



## RESEARCH ARTICLE

## The Rights of the Mentally and Psychologically Ill Child in the Algerian and the Comparative Legislations

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ARTICLE INFO	ABSTRACT
Received: Aug 24, 2024 Accepted: Oct 16, 2024	Childhood is the nucleus of the future , the buds flowers of life. God Almighty considered it the adornment of worldly life in his saying : "Wealth and children are the adornment of the worldly life". Therefore , it needs complete care to grow , flourish , and develop peacefully and to pass this sensitive stage in life of each us. Therefore , it is necessary to provide protection for the child from all obstacles that he may face , in addition to providing sufficient means and mechanisms to care for the child and ensure his growth. This matter requires a clear and an effective consolidation of the rights of the child as an integral part of human rights. In addition to the report about the protection of children's rights in general , there is a special category of children who needs a special care and unique protection due to their status as a child characterized by mental and psychological immaturity. This category needs treatment , care , attention that exceeds what healthy children need , which is what the Algerian legislator adopted through Law No 09/02 about the protection and the promotion of disabled persons Law 11/19 of the Algerian Health Law , as well as Law No 15/12 about child protection , which allocated several legal , institutional and administrative mechanisms to protect this category.
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### INTRODUCTION

Children are the fruit of humanity , that's why they need a complete care to grow and develop in their life , they are also need to be protected from all what it can affect negatively their life in order to grow up in peace and in other hand to pass this sensitive phase because they are considered the foundation on which the child's thinking and conscience are based , that's why the child must be protected from all obstacles that he may face , in addition to provide sufficient means and mechanisms to care for the child and ensure his growing.

Childhood is the most important phase in society , in this case , caring for children and surrounding them with guarantees that protect their rights is not only a patriotic duty , but also it is a human moral principle. A nation that cares for its children and protect them is a nation that realizes its future

cannot be better than its present , except if it made more efforts to prepare its children well , so that they become responsible to lead successfully their society.<sup>1</sup>

As an embodiment of the great importance that children occupy in shaping the future of each country most countries have been keen , from ancient times to present day , whether at the international or local level to issue an international declaration about the rights of the child and made a collective and bilateral international agreements to ensure the legal protection of children. And in this case statutory laws and legislation have created a special protection for children because they are threaten by crimes that make their life difficult whether from a physical or psychological aspect. Therefore the Algerian Penal Code includes rules which aim to protect children and set deterrent penalties and punishments for anyone who attacks this weak and sensible category.

## **THE FIRST TOPIC: THEORETICAL ASPECT**

**The first requirement : Definition of the child and the psychological and mental illnesses linguistically and as a term:**

**The first branch: Definition of the child linguistically and as a term:**

It is difficult to find an exact definition of the child because of the different viewpoints of jurists psychologists , sociologists and others who are interested in childhood affairs , so it will be defined according to the following :

**Definition of the child linguistically :**

The child with Kasra and aggravated ta. Small of everything. A child with a hole offers licenses and blessings. The boy and the girl are the two little ones , and the plural form is children. The newborn and offspring of every wild animal is also called a child.

Ibn al-Haytham said : A boy is called a child if he appears from his mother's womb until he reaches Puberty<sup>2</sup>.

**Definition of the child as a term:**

Childhood is the stage that the child lives through , and there is a difference between the researchers regarding its definition and the age stages that he passes through. Some of them defined this stage that it starts from birth until the end of the age of eleven. And in other hand , others believed that the childhood stage begins from the first moment of the formation of the fetus , and according to this opinion , the fetal stage is considered the beginning of the childhood stage , until the child reaches the age of eighteen.

Childhood is the period of time where young children grow and mature , until they reach adulthood where they can rely on themselves to manage their affairs such as assuring their biological and

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<sup>1</sup> - AL Khaldi Abd Almadjid , Doctor Kamel Hocin Wahbi , Mental and psychological illnesses and behavioral disorders ( Beirut : Dar Al- Fikr Al-Arabi ) , 1998 , P 23 – 25.

<sup>2</sup> - Djamel Eddine Ibn Mandour Al-Ansari , Lissan Al-Arab , part 11 , Edition 3 , Dar Sadir , Beirut , 1414 , P 04.

<sup>2</sup> - Mohamed Dayae Eddine Khalil Ibrahim , Children's rights , its concept and development throughout human history , a communication within the works of the Sixth International Conference : the international protection of the child , Tripoli , 2014 , P 04 – 05.

psychological needs. During this period , the young children depend completely on their parents because they are responsible to assure their needs<sup>2</sup>.

### **Definition of the child in the Algerian Legislation:**

There are differences between the statutory legislations about the child's definition , due to their differences in determining both the age of distinction and the age of the majority because of several factors whether natural , social or cultural<sup>3</sup>. Among the legislations that dealt with this issue in Algeria. we mention what is stated in the article 02 of Law No 12/ 15 related to the child protection :A child is every person who has not reached the full age of eighteen. The term event has the same meaning.

### **The second branch: Definition of the mental illnesses:**

The mental illness is a compound word consisting of two parts : illnesses from illness , and mental illness from mind and its relation to it. Therefore , until the meaning becomes clear , I will define each part of this compound in order to arrive at its compound definition.

### **The mental illness in Language:**

It is illness and disease , and the letters Mim , Raa and Thad are the origin of the word and indicate exceeding the limits of health in any matter , so it is said a sick man , it means he has a disease or illness , and the same thing for the sun, it is said sun is sick it means it doesn't rise because of the presence of clouds that prevent the sun from rising. It may be applied to another meaning than sickness and tangible illness , as in the Almighty's saying , "And in their hearts was a disease , so God increased their disease<sup>4</sup>". God compared faith with health and the hypocrites with disease , because of the lack of health in their hearts and the presence of disease in this sensible organ , and mind is the opposite of ignorance , so all the letters of this word are original , and its greatness indicates an aphasia or something close to aphasia. Reason prevents a person from issuing reprehensible words or actions and it is said that the person who suffers from a mental illness becomes calm , it means he purified and attained and the camel becomes quite , it means his hands were tied with the known bond<sup>5</sup>.

### **The mental illness as a term:**

Many Sharia scholars and philosophers have delved deeply into explaining the reality of the mind, and they disagreed between essence and accident. The mental illness is a compound word , but Sharia scholars didn't mention it in the past because it is a new word invented in a period , there were no medical and psychological sciences.

The mental illness is defined as : a disease that includes all emotional , behavioral , mental disorders and in general personality ones. This illness reflects cases of anomaly and disharmony. The person who suffers from mental illness exposes to a comprehensive and a serious disorder in his personality. It appears as form of severe imbalance in thinking , mental powers and inability of control

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<sup>3</sup> - Sawaykat Belkacem , Social protection of the child in the Algerian Law , Graduation thesis : Master of Law

specialization : Criminal Law , Merbahi Kasdi , Political Sciences and Law Faculty , Ourgla , 2010 , 2011.

<sup>4</sup> Verse 10 from Surat Al Bakkara .

<sup>5</sup> - Ahmed Ibn Fares , Lexicon of Makaiies of Language 4/92 and Abou Abd Arahman Alkhalil Ibn Tamimi Alfarahidi Albasri ( in 180 Hidjri ) Books of Al-Ain ( Dar ans Library of Al-Hialal 1/159).

and care for himself , in addition to that , he doesn't know the main causes of his illness and he can't recognize his problem<sup>6</sup>.

Based on the above , mental illnesses can be defined as " a set of severe mental and personality disorders that make an obstacle for social and individual activity and cause a behavioral confusion and make the patient behave abnormally and make him different in his thoughts , words and actions compared to ordinary people to an exaggerated degree where it may often cause a danger which necessitates his removal from society and taking care of him in private hospitals. Doctors describe the mental illnesses as the most dangerous thing that affects a person where it can cause a danger in the personnel functions and at the same time a serious physical diseases like : cancer.

### **The third branch : Definition of the psychological illness linguistically and as a term:**

The psychological diseases is a word composed of two parts. The first is disease which was previously defined in the first requirement. But concerning psychology , it must be defined linguistically.

### **Psychology in Language:**

The letters Noun , Faa and sin are the origin of the word and it indicates more than one meaning. It means soul. We find that some linguists have linked between soul and psychology , making them one thing , except for one thing that soul is masculine and psychology is feminine. Other linguists mentioned another difference that soul contains life whereas psychology contains mind. If the sleeper sleeps , God takes his psychology and doesn't take his soul , and soul is not taken except at death. God Almighty said : "And God take souls at the time of their death and they have not died in their sleep , then God withholds the one upon whom He has decreed death and sends the others for an appointed time. Indeed , in that are signs for a people who reflect".<sup>7</sup>

Soul was called a soul because it was born from it , as well as , they also called the spirit spirit because spirit is existed in it<sup>8</sup>. Man has two souls : soul of discernment which , when he sleeps , leaves him and he doesn't understand or reason with it , but the second is the soul of life , if it is removed from it , soul is removed. This is the difference between death of soul of a sleeping person and soul of a living person<sup>9</sup>.

And the non-existence of the thing : it is said the prince himself came to me , or a man killed himself it means he is a killer and he will be killed. Soul has many definitions and many meanings , and each definition has its own special meaning.

**The psychological illnesses in terms of terminology:** the psychological diseases' s definitions have varied and converged including that : " the psychological illnesses are a set of deviations that do not cause just by the structure of brain , but they are functional and mood disorders in the personality that are due to painful experiences or emotional shocks or disorders in the relationship that links

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<sup>6</sup> - Atouf Mohamed Yacine , Clinical Psychology , Beirut , House of Knowledge for millions , 1981.P 281.

<sup>7</sup> Verse (42) from Surat Al- Zummar.

<sup>8</sup> - Mohamed Ahmed Ben Al-Azhari Al-Haroui , Abou Mansour ( in 380 Hidjri) Tahdib Language ( Beirut Dar of Riviving Arab heritage , 2001 Miladi ) , 13/8.

<sup>9</sup> - Ibrahim Ben Al- Nasri Ben Sahl , Abou Ishak Al – Zoujaja ( in 311 Hidjri ) , Meaning of the Holy Quran and its parsing , (Beirut , World of book , 1988 Miladi ) , 4 /362.

between the individual and the social environment in which he lives and interacts , and these are linked to the individual's past life especially his early childhood<sup>10</sup>.

Or it is a functional personality disorder that is primarily , due to painful experiences , emotional shocks or disorders related to the social environment with which interacts with the various types of painful experiences to which exposed in the past and present , and its impact on the future<sup>11</sup>. It is also known as : a health problem that affects a person greatly , and not for a physiological reason. It affects the patient's mood , thoughts and behavior and lead to difficulties or a problems in the social and the functional aspects. It may arise from childhood and it appears at different stages. Doctors agree that it differ from mental diseases in that it is less serious and does not eliminate contact with reality or social harmony. The person affected remains connected to the real life , he has some knowledge of his condition , he stays aware in his life and he can accomplish his duties and distinguish between reality and imagination.

### **The Second Requirement: The Causes Of Psychological And Mental Illnesses And The Difference Between Them:**

#### **The first branch: The causes of psychological illness :**

The psychological conditions and diseases that may affect children can include the following disorders<sup>12</sup>:

- Anxiety disorders : the infected children suffer from these disorders , whether as the form of obsessive compulsive disorder , post- traumatic stress disorder , social phobia , generalized anxiety disorder or other anxiety that represents an obstacle which prevents them from performing their daily activities and duties.
- Attention deficit and hyperactivity disorder : this disorder is usually associated with different aspects of a child's behavior , including difficulty to keep attention.
- Autism : it is considered as one of the disorders called autism spectrum disorders which appear during the early childhood. World Health Organization has defined it as a developmental disorder which appears in the first year of a child's life where he becomes unable to acquire language , to play and to establish a relationship with others it means that he becomes dissociable. But until now , and despite the researches and the studies that are still being conducted , scientists have not reached the main causes that lead to a autism , in addition to their inability to reveal the effects of the brain's condition , its functions and its chemical features.

Knowing whether the child is suffering from a psychological disease or not is up to the adults who live around him. If they are educated about the symptoms and the signs which indicate that , they will certainly help him to overcome it. However most parents do not know the signs and the symptoms of these diseases among the children.

The psychological disorders among the children are considered among the symptoms of the diseases mentioned above which can be defined as: those the physical , psychological and the social difficulties and obstacles that stand in the way of the child achieving his needs and his requirements and it becomes an obstacle for him to overcome the challenges and the conflicts of childhood , as a result he can't adapt with the environment where he lives and he becomes incompatible with others whether

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<sup>10</sup> Atouf Mohamed Yacine , reference was mentioned previously , P 209.

<sup>11</sup> - Ijlal Mohamed sirri , Clinical Psychology , Cairo , Aula for books , 2000, P 39.

<sup>12</sup> - Djamel Abdellah Laki , the effect of the psychological illness in rising the criminal responsibility in Islamic Al-Fikh , Islamic University , Gaza , 2009 , P 32.

at home , at work or at school , which leads to his isolation from society and he needs care , guidance and treatment<sup>13</sup>.

### **The second branch: the causes of the mental illness:**

There are no known direct causes of mental disease and it is known that the mental illnesses are not due to the personality disorder , weakness or because of genetic error , but there is a set of factors that are believed that it causes the mental illnesses.

These factors are:

- Changes in the structure or chemistry of the brain , which affect the brain functions and in other hand it affect the individual's feelings , thoughts and behavior.
- Environmental factors , it include the individual's environment , social relationships , family life , traumas and abuses that he exposes to them , in addition to the life stresses. All of these factors contribute to stimulate it<sup>14</sup>.
- Biological factors : Mental disease can be inherited entirely or partially , thus it becomes a part of a person's genetic makeup. However , the person can inherit this genetic without suffering from a mental disease.

In this context , it is necessary to point out an important point which is that there is a difference between both terms mental disease and mental retardation. The mental retardation is considered a condition while the mental disease is considered a defect in mental balance , and it may affect the individual at any stage of his life , contrary to the mental retardation which occurs during the pregnancy or during the childhood.

The causes of the mental retardation among the child are due to genetic or non-genetic ones<sup>15</sup>. Concerning the genetic causes , they are sometimes called the internal or the formative causes which are defined as a causes that arise genetically and it has a relationship with the transmission of genetic traits from the father or the mother or from direct or indirect grandparents ( for example : grandfather brothers ) to the child.

And in other hand and concerning the non-genetic causes of this mental , it can be divided into three causes

1- Causes that lead to the mental retardation among the child before his birth , including the mother who takes the medical drugs without consulting a doctor , the mother who is exposed to an infectious disease which affects the growth of fetus later , the pregnant mother being exposed to the radiation and the last cause represents the lack of nutrition among the pregnant mother in general.

2- Causes that lead to the mental retardation among the child because of the difficult birth , including the fetus being exposed to asphyxiation during his birth ( the umbilical cord wrapping around the neck of newborn) and the lack of oxygen among the child.

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<sup>13</sup> - Kamel Hacen Wahbi , The mental and psychological illnesses and the behavioral disorders among children House of University Thought , Beirut , the first Edition , 1998 , P 120.

<sup>14</sup> - Al-Hadj AL-Shikh Soumia , Social perceptions of mental illness among doctors ( A practical study among a sample of doctors from Bashir Nasser Hospital in Biskra , a supplementary memorandum to obtain a master's degree in Psychology , Khadir Mohamed University , Biskra , 2013 , P 04.

<sup>15</sup> - Azzam Hourri between the mental and psychological illnesses , a different concept , health and human No 02 , 2008 , P 59.

3- causes that lead to the mental retardation because of some diseases which the child is exposed to them during his childhood where he suffers from severe fever such as cerebral fever or inflammation of the brain's membranes , in addition to an imbalance in the secretions of the endocrine glands among the child like the dwarfism as a result of a disorder in the function of the hypothypoid gland.

### **The third branch :The difference between the psychological and the mental illness:**

Most of people do not differentiate between the mental and the psychological illness. They even see the mental disease as mere insanity , so in this case they don't consult a psychiatrist because they are afraid of being described as crazy. However the truth is quite the opposite because there are many differences between the mental illness ( psychosis) and the psychological one (neurosis) where the symptoms of each differ from the other , and we will explain that below<sup>16</sup>:

1- The basic origin of the psychological illness is due to the psychological factors such as : the inclinations and the repressed desires and not because of the heredity , while the mental disease arises from an organic and functional disorders which affects the nervous system , in this case plays a varying role in its appearance

2- the psychopath is affected and he suffers from a partial disturbance in some elements of his personality while the mentally ill suffers from a total disorder or he can be affected in some elements of his personality.

3- The person affected by a psychological illness establishes a relationship with others and he can work as usual in most cases , while the mentally ill lives isolated from the society in his own world except of some periods when the patient recovers.

4- The person who suffers from a psychological illness is still aware of what is around him and he doesn't loose either will or insight even his awareness and his will are weak where he can understand that he is ill. However the person who suffers from a mental disease , he loses awareness and will or one of them. Also he lacks insight and he doesn't know anything about his disease , as well as , he refuses the treatment because he can't believe that he is sick and he doesn't feel his disease and he is ignorant of his conditions and the abnormal stages of his life.

5- The psychological diseases are treated by both psychiatrist and psychoanalyst by using the psychotherapy and psychological analysis of the patient's personality with a physical supportive treatment where he sometimes takes a sedative medications whereas the mental diseases need a psychiatrist and they are treated by the physical treatment which includes trauma in addition to the psychological supportive treatment.

## **THE SECOND TOPIC**

### **LEGAL PROTECTION FOR THE MENTALLY AND THE PSYCHOLOGICALLY ILL CHILD :**

**The first requirement :Manifestations and mechanisms of legal protection for the mentally and psychologically ill child.**

**The first branch :Manifestations of legal protection for the mentally and psychologically ill child**

It is not enough to recognize the rights of disabled persons or those who suffer from mental and psychological diseases by stipulating those rights in international declarations and agreements. In

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<sup>16</sup> - Akram Nachat Ibrahim , Criminal Psychology , Oman : Library of House of Culture for publishing and distribution , 1998 , p 91 – 92.

addition to the internal texts where this protection must be supported with mechanisms , devices and practical measures that ensure its practical embodiment.

And by referring to the regulatory texts and agreements which denounces the rights of disabled persons we find that they decided to protect this group , whether at the administrative and institutional level or at the level of treatment and integration into society<sup>17</sup>.

Childhood is an important stage in the person's life. Its beginning is the formation of his legal personality it means from his birth , where he goes through several stages according to his physical , mental and psychological growing. The international and national legislations has paid attention to a category which is characterized by weakness , lack of awareness and it needs to ask help from another person. In addition to this specificity , a child may be born with a defect , physiological deficiency or a disability that represents an obstacle to achieve his desires , this defect may be is due to an accident or a specific disease. This condition is called disability.

Algeria as a member in the international community , it includes a large segment of children , and it took the initiative to issue a legal texts concerning the children's rights in order to be protected legally. These legal texts are preceded by the constitutional protection which was embodied in several legislative and regulatory texts which seeks to regulate children's rights and the most important is Order No 72/03 dated on February, 10<sup>th</sup>, 1972 related to the protection of childhood and adolescence , in addition to that Algeria ratified the International Agreement of the right's children in 1992<sup>18</sup>. This agreement seeks to promote the rights of the child within the family by amending the Family Law issued in 2005<sup>19</sup>.

The Algerian constitutions indicated to the principles which regulate the rights of the child and the family as the environment where the child grows up and it is the basic cell of society. Despite the scarcity of constitutional texts that address the children's rights , they share four topics : the right of education ( article No 65) , the right of education ( article No 53) , the right of health care ( article No 54 ) , the right of

improving living conditions ( article No 59) <sup>20</sup>, because all the controls included in the Constitution , whether those that define the features of the state or those that clarify the basic rights and freedoms recognized for the individuals constitute a real guarantee which aims to ensure the protection of the child's rights from any transgression or assault that may happen to him<sup>21</sup>.

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<sup>17</sup> - Mohamed Naim Yacine , the effect of the mental and psychological illnesses on the Criminal responsibility Journal of Sharia and Law , 2002 , 24 – 25.

<sup>18</sup> Algeria ratified it with explanatory statements pursuant to Presidential Decree No 92\_461 of Jumada 2 , 24<sup>th</sup> 1413 corresponding to December 19<sup>th</sup> , 1992.

<sup>19</sup> In addition to the amendment it made , the most prominent of which was the amendment to the Family Law issued in 2005 pursuant to Order No 05/02 dated on February , 27<sup>th</sup> , 2005 , newspaper No issued on February , 27<sup>th</sup> , 2007 , which affected the family rights of the child such as : the right to parentage , guardianship and custody.

<sup>20</sup> Articles from Constitution of the people's Democratic Republic of Algeria in 2020.

<sup>21</sup> - Djaldi Mansour , Children 's rights in light of the desired constitutional reforms , a study of the constitutional experiences of Algeria , Journal of Labor and Employment , No 33 , Algeria , 2018 , P 15.



The article No 71 from the Constitution issued in 2020 also included the rights of the child which are protected by the state and the family, taking into account the best interest of the child. The state protects and guarantees children who are abandoned or whose are unknown parentage<sup>22</sup>.

Algeria ratified the Convention of the child's rights on April, 1992 and according to the Algerian Constitution, once ratified, the Convention is activated, and it has priority over the national laws according to the article No72 from the Algerian Constitution in 2020, where it is obliged to take all measures to implement the recognized rights in this agreement and to develop and enhance its interest in childhood through its legislations and laws in the same field issued by the Legislative Authority. It also establishes a social structures and creates the necessary mechanisms to guarantee these rights through a specialized institutions and bodies.

In Algeria, the social protection for childhood is embodied at the national level in the National Authority which works on protecting and promoting childhood which carries out its tasks through its distinct legal organization based on the availability of administrative structures, and in other hand, it bases on specific human training, as well as, through its notification mechanism about the cases of children at risk. These cases are followed by measures taken as a result of those notifications. In addition to international and national legal arsenal which seeks to regulate the children's rights in general, there is a special category of children who need a special care and unique protection because of their childhood condition. This category is characterized by mental or psychological immaturity, it represents the category of children with special needs or disabled persons. It needs more treatment, care and treatment than deaf children, so this special case requires a special treatment, which is what the countries of the international community have embodied where we start by the first declaration which represents the United Nations Declaration about the Mental Retardation in 1971 and the second declaration is about the persons suffering from disabilities in 1975 in addition to an International Conventions such as the International Agreement of the child's rights issued in 1989 and the International Agreement of the disabled person's rights issued in 2006<sup>23</sup>. And at the local life, Algeria made an efforts to provide care for disabled persons and people with a special needs by issuing several legislative and regulatory texts that work to provide the legal protection for this category. This protection reflects in the special texts of these people and at the heart of the constitution, in addition to several legislative texts, including:

Law N 18 /11 issued in 2018: the Algerian Health Law, the important and the special text related to the protection and the promotion of disabled persons N 02 /09 dated on May, 8<sup>th</sup> 2002 which is amended and supplemented. Finally, the legislator provided an additional protection for this category under law N 12/15 related to the protection of the child<sup>24</sup>.

### **The second branch : Mechanisms of the legal protection for the mentally and psychologically ill child**

Concerning the treatment of mental diseases, the Algerian legislator regulated the hospitalization or treatment of people suffering from the mental diseases according to the duration of this disease

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<sup>22</sup> - Wali Abdelatif, Constitutional Protection of the child's rights in Algeria and the mechanisms of its application, thesis to obtain Master's diploma in Law, Law Faculty, Algeria, 2020, p 18.

<sup>23</sup> To view the agreements and announcements related to the disabled children, see the following website: <http://www.un.org/arabic/documents/instruments/docs-subj-ar.asp?subj>

<sup>24</sup> - Soawkat Al- Amin, Social protection of the child between reality and expectation, Researcher Journal in the Humanities and Social Sciences, No 33, 2018, P 314.

and its effect on the patient or on others , in addition to this , it focused on the specialized authorities that can initiate or approve the treatment<sup>25</sup>.

In the Algerian Legislation , the treatment of the mental diseases is subjected to two systems , the first one is the external hospitalization or what is called hospitalization in an open Department , and the second one it represents the internal hospitalization where we can call it the closed Department.

#### **-Hospitalization in an open Department:**

The Algerian legislator included that in the law 18-11 , where it stipulated in the second paragraph from the article N 136 that "In the case that the patient is incapacitated and does not a family , the legislative representative can prepare a request for hospitalization".

#### **-Hospitalization in a closed Department:**

The Algerian legislator has strictly regulated this type of hospitalization to avoid abuses that the mentally ill patients may be exposed to in these institutions. We mention some of these methods ( hospitalization by help of others and forced hospitalization).

**- Hospitalization by help of others :** it is an internal hospitalized system that takes care of patients suffering from mental illnesses who need a continuous and close medical follow-up that the patient's families and their representatives can not provide it outside the treatment institutions. This procedure requires the approval of a member of the patient's family , whether a direct origin or branch or his legislative representative this approval is expressed in a written request recorded in the register designated for this purpose. The order hospitalization is issued by help of others for a specific period according to the patient's health conditions. And concerning how a patient who is at hospital is discharged , it is determined in the

Article 143 from Health Law N 18 – 11 as follows:

- Either on the initiative of the psychiatrist within the institution.
- Either on the request of civilly qualified adult person.
- Either from the request of the person who caused the hospitalization due to help of others.

Or because of request of the patient's adult direct ascendants or descendants , or the patient's spouse brother , sister , uncle , aunt , adult uncle or aunt , or the legislative representative of the incapacitated patient , and they are civilly responsible for the patient , where they must take care of them.

#### **Compulsory hospitalization :**

It is a compulsory inpatient hospitalization system that cares for patients who suffer from severe mental diseases where it requires continuous medical follow-up , if these persons are released , they may pose a danger to themselves , to public order , or to the safety of individuals<sup>26</sup>. The psychiatrist may request the case of patients who is placed under compulsory hospitalization at the end or during hospitalization in an open Department , or he can be placed under observation or hospitalization by help of other persons , or he can be placed under compulsory observation<sup>27</sup>.

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<sup>25</sup> - Maamoun Abdelkarim , patient satisfaction on the surgical medical work ( a comparative study) , Press House University , Alexandria , 2006 , p 232.

<sup>26</sup> Maamoun Abdelkarim , reference was mentioned previously , p 238.

<sup>27</sup> Article No 152 from Law of Health 11/18.

The governor in accordance with Article 154 of the Law 18/11 also considers this request , which must include a detail of the reasons that made the doctor believes that this procedure is necessary , focusing on the patient's past or present serious reactions and the dangers that his discharge may cause. If it becomes clear to the governor , after conducting a medical expertise on the patient that there is no need to place the patient under compulsory hospitalization , he informs the psychiatrist of this case and it is obligatory to refer his file to a State Mental Health Committee for final examination , knowing that compulsory hospitalization is made for a period not exceeding 06 months to be renewed by the governor<sup>28</sup>.

But concerning the discharge of patient who is in the compulsory hospitalization system , his conditions are specified in Article 156 of the Law 18 – 11 as follows :

- Patients subject to compulsory hospitalization system is discharged when the psychiatrist deems that their discharge is beneficial and he sends to the governor before the expiry of the final decision a justified request to lift the compulsory hospitalization.

- If the governor approves , the psychiatrist initiates the patient's discharge procedure by preparing a statement in accordance with the applicable rules. So , if the governor refuses or he doesn't respond with the situation to be treated , the psychiatrist of the institution can't authorize the compulsory discharge of a patient who has hospitalized after the expiration of the period covered by the governor's decision.

#### **- Compulsory examination in Psychiatry :**

A decision may be taken to order to make a compulsory mental examination if the public authority deems that it is necessary to take this decision , especially if there is an imminent danger because of a disease where the patient himself or others is exposed to , noting that the Public Prosecutor in the Judicial Council or the governor are the only ones qualified to make the decision to order a mental compulsory examination<sup>29</sup>.

#### **- Placement in compulsory examination:**

It is obligatory that the person accompanying the patient provides all the necessary administrative and a medical information during the medical and the administrative phase to place him under an obligatory observation <sup>30</sup>for fifteen days. After the expiry of this period , the following cases can be followed<sup>31</sup>:

- The psychiatrist decides to discharge the patient.

- The psychiatrist decides to keep the patient in hospital in an open Department but the patient must agree.

- It is suggested to the patient's family or anyone who cares about the patient's case that the hospitalization is done by others.

- Compulsory hospitalization is required in accordance with the provisions of this law. In addition to these systems , the Algerian Health Law stipulates a judicial hospitalization system in article

N 158 which is stated as follows: "Judicial hospitalization may take place according to the case of ill person in the form of judicial detention in a mental illnesses' institution or in the form of judicial placement in a therapeutic institution in accordance of the provisions of Articles N 21 and 26 from

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<sup>28</sup> Article No 132 from Law of Health 11/18.

<sup>29</sup> Article No 144 from Law of Health 11/18

<sup>30</sup> Article No 149 from Law of Health 11/18

<sup>31</sup> Article No 151 from Law of Health 11/18

the Penal Code". But concerning the treatment of psychological illnesses , psychological disorders among children are usually treated within a specialized treatment programs to address each case separately according to its data where a specialized team of doctors , psychologists , social work specialists and occupational therapists participate in order to provide the maximum possible assistance to the child. Parents and schools usually participate in these treatment programs to guide them on how to deal with this child and at the same time how to modify his behavior whenever possible.

As for the treatment of children who suffer from a psychological illnesses , psychological disorders among children are usually treated.

**- Drug treatment:**

In this case , the psychiatrist prescribes for the child a certain medications such as :stimulant and antidepressant medications.

**- Psychotherapy:**

It is called also talk therapy and behavioral therapy which works on training mind's child to adopt positive behaviors to control their psychological problems , but there are a different methods used by the psychotherapists bases on many factors , including the child and the extent of his ability to recognize his situation<sup>32</sup>.

**The second requirement : Legal protection for the mentally and psychologically ill child in Algerian legislation and comparative legislations.**

**The first branch : Legal protection for the mentally and psychologically ill child in Algerian Legislation:**

Childhood plays a vital role in building future , that's why Algeria took the initiative to issue a legislations which aim to protect this segment of society , especially the category of disabled children (whether a psychological or mental disability ) where Algeria provides adequate care and protection for them and it helps these children with an institutional and an administrative mechanisms to activate this category in the practical field . Below , we will mention the relevant legal texts and what are the mechanisms of protection that these texts include:

**1)- Law No 02 /09 related the protection and promoting the disabled persons:**

This law is an independent and a specialized legislation which seek to protect the disabled persons , and it was applied within the framework of the state's dedication to its policies within the framework which supports the protection of human rights in general , and in other hand , it protects people with special needs including the children in particular. And among the measures and the mechanisms that adopted by the state in order to protect this category , we mention<sup>33</sup> :

**1- Establishing a preventive measures against disability :**

Based on the following wisdom "Prevention is better than cure" , the legislator sought to apply it due to its importance to prevent diseases and from all dangers that represent a threat on the life of the individual in the society. The legislator aims to save the individual and the government the financial

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<sup>32</sup> - Hariz Asmaa , Legal protection for the psychologically and mentally ill child , Algeria , Abaad Journal , 2019 , p 14.

<sup>33</sup> Law No 02/09 related to the protection and promotion of the disabled persons.

and the human costs and it contributes to improve health care. All this is clear , particularly in some measures which prevent disability , among them :

- The third article of Law N 02/09 stipulated that : "the protection and the promotion of disabled persons aims to detect disability early and on how to prevent it and especially its complications.

- The second chapter is devoted to disability prevention according to the following :

\*Disability is prevented through screening activities , medical prevention programs , media campaigns and also through raising awareness among citizens about the factors that lead to disability.

\* Disability is discovered through early medical and social work , analysis , tests , and medical examinations aiming to identify and diagnoses the disability , in order to take care of it and to reduce its causes and severity.

\*The guardian of the disabled person or his legal representative , persons who work in the health field while carrying out their tasks , and every person concerned must declare the disability to the states departments which are specialized in the social protection as soon as it appears to enable the concerned authorities to address it in a timely manner.

## **2- Establishing measures to protect , care for , rehabilitate and integrate the disabled person**

Law N 02 /09 includes many measures and mechanisms , we mention them :

a- Granting social assistances : these assistances include :

\* Monthly financial grant : it is beneficial for disabled persons including children who have no income it is granted to them or to their families who support them in addition to the children who suffer from a congenital or acquired disability , or anyone who needs others to carry out their activities because of their mental retardation or profound mental retardation. It is specified in the Executive Decree N 03/45 dated on January , 19<sup>th</sup> 2003 amended and completed in 2009 at a value of 10000DA per month<sup>34</sup>.

b- Special education institutions for people with special needs:

Article N 16 of Law N 02/09 stipulates that : "Education and professional training for disabled persons shall take place in specialized institutions when the nature and degree of the disability requires this matter..".

In this regard , the educational institutions have been established for disabled children through Decree N 80/59 dated on March , 8<sup>th</sup> 1980 including the establishment and the organizing of medical and educational centers specialized in educating the disabled children<sup>35</sup>.

## **2- In Law N 15/12 related to the child protection:**

In Algeria , there is no legislation specifically for children with special needs , but their rights have been regulated , cared for , and protected in Law N 12/15 relating to the protection of children , where the third Article of this Law stipulates that : "Each child enjoys all the rights without discrimination due to color , sex Language , opinion , disability or other forms of discrimination , these rights are

<sup>34</sup> The Executive Decree No 03/45 dated on January , 19<sup>th</sup> , 2003 , 2003 modified and complemented in 2007.

<sup>35</sup> Decree No 80/59 dated on March , 8<sup>th</sup> , 1980 , including establishment and organizing the Educational and Medical centers and the specialized centers to educate the disabled children , newspaper No 11 dated on March , 17<sup>th</sup> , 1980 , completed and implemented under the Executive Decree No 11-163 dated on April , 17<sup>th</sup> 2011 newspaper No 24 dated on April , 20<sup>th</sup> , 2011.

stipulated in the Agreement of the Child Rights and other relevant international agreements ratified and stipulated in the National Legislation , in particular , the right to life , to name , to nationality , to family , to health care to equality , to education , to culture , to entertainment and respect his private life".

**The second branch :Legal protection of the mentally and psychologically and disabled ill child in the comparative legislations.**

**In Tunisian Legislation:**

For the first time in Tunisia , the Constitution of the Second Republic gave the right of disabled persons a higher status where it allocate them with an independent chapter which is Chapter 48 which stipulates that:"the state protects the disabled people from all discrimination. Each citizen suffering from disability has the right to benefit , according to the nature of his disability , from all measures that ensure his full integration into society , and the state must take all the necessary procedures to achieve this aim". This chapter is important because it enshrines the right to protection from all forms of discrimination and it stipulates the necessity of taking reasonable facilitating measures until the disabled men and women integrate fully into society. Whereas in Tunisia , the disabled children enjoy special legal protection that ensures their rights and provides them with the necessary support through Law N 92 dated on November 09<sup>th</sup> , 1995 where the Child Protection Journal was published which includes several mechanisms to protect children , including the disabled ones. Among the mechanisms of this protection:

- Social protection : It includes preventive measures and social procedures which aim to protect the child from all forms of violence and abuse.
- Judicial protection : It includes appointment of a family judge to consider children's cases and protect them legally.
- Urgent measures : It includes an immediate measures that can be taken to protect the child in an emergency.
- Rights of the disabled persons : In chapter 48 , the Tunisian Constitution stipulates that the disabled persons must be protected from all discrimination and it ensures their full integration into society.

**In Jordanian Legislation :**

In Jordan , the rights of children who suffer from disability are protected by using several legal mechanisms The most prominent of these mechanisms are :

**1- Law of the Rights of Disabled Persons No 20 issued in 2017:** This Law aims to ensure that the disabled persons enjoy their main rights and freedoms to be equal with others through <sup>36</sup>:

- Discrimination on the basis of disability : The law prohibits any form of discrimination against the disabled persons , whether direct or indirect.
- Reasonable facilitating accommodations : The law requires the provision of the necessary modifications in the environment to enable the disabled persons to exercise their rights and freedoms.
- Accessibility : It includes preparing buildings , roads , and public and private facilities to be suitable for the disabled persons.

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<sup>36</sup> Hiam Moussa Al-Taj , Laws and Legislation for the disabled persons ( the Jordanian Experience) , Journal of social studies and researches , Jordan , 2018 , p 37.

- Education : The law ensures the right of the disabled children to learn in a comprehensive and accessible environment.

- Health : The children affected with disability has the right to obtain appropriate health care and a necessary medical services.

**2- Child Rights Law N 19 issued in 2022 :** This law aims to strengthen the protection and care of children including the disabled children by creating a legislation that regulates the relationship and coordinates between public , civil and private authorities which take care of the child , by providing them many services

### **CONCLUSION:**

To conclude this research which is under the title of legal protection for the child affected with mental and psychological disorder , it is extremely important to provide a safe and a supportive environment for these children where laws and legislations must be clear and comprehensive to guarantee their rights to health care , education , and protection from all forms of discrimination and abuse. These laws must also include an effective implementation and controlling mechanisms to ensure their correct applying. Society must enhance awareness of the importance of supporting children who suffer from mental and psychological disorders , in addition to providing the necessary training for parents , educators and specialists because this step is considered the most important to achieve a more comprehensive and just environment.

Ultimately , the main aim of this protection is to make these children able to live in dignity and to achieve their full potential which contributes to build a more human and solidarity –based society.

### **RESULTS:**

The desired results from this research are :

1- The child must be provided with mental and psychological health protection , and this will only achieved by concerted various efforts and spending more time understanding the nature of mental diseases and behavioral disorders among children and working to solve them.

2- The family plays a vital role to achieve an efficient compatibility , especially , if it adopts a successful methods , it is the nucleus and the first social unit where the child grows up and interacts with the family's members. Also , it contributes widely in his growth , forming his personality and shaping his behavior.

3- It is clear that Algerian law provides a legal protection for children psychologically and mentally ill through a several legal texts , such as : Law N 12 – 15 related to child protection and Law N 02-05 related to the protection and the promotion of disabled persons.

### **Recommendations :**

1- Promoting awareness : concerned authorities must enhance awareness of the laws related to the protection of children psychologically and mentally ill whether among parents or persons who work in the health and educational field.

2- Strictly implementing laws : existing laws should be strictly implemented to ensure that children who suffer from mental and psychological disorders obtain their full rights and they are protected from any violations.

3- Establishing specialized centers : the government must work hard to establish specialized centers in order to provide care and rehabilitation for the mentally and psychologically ill children and provide the necessary support especially in terms of financing and training.

4- Developing training programs : the government must develop a specialized training programs for persons working in the field of caring for children who suffer from a mental and psychological disorders to ensure that appropriate care is provided to these children.

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