational trainer who gets two premiums; the first is paid by the vocational training center in the first month, and the second is paid by the employer or employing administration after 09 months (Mebarki, p. 329).

## III.2 Enforcing the rules on child labor conditions:

When the law lacks the binding force, it is confused with the moral rules and may lose its importance if deterrence and punishment are absent. Therefore, the laws that address companies and employers about child labor cannot achieve efficient results unless the companies are controlled and the violation of child rights are criminalized.

### III.2.1 The entities assigned with enforcing the child labor laws:

A set of entities and commissions are assigned with controlling the enforcing child labor laws, based on mechanisms that differ according to the nature of the entity or commission.

#### The labor inspectorate:

Algeria is one of the states that adopted the job inspection, which uses employees to inspect the professional sectors to check the respect of the law regulations (Gheraieb, 2007, p. 179). The main inspection task is not detecting violations of labor and child labor laws to sanction the commissioners; rather, it aims at ensuring the legal protection of the workers. Due to the difference in the degrees and nature of violations, the inspectors have the right to take the necessary measures to redress the issues noticed (Khenniche, 2012, p. 74). Thus, the labor inspectorate enforces the legislative and

organizational laws regarding the labor law and conditions, the health prevention, and the workers security, and provides information and guidance to the workers, employers, and managers regarding the legal provisions about the rights and duties (Gheraieb, p. 182). Besides, it informs the competent authorities about the gaps covered by these legal provisions, as complementary tasks that contribute to the application and improvement of the labor and child protection laws (Khenniche, p. 77).

**- The security and health prevention committees:**

The Algerian legislator provided for establishing these committees in the companies that employ more than 09 permanent employees. The Executive Decree 05-09 on these commissions insisted on their establishment and called them "the company committees". On the other hand, if the company is made up of many units, each unit must have a parity committee for security and health prevention, called "the unit committee". In this context, the general directorate is the headquarters. As for the case of a company that has less than 09 workers, the manager appoints a health prevention delegate while in those with more than 09 temporary workers, the manager appoints a permanent delegate assisted by two qualified workers (Rokaya Sekkil, 2014, p. 82). This difference in forming the prevention members pushed the legislator to use the expression "security and health prevention committee", whose role manifests in enforcing the laws and criteria on child labor, mainly regarding security, health prevention, work conditions, and nature of the tasks assigned. In addition, they adjust the machinery and tools to children, launch investigations after work incidents, choose the methods of work and of educating children about prevention from risks, and inspect workplaces to make sure of the good conditions of health prevention and hygiene. Despite the Algerian legislator provided for the right of the security and health prevention committees to get information, he did not show the nature of the information and how to access it (Hadj Saoudi, pp. 302-306.).

### **III.3 The penal provisions to deter the violation of child labor rules:**

In promoting the protection of the working child, and in enforcing Article 07 of Convention 182 of 1999 on the worst Forms of Child Labor that called for applying penal and other sanctions (Article 07 of Convention 182, 1999), the Algerian legislator deterred any violation of child labor rules through enacting the Labor Law, the Penal Law, and Law 15/12 on child protection.

#### **III.3.1 The penal provisions in the Labor Law:**

It has different provisions, some are about deterring the violation of the child protection laws and others are about deterring the violation of the laws of child protection during work.

**- The penal provisions to deter the violation of child protection rules before work:**

After the legislator has set rules to protect children before starting a job relation, he considered that any violation of these rules would raise penal sanctions, as follows:

**a- Violating the minimum working age:** This crime arises when a job relation between U-16 child and an employer is established after the regionally competent labor inspector proves it, either the contract is permanent or temporary. In this regard, the violator is sentenced to a monetary fine of 1000 to 2000 Algerian Dinar if:

- The job relation is established in accordance with Law 90/11.
- The quality of worker is met, as the worker is a natural person who does manual or intellectual job for another natural or moral person.
- The age is under 16, except in licensed vocational training (Boussanboura, 2008, p. 311).
- The violation is proved by the labor inspector, in accordance with Article 138 of Law 90-11 (Article 138 of Law 90/11).

This crime is deliberate because it needs a real will based on the knowledge of the user about the age of the U-16 child, and on his awareness about the process of job relation making. In case of recidivism, the judge may sentence the employer to 15 to 60 days of prison and to a monetary fine that may redouble than the 1<sup>st</sup> time (Mebarki, p. 330). The recidivism is when the violator recommits the same violation with 12 months of the 1<sup>st</sup> (Boukemmache & Atilia, p. 447).

**b- The violation of the medical examination:**

The material condition of this crime is discussed in Article 143 of Law 96/03 that supplements Law 90-11, which states that the material condition is raised when the employer abstains to sign the primary and periodical medical examination, which is on his expense and to be proven in the professional and healthy card of the child. As for the moral condition, it requires the will and knowledge about what the employer did. In this regard, he is sentenced to a monetary fine of 500 to 1500 Algerian Dinar because he violated the law on health prevention, security, and labor medicine (Article 38 of Law 88/07, 1988).

**\* The penal provisions to deter the violation of child protection during work:**

During work, the child is often subject to rights violations, as the rules on the work conditions may not be respected. Therefore, the legislator criminalized these violations by discussing the following crimes:

**a. Violating the legal duration of the work:** Unlike the principle of free contracting, the employer is not free to overwork the worker to avoid abuse and, thus, criminalization and sanctions mentioned in Article 143 of Law 90-11, which provides

that the legislator set the maximum working hours in the ordinary system (Jahel, 2012; p.18), and that any employer who overworks someone for more than 40 hours per week, divides the weekly working hours on 04 or less days, or overworks a child for 12 hours per day is sentenced to a monetary fine of 500 to 1000 Algerian Dinar if the labor inspector proves the facts (Boussanboura, p. 313.).

**b- Working children in night shifts:**

Article 27 of Law 90/11 defined the night shift as the work between 09 p.m. and 05 a.m.. Besides, Article 28 banned night shifts for U-19 children (Article 28 of Law 90/11). In this regard, the violation of the provisions raise penal sanctions mentioned in Article 143 of the same law, estimated at a monetary fine of 500 to 1000 Algerian Dinar (Hadeffi, op. cit., p. 184).

**c- Violating the break rules:**

The Algerian legislator drew the legal model of this violation that affects the commitments mentioned in Articles 33 to 52 of Law 90-11. In this context, Article 144 provides for sentencing the employer who violates the provisions on the legal break to a monetary fine between 1000 and 2000 Algerian Dinar on each worker. Nevertheless (Jahel, p.18), the legislator rebuilt this model in Article 145 of Law 90/11, which insisted on sanctioning the violators of Articles 38 to 52 of Law 90/11 with the same monetary fine. This is an unjustified double criminalization because all the violations under the legal frame of Article 145 of Law 90/11 cover the violations mentioned in Article 144 of the same law, either regarding the weekly break, the feasts, the holidays, and the annual leaves (Boussanboura, p. 317).

**d- Violating the salary rules:**

The salary is the first motive for the child early work, and is one of the rights of any worker. Therefore, Article 148 of Law 90/11 shows that the employer can commit three crimes. The first is paying the salary without a statement as a base salary, what marks one of omission crimes. The second is paying the salary and submitting an unrelated salary statement. The third is deliberately neglecting one or more items of salary, as determined by the contract, agreement, or law (Boussanboura, p. 327).

### III.2.2. The penal provisions mentioned in the Penal Law and the Child Protection Law

To provide more protection to the child and end the worst forms of child labor, the Algerian legislator criminalized some acts in Article 342 of the Penal Law, such as inciting children for prostitution and bad behaviors, whose material condition is raised when children are incited for, encouraged, or helped to make prostitution and bad behaviors regardless the tool used by the inciter. As for the moral condition, it is raised when the offender is aware that what he does should harm the child. In this regard, the offender is sentenced to 05 to 10 years of prison and to a monetary fine of 20000 to 100000 Algerian Dinar. In addition, he is even sanctioned for the mere initiation of the crime (Dekaichia, 2006, pp.270-271). As for child beggary, Article 196 Bis tells that protection and disciplinary measures are taken against U-18 children who exercise beggary, such as blame or simple monetary fines. Besides, the child is submitted to his family or maintained in children protection centers (HadjSaoudi, p. 321). Since the beggar child is a victim of exploitation and incitement, Article 139 of Law 15/12 on children protection provides for sanctioning any party that economically exploits children with 01 to 03 years of prison and with a monetary fine of 50000 to 100000 Algerian Dinar. The sanction redoubles in case the offender is one of the child mentors or relatives (Article 139 of Law 15/22). As for the material condition, it is raised when the economic benefit from the child is achieved, without exception of the acts. This marks a positive point amid the economic development in the society and the emergence of child labor as an international issue (al Qanii, 2018, p.47). Thus, based on the penal provisions and on widening the scope of criminalization and sanctions, we can say that the legislator responded to the commitments imposed by the international conventions.

### Conclusion:

Despite the efforts of the Algerian legislator, who set a legal arsenal that included the Labor Law, the Penal Law, and Law 15/12 on child protection to commit to the international conventions that set legal rules and obliged the states to enforce them, the issue of child labor is still increasing, as reports and studies of the international organizations that aim at measuring the issue and finding its causes show. The organizations basically rely on the official statistics provided by the labor inspectorates and business managers, what represents the first obstacle against determining the efficiency of the legal texts imposed by the legislator. The validity of these statistics is doubted due to the restrictions on the prerogatives of the control entities and the mismatch between the penal sanctions against violating the child labor rules and its negative effects. Based on what was said, we suggest:

- Forming commissions to monitor the enforcement of child labor laws and giving them large prerogatives to access real information.
- Abolishing the individual and collective agreements that violate the minimum working age.
- The necessity of the legislator intervention to determine the working hours for children and distinguishing them from the hours of the adults.
- Identifying the works that involve an exploitation of the child and endanger him, because the conventions gave freedom to each state to do so.
- Widening the scope of criminalization of the violations of children rights.

- Enacting stringent laws against the violation of children work rules, which ban the work or discuss its conditions.

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