



## RESEARCH ARTICLE

**Criminal Protection of Juvenile in the Judiciary: A Comparative Study (Jordan-Egypt)**Rakad Salem Khawaldeh<sup>1\*</sup>, Sultan Ibrahim Aletein<sup>2</sup>, Zuhair Nahar Khawaldeh<sup>3</sup><sup>1,2,3</sup> Law College /Amman Arab University, Jordan, Amman**ARTICLE INFO****ABSTRACT**

Received: May 22, 2024

Accepted: Jul 10, 2024

**Keywords**

Comparison

Criminal

Egypt

Juvenile

Jordan

Protection

This paper addresses the criminal protection of juveniles in the judiciary, methods of applying it and analyzing and organizing it in the courts as a comparative study between Jordan and Egypt. The focus of the paper revolves around the instructions for trying the juveniles and their appearance before the judicial body. The beginning of the formation and jurisdiction of the juvenile judicial body, the jurisdiction of the public prosecution "initial investigation of the juvenile," the controls and guarantees available to the juvenile in juvenile justice, the procedural rules for juveniles in the judiciary, international conventions, and the procedures and penalties prescribed for juveniles in Egyptian and Jordanian legislation are also explored. The horizontal comparative approach is appropriated and adapted to achieve the research objectives. The Public Prosecution for Juveniles is defined by law with procedures specific to the juvenile and the juvenile's appearance before the juvenile court judge since these procedures give the juvenile the criminal protection and guarantees called for by the international community, which seeks to prevent the crime from being committed.

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**INTRODUCTION**

Juvenile justice is internationally considered a unique judiciary in its characteristics and objectives, making it distinguished by its composition in its governance bodies and the quality and nature of the cases it deals with. The interest of countries in the world in juvenile justice has recently increased, starting with the Seventh United Nations Conference in Milan in 1985 on the prevention of crime and the treatment of criminals, alongside the call for the development of model rules for the treatment of juveniles deprived of their liberty. In 1990, the Cultural Conference in Havana also adopted these standard minimum rules for the administration of juvenile justice affairs, imposing the necessity of taking into account - in all circumstances - the best interest of the child (Hamouda, 2007).

People generally make criminals out of children, who are not criminals by treating and looking at them as if they were criminals since what our system must aim and achieve is to create new courts for children who commit sin and violate the law (Imam, 2015). New juvenile judges must be appointed who will not practice any work other than adjudicating minor criminals, and thus we demand the establishment of special centers to arrest and detain children in places other than prisons (Hamouda, 2007).

Moreover, Juvenile justice occupies a necessary place in the criminal justice system, as it represents an advanced form of criminal justice. Juvenile justice is also based on the special personal characteristics of the delinquent children because they have not reached the age of majority. The actions committed by the delinquent children are often the result of social and economic conditions that lead them to behavior that violates the law. Accordingly, the view of the international community, including Egypt and Jordan, is to separate these delinquents through independent procedures with their judiciary and form juvenile courts in a method different from forming adult courts (Al-Feki, 2004).

The remainder of the paper is structured as follows: Section two provides an overview of the research problem. Section three presents the research significance, while section four shows the research hypothesis. Section five provides a review of the methodology adopted in this paper. Subsequently, section six brings the related discussion analysis. Section seven makes concluding remarks, while section eight provides recommendations.

## **2. RESEARCH PROBLEM**

The phenomenon of Juvenile delinquency is considered one of the most important problems facing societies. It is an ancient social phenomenon that threatens the security and safety of society, its future, and its entity, and therefore it must be prevented, as children are exposed to one of the following problems that take the form of running away from home, lying, theft, vandalism, beating, acts related to sexual crimes, or crimes of public morals or drunkenness, gambling, and begging. All of the said crimes represent behaviors that are contrary to society, and the juvenile, in short, is a young person who represents the hope of the future for his or her family and entity.

Juvenile crime is characterized by a serious threat to the entity of society. The juvenile criminal becomes a disruptive energy that does not benefit society and its entity, but rather harms it and brings damage to it, which results in committing various types of crimes and having dire and future effects on society. Juvenile crimes are considered like adult crimes, causing harm to society. If a juvenile is accustomed to crime and begins his or her life with crime and then becomes accustomed to it, it becomes difficult to reform them when they reach the age of majority .

Since juveniles are an essential element, the nucleus of society and its future, reforming them with the presence of one of the factors, which is assigning an independent judiciary that specializes in juveniles, is a guarantee and a form of progress for the state. When a juvenile reaches adulthood, he or she will have gone through an experience that they would never want to return to, as the presence of a specialized juvenile justice system limits the spread of crime among juveniles in the future. With this in mind, the current research aims to identify the criminal protection of juveniles in the judiciary, methods of applying it and analyzing and organizing it in the courts as a comparative study between Jordan and Egypt.

Accordingly, the research problem is reflected in answering the following questions:

- Are the criminal guarantees for the juvenile at trial, specifically within the jurisdiction and organization of juvenile justice, sufficient and consistent with the actual reality and desire to protect the juveniles and prevent them from returning to crime?
- Does applying the jurisdiction of juvenile justice achieve the desired benefit by preventing the juveniles from returning to crime?
- Does the presence of a private trial achieve the required societal justice and the best interest of the juveniles?

### **3. RESEARCH SIGNIFICANCE**

The significance of the research is reflected in the presence of special protection for the juvenile, that is, the presence of criminal guarantees within the scope of the measures taken against the juvenile in the courts to achieve the ultimate goal, which is to reform the juveniles so that they do not return to crime and achieve the best interest of the juvenile, which is what legislation and states seek. The research also opens a new venue for broader applications of criminal protection for juveniles so that it addresses the main goals when trying juveniles, which are to reform, correct, and protect them from the risk of delinquency and crime-recidivism.

This research also shows that the trial of juveniles is an important factor in achieving the above goals and that its nature and organization have a role in achieving the best interest of the juveniles and preventing them from returning to crime. The topic of juvenile and juvenile justice is examined in this paper given the importance that states attach to building and developing the juvenile and the fact that it enhances the means of protection for the juvenile and works to embody them in the judiciary when the juvenile is tried.

### **4. RESEARCH HYPOTHESIS**

Given the research problem and significance, the research hypothesis can be read as follows:

The presence of courts specialized in trying juveniles and an independent judiciary for juveniles from adults achieves lofty goals for society so that it is free of crime in the future and that the juveniles do not return to crime, achieves the best interest of the juveniles, and protects an important segment of society.

### **5. METHOD**

Given the significance of the juvenile as an individual in the family and society and the necessity of addressing the means of protecting him or her in the judiciary, the horizontal comparative approach is used so that the elements of comparison appear in every topic, subtopic, and idea shown in the subjects raised in the paper.

### **6. DISCUSSION**

This section addresses the criminal protection of juveniles in the judiciary in two parts as follows: The juvenile courts and procedures for juveniles in the judiciary.

#### **6.1 The juvenile courts**

The Egyptian legislator has adopted the principle of allocating courts for juveniles since the last century, as the establishment of juvenile courts in Egypt dates back to 1905. The text of the related article has mentioned the formation of juvenile courts in that a court would be formed in each governorate of the Arab Republic of Egypt to try juveniles.

On the other hand, the Jordanian legislator has stated that at least a magistrate court shall be established in every governorate in Jordan. It is also possible to establish more than one magistrate court in one governorate if necessary, as it specializes in examining misdemeanors and violations whose punishment does not exceed two years. This article also stipulated that a juvenile court would be formed in the center of each governorate. Accordingly, the section is divided into two subtopics as follows: The formation of a juvenile court and the controls for the jurisdiction of juvenile justice.

### 6.1.1 The formation of a juvenile court

The significance of establishing specialized courts for juvenile crimes lies in the special nature of juvenile delinquency in terms of its causes and treatment methods, which requires assigning some specialized juvenile judges to look into juvenile affairs and following special procedures for trying juveniles. The Hashemite Kingdom of Jordan has adopted a system of establishing courts for juvenile children and has allocated independent courts to look into violations, misdemeanors, and felonies committed by these juvenile offenders. Article (15) of the Jordanian Juvenile Law No. 32 of 2014 stipulates:

- (A) A juvenile shall only be tried before the competent juvenile courts in accordance with the provisions of this law.
- (B) Juvenile judges and judgment enforcement judges in their courts are called experienced judges.

Hence, the formation of a juvenile court is divided into two sections, as follows:

- a. Juvenile Judicial Authority
- b. Juvenile Public Prosecution

#### a. Juvenile judicial authority

Concerning the Juvenile Judicial Authority and Egyptian legislation:

First: Formation of Court of First Instance (CFI)

- a. Judges: The judiciary must be an essential element in the formation of the juvenile court. Article (121) of the Egyptian Child Law stipulates that the legal number is three judges. Otherwise, its formation would be invalid with regard to the number of judges. Juvenile judges play a very important role in the procedures before the court because their mission is to order the application of the most appropriate means for treating juveniles (Zahran, 1978).
- b. Representative of the Public Prosecution. According to Article (269) of the Egyptian Code of Criminal Procedure, a member of the Public Prosecution must attend criminal court sessions. Failure to represent the Public Prosecution in trial sessions invalidates its formation. Egyptian legislation in the Juvenile Law did not include a text on the subject of Public Prosecution representation, which means applying General procedural rules that therefore require representation by the Public Prosecution in juvenile court sessions (Al-Khayyat, 1996).
- c. The two social experts and workers: It is found that the Egyptian legislator emphasizes the social function of the juvenile court by stipulating that two social work experts must be part of the court. Two experts are appointed by a decision of the Minister of Justice in agreement with the Minister of Social Affairs. The conditions that must be met by the person who is appointed as an expert are determined by a decision of the Minister of Social Affairs. It should always be taken into account that one of these two experts is a woman, as neglecting to do so will result in the ruling issued against the juveniles being invalidated (Al-Khayyat, 1996).

Second: Formation of Court of Second Instance (CSI)

Article (121) of the Egyptian Child Law stipulates that rulings issued by the juvenile court shall be appealed before an appeals court formed in each court of first instance consisting of three judiciaries. At least two of them must have the rank of court president, and the provisions of the previous two paragraphs must be taken into account in forming this court (Article (121) of the Egyptian Child Law). The Egyptian legislator takes into account that the composition of the Court of Appeal shall

include experienced and highly qualified judges when stipulating that at least two of them must have the rank of court president (Attia, 1999).

Regarding the juvenile judicial authority and Jordanian legislation

Article (15) of the Jordanian Juvenile Law No. 32 of 2014 speaks of the nature of the formation of juvenile courts in Jordan, stipulating:

- a- The juvenile judges and judgment enforcement judges in their courts are called experienced.
- b- The juvenile judge must continue to consider juvenile cases in juvenile courts at all levels.
- c- A Juvenile Magistrate Court shall be formed in at least every governorate and shall have jurisdiction over violations and misdemeanors whose punishment does not exceed two years and measures of protection or care (Jordanian Juvenile Law No. 32 of 2014).

The most important guarantee provided to a juvenile when his or her trial is conducted is their appearance before a specialized judge familiar with the problems of juveniles and the methods of treating them (Tubasi, 2014). The Jordanian legislator does not mention or specify the formation of the Magistrate Court, the Court of First Instance, or the Grand Criminal Court with regard to the nature of the juvenile judicial authority that hears juvenile cases, leaving the matter to the general rules in the Code of Criminal Procedure and the Law on the Formation of Regular Courts and its amendments No. 17 of 2001.

In the same context, it is found that it is the fault of the Jordanian legislator for not addressing the formation of juvenile courts and the nature of the judicial authority governing juvenile cases. The Jordanian Juvenile Law stipulates in Article (22/A) that a juvenile may not be tried except at the invitation of one of his or her parents or guardian, as the case may be, and in the presence of the probation officer and the juvenile's lawyer (Jordanian Juvenile Law No. 32 of 2014).

Social Behavior Monitor is one the employees affiliated with the Ministry of Social Development who monitors the behavior of juveniles in accordance with the provisions of this law, studies the social and psychological status of the juvenile, and submits an official report to the court (Jordanian Juvenile Law No. 32 of 2014). It is also shown that the Jordanian legislator has narrowed the limits of the subject of the social expert and neither expands them and nor focuses well on the social factors that aim to correct and evaluate the juvenile. With regard to social experts, the Egyptian legislator has stipulated that one of them shall be a woman. Also, the Jordanian legislator neither requires the presence of the Public Prosecution in misdemeanors and felonies in the Jordanian Juvenile Law nor does the Jordanian legislator prohibit its presence. Rather, the Jordanian legislator leaves the matter to the general rules and texts in the Jordanian Code of Criminal Procedure.

## **b. Juvenile public prosecution**

### **- Public prosecution for juveniles in Jordanian legislation**

The Jordanian legislator has recognized the significance of the role played by the specialized Public Prosecution in the course of the juveniles' case and the plan for their rehabilitation and reform. The preliminary investigation is the jurisdiction of the Public Prosecution for Juveniles, as it is the first stage that leads to establishing the investigation file in the case so that the Prosecution can determine its authority to present it to the judiciary to decide on its merits (Tubasi, 2005).

On the other hand, the preliminary investigation ends when the investigator considers that all the necessary elements to find out the truth are completely attained. If the investigation is completed, the investigator may act in one of the following two ways: issuing an order declaring there is no basis for filing a lawsuit or issuing a lawsuit referral to the competent court (Al-Sagheer & Jamal El-Din, 2007).

## **- Public prosecution for juveniles in Egyptian legislation**

In Egyptian legislation, the legislator selects to establish a public prosecution specialized in child crimes, where the work of the public prosecution before those courts is undertaken by specialized prosecutions for juveniles, and the approval of their establishment is issued by the Minister of Justice (Egyptian Child Law No. 12 of 1996, amended by Law No. 126 of 2008). These prosecutors are responsible for charging and investigating, and they are the preliminary investigative authority for all crimes. The Egyptian legislator adopts the principle of assigning a representative office for juveniles in compliance with the special provisions contained in the Children's Law in this regard (Al-Mahdi & Al-Shafi'i, 2005).

### **6.1.2 The controls for the jurisdiction of juvenile justice**

In application of the general rules of criminal procedures in Jordanian and Egyptian legislation, the jurisdiction of the Juvenile Court is subject to the fulfillment of the three conditions "personal, special, and spatial" (Article (122) of the Egyptian Child Law No. 12 of 1996 and Article (15) of the Jordanian Juvenile Law No. 32 of 2014). With this in mind, the controls for the jurisdiction of juvenile justice are divided into two sections, as follows:

- a. General controls in the jurisdiction of juvenile justice
- b. Special controls in the jurisdiction of juvenile justice

#### **a. General controls in the jurisdiction of juvenile justice**

The Jordanian Juvenile Law states that the Juvenile Court has exclusive jurisdiction over juvenile cases. The Egyptian legislative text is clear that jurisdiction over juvenile crimes rests exclusively with juvenile courts. Article (122) of the Egyptian Child Law No. 12 of 1996 stipulates that the juvenile court has exclusive jurisdiction to look into the matter of a child when he or she is accused of a crime or exposed to delinquency. The jurisdiction of the courts is of public order. The following points are based on it:

1. Violation of its rules shall result in an invalidity related to public order.
2. Disputants may not agree to violate its rules.
3. Each criminal justice system, whether an investigation or a ruling, must decide on its initiative
4. For any party in the case, the claim of lack of jurisdiction in whatever case, the case is and before any court, even for the first time before the Court of Cassation (Al-Jokhadar, 1992).

- **Personal jurisdiction**

The general principle is to take into account the person of the accused in determining jurisdiction. What matters in determining personal jurisdiction is the character or condition of the accused at the time of committing the crime, not at the time of filing the lawsuit. In accordance with this, the accused is tried before the juvenile court if at the time of committing the crime; he or she was before they reach eighteen years of age (Al-Sagheer & Jamal El-Din, 2007). Article (2) of the Jordanian Juvenile Law stipulates that a juvenile is anyone who has not completed the age of eighteen years (Article (2) of the Jordanian Juvenile Law No. 32 of 2014).

- **Special jurisdiction**

Special jurisdiction is defined as the jurisdiction that is determined concerning the type of courts and the type of crime they are specialized in examining. It is also what is known as specialty jurisdiction, which finds its basis in the tripartite division of crimes "felonies,

misdemeanors, violations". In the domain of juvenile justice, special jurisdiction means the jurisdiction that is determined according to the type and seriousness of the crime committed (Ramadan, 2012).

The criterion in determining the special jurisdiction of criminal courts is the division of crimes into felonies on the one hand and misdemeanors and violations on the other hand. Felonies fall within the special jurisdiction of criminal courts, while misdemeanors and violations fall within the special jurisdiction of magistrate courts (Salem, 2000).

- **Spatial jurisdiction**

According to the Egyptian Child Law, spatial jurisdiction is determined by the following controls:

- a. Crime scene: It is the place where the physical element of the crime has occurred. However, the crime may occur in one place and its result may occur in another place, and the crime may be a continuing crime. In this case, every place in which one of the acts included in it occurs is considered a place for a successive crime.
- b. The child's place of residence: This is the place that the accused offender has taken as his or her temporary or permanent residence. Article (122) of the Egyptian Child Law adds another specification to the spatial jurisdiction of the Children's Court, which is the child's place of residence or where his or her guardian or mother resides, as the case may be (Rabie, 1991).
- c. The child's place of arrest: If the child does not have a place of residence at all or his or her place of residence is not fixed or unknown, the criterion of the place of the crime or the place of his or her arrest "place of arrest" must be taken into account.
- d. Permissibility of the Children's Court to be held in a social care institution: This exception is stipulated in Article (123) of the Children's Law No. 12 of 1996, which stipulates that the court may, as necessary, be held in one of the children's social care institutions in which the child is placed. Holding the Children's Court in one of the social care institutions for children in which the child is placed, if necessary, is a procedure that keeps the child away from the courts (Al-Shorbagy, 2014).

With that being said, the permissibility of the Child Court being held in a social welfare institution is an exception in the Egyptian Child Law and must be in place one day. Article (15) of the Jordanian Juvenile Law No. 32 of 2014 regarding spatial jurisdiction stipulates the following points:

1. The place where the crime occurs.
2. The juvenile's place of residence, where the juvenile is found, or where the juvenile is arrested.
3. The place of the facility "juvenile facility" in which the juvenile is placed.

Additionally, the Jordanian legislator does not prefer one reference over another, as spatial jurisdiction is determined more broadly through the text referred to as "choice" (Article 15 of the Jordanian Juvenile Law No. 32 of 2014).

## **b. Special controls in the jurisdiction of juvenile justice**

The special controls in the jurisdiction of juvenile justice are addressed through the following areas.

### **a. Jurisdiction in civil prosecution**

A certain part of jurisprudence considers the impermissibility of a civil claim against a juvenile before the juvenile courts. This is justified by the fact that the juvenile courts have created a special formation to protect the juveniles and offer them appropriate penalties. The jurisdiction of the

ordinary criminal judiciary to hear civil cases is an exceptional jurisdiction from the general origin, which is the jurisdiction of the civil courts. The exclusion of civil prosecution before juvenile courts quickens court procedures (Abdulsatar, 1977; Sorour, 1993).

However, another aspect of jurisprudence considers the permissibility of a civil claim before courts that consider children's justice because the children's judge "juvenile judge" is more capable of adjudicating the civil dispute. Achingly, the civil plaintiff is enabled to intervene before the Children's Court to defend a right and thus will not be surprised by a ruling (Mustafa, 1964).

In Egyptian legislation, Article 129 of the Egyptian Child Law stipulates that a civil lawsuit shall not be accepted before the juvenile court. The civil lawsuit must not be accepted before the juvenile court to dismiss the criminal lawsuit filed against the juveniles to achieve an interest in examining their condition and taking corrective measures against them, contrary to the general rules in claiming civil rights before the criminal court.

Regarding the Jordanian legislation, Article (28) of the Jordanian Juvenile Law is clear, as it stipulates that a personal right lawsuit shall not be accepted before the juvenile court, and the aggrieved party has the right to resort to special courts (Jordanian Juvenile Law No. 32 of 2014).

#### b. Jurisdiction in the event that the juvenile participates with the adult

The Public Prosecution "the Public Prosecutor" specifically prepares the investigation papers received by the juvenile police, as the public prosecutor begins the work with the preliminary investigation until reaching the juvenile involved with the adults. The public prosecutor then directly sends an exact copy to the juvenile prosecutor and sends those files "the original and the copy" to the judge specializing in trying adults and the judge specializing in trying juveniles.

The Jordanian Juvenile Law No. 32 of 2014 differentiates between a juvenile and an adult in court and before the Public Prosecution, starting with participation or association in the crime. They are separated by a decision from the Public Prosecution and a special file is allocated to be separately tried before the juvenile court (Abu Hudaib, 2015). However, in Egyptian legislation, the Juvenile Court has jurisdiction over all crimes committed by juveniles, regardless of their type. The general rule is that the juvenile court has exclusive jurisdiction to try a child when he is accused of committing crimes of any kind and when he is exposed to delinquency, where the age of the child at the time of committing the crime matters (Kamel, 2006).

## 6.2 Procedures for juveniles in the judiciary

The right to a fair trial is clearly stated in the Universal Declaration of Human Rights issued by the United Nations General Assembly where Article (10) states that "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him". Procedures for juveniles in the judiciary are discussed through the following two subtopics: Procedural rules for juveniles in the judiciary and charters and measures and penalties prescribed for juveniles.

### 6.2.1 Procedural rules for juveniles in the judiciary and charters

This section is divided into two subsections as follows:

#### a. General guarantees for juveniles at the trial stage

Criminal protection for the juvenile during the trial and at the trial stage specifically arises in several aspects and guarantees created by the Jordanian and Egyptian legislators (Al-Jabri, 2014). The most important general guarantees for juveniles during the trial stage before the judiciary:



**First: Trial before independent juvenile courts: specialized juvenile judges**

One of the most important guarantees that can be provided to a juvenile when his or her trial is held is their appearance before a specialized judge who is equipped with a sufficient amount of information in the social and human sciences. The specialized judge shall know the problems of juveniles and methods of treating them (Abu Hudaib, 2015).

**Second: Confidentiality of the trial**

The purpose of the confidentiality of the trial is to maintain public order and ethics so that the juvenile is not exposed to the public appearing as an accused criminal, which may affect his or her psychological condition and behavior.

**Third: Simplifying trial procedures and ensuring the right to defense**

Creating the appropriate atmosphere for the juvenile court is essential, as the serious and disciplined nature of the court inevitably affects the juveniles before it, and they may show psychological responses of anxiety and fear. Therefore, the judge must try as much as possible to create an atmosphere of familiarity and friendliness toward the juvenile (Abu Hudaib, 2015).

**Fourth: Convicting the juvenile is not considered a priority**

The Jordanian Juvenile Law does not consider the conviction of a juvenile of any crime precedence, as the legislator is keen to protect the juvenile so that the conviction does not remain a disgrace to the juvenile in the future, and to give him or her opportunity and motivation in the future (Matouq, 2013).

**Fifth: The best interest of the juvenile**

The Jordanian Juvenile Law has many provisions that take into account the best interest of the juvenile, including the main text stated in Paragraph (A) of Article (4), which requires taking into account the best interest of the juvenile in applying the provisions of the law, as the text states that the best interest of the juveniles shall be taken into account, and their protection, reform, rehabilitation, and care shall be also taken into account when applying the provisions of this law (Jordanian Juvenile Law No. 32 of 2014).

Taking into account the best interest of the juvenile, the Juvenile Law may raise the age of criminal responsibility from (7 years) to (12 years), and establish special guarantees for justice for juveniles. The most prominent of these guarantees are the right to defense and the obligation to provide legal assistance in criminal cases (Jordanian Juvenile Law No. 32 of 2014). Also, the general guarantees at the trial stage are mentioned by the researcher, for example, but not limited to:

- Activating the role of the behavioral monitor from the investigation until the trial.
- Differentiating between a juvenile and an adult in the trial when participating or accompanying in the crime.
- The right to seek the assistance of a defender or lawyer.

**b. Guarantees related to juveniles in international conventions.**

Numerous international charters, such as the Universal Declaration of Human Rights and the International Covenants on Civil, Political, Economic, Social, and Cultural Rights, have included a set of general rights for children that indicate the necessity of providing criminal protection for juvenile offenders (Al-Tarawneh, 2003).

### **First: General international conventions related to juveniles**

There is a group of conventions and declarations that originally dealt with human rights in general. However, they include within them explicit references to children's rights. The Hashemite Kingdom of Jordan and the Arab Republic of Egypt are among the most important examples of these conventions.

1. **Universal Declaration of Human Rights 1948**

In the wake of World War II, and its losses, violations of rights, and freedoms, this declaration was adopted by the United Nations General Assembly by Resolution No. (217/3) in 1948. The Declaration is at the forefront of general international conventions that call for the protection of human rights as a human being without discrimination based on age, sex, color, religion, or wealth, and of course, this protection applies to juveniles because they are human beings in the first place (Al-Tarawneh, 2003).

2. **The International Covenant on Economic, Social, and Cultural Rights of 1966**

This text was adopted by a decision of the General Assembly in 1966 and entered into force in 1976. Although this covenant is a general international covenant, the text of Article 10 stipulates the protection of children through the following:

- Special protection must be made for the benefit of all children and adolescents without any discrimination.
- The necessity of protecting families and helping them assume responsibility and raise and educate their children.
- The necessity of special protection and assistance for all children and adolescents without discrimination for any reason.

3. **The International Covenant on Civil and Political Rights of 1966**

It was adopted by General Assembly Resolution No. (2200) in 1976. It included some provisions related to child protection, including:

- Not to impose the death penalty for crimes committed by children under the age of eighteen (Article 6 of the Covenant).
- Separating adult and juvenile defendants during detention and imprisonment, provided that the juvenile defendant is brought to justice as soon as possible and treated in a manner consistent with their age and legal status (Article 10 of the Covenant).

### **Second: Regional conventions for the protection of juveniles**

The beginnings of developing the first concepts of children's rights go back to the Geneva Declaration of 1924, which is the first special international convention in this regard. In the following years after the establishment of the United Nations, the United Nations Children's Fund (UNICEF) was established in 1946 (Al-Kawari, 2005). With the emergence of the idea of establishing treaties between countries that would be binding under international law, Jordan and Egypt joined the most important of these treaties such as:

1. **The 1989 Convention on the Rights of the Child**

In 1978, the Polish government proposed a draft Convention on the Rights of the Child as an occasion of the International Year of the Child in 1979. The terms of the agreement were agreed upon unanimously among the member states, and it was approved for signature, ratification, and accession pursuant to United Nations General Assembly Resolution No. 44

on 25, dated November 20, 1989. The most important principles and rights related to children that are worthy of criminal protection are:

- Protecting children from violence and abuse.
- Protecting children from exploitation.

2. Optional protocols to the Convention on the Rights of the Child

In view of the increasing violations suffered by children in armed conflicts, the United Nations General Assembly by its Resolution No. (54/263) adopted two optional protocols to the Convention. The first concerns the protection of children and their exploitation in prostitution and pornography, while the second concerns the involvement of children in armed conflicts and includes, in particular, protection measures for children in such circumstances (Rashida, 2008).

3. Rules and guidelines emerging from international conferences

In 1980, the United Nations Conference on Combating Crime was held in Caracas, Venezuela. Among its guiding outcomes is the establishment of basic principles and rules that include rules for juvenile “offenders” of the law. Therefore, the United Nations Economic and Social Council submitted these rules to the Seventh Congress against Crime held in Milan from August 26 to September 6, 1985. The United Nations General Assembly insisted on adopting these rules, and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice were actually adopted on November 29, 1985, known as the Beijing Rules (Al-Kawari, 2005).

4. African Charter on the Rights and Welfare of the Child 1990

This charter was adopted in Addis Ababa in July 1990 by the Organization of African States against the backdrop of the poor conditions of many African children. The preamble of the Charter referred to the poor economic and social conditions, which made the States Parties pledge to protect children’s rights by stipulating protection in the procedures and measures mentioned in the Charter in their legislation. The most important of these procedures and measures is protecting children from torture, inhuman and shameful treatment, especially physical, mental and sexual torture, by adopting bodies to take preventive measures to detect cases of torture and ill-treatment” Article 16 of the Charter.

5. Model Law for Juveniles

This law was adopted by the Council of Arab Ministers of Justice, emanating from the League of Arab States and headquartered in Cairo, as Model Law No. 266-D dated 11/19/1996. The law called for the necessity of developing an appropriate legislative framework to confront the problem of delinquent juveniles or those at risk of delinquency in Arab countries, thus ensuring the renewal of the concept of the delinquent juvenile and the juvenile at risk of delinquency.

### 6.2.2 Measures and penalties prescribed for juveniles

Punishment and precautionary measures, including measures prescribed for children, represent the social and legal reaction to the crime or the criminal. They are the subject of criminal liability, as whoever is proven responsible for the crime should be punished or subjected to precautionary measures (Hosni, 1977). Measures and penalties prescribed for juveniles are discussed through two subtopics as follows: Measures prescribed for juveniles and juvenile penalties and appeals.

**a. Measures prescribed for juveniles**

A measure can be defined as a court-ordered action directed at a child. It is a set of legal procedures that aim to protect society by confronting the criminal danger that resides in the child's personality (Al-Qahwaji & El-Shazly, 2013). The measures prescribed for juveniles are discussed as follows: Measures imposed on juveniles in Egyptian legislation and measures imposed on juveniles in Jordanian legislation.

**b. Measures imposed on juveniles in Egyptian legislation**

Measure differs from punishment in many elements. If the original purpose of punishment is to achieve responsibility and deterrence, then the measure aims primarily to reform. Also, the punishment is directed to the past, while the measure is directed to the future to achieve judicial purposes (Al-Razouqi, 2004). Article (101) of the Egyptian Child Law No. 12 of 1996 stipulates the measures for children less than fifteen years of age if they commit a crime through one of the measures: reprimand, extradition, placement in training and rehabilitation, obligation to perform certain duties, and judicial probation. The measures imposed on those less than fifteen years of age include:

**Reprimand:** This is when the judge blames the child, warns him or her, and reprimands him or her for their bad actions and the corresponding punishment. The judge warns him or her not to do that act again, and urges them to practice good behavior, and reprimands them immediately, as it will not be appealed or replaced by a fine (Abdulaziz, 2017).

**Extradition:** The Egyptian legislator does not define what is meant by extradition, but rather explains that the child should be extradited to one of his or her parents or someone who has legislative or legal authority over them. Priority shall be taken into account regarding the person to whom the child is handed over and who becomes responsible for him or her. If there is no authority to undertake his or her upbringing and good conduct or to hand them over to a trusted family, the breadwinner undertakes to do so. Other key measures are admission to a specialized hospital or a social care institution

**c. Measures imposed on juveniles in Jordanian legislation**

According to the provisions of Article 24 of the Jordanian Juvenile Law of 2014, the non-deprivation of liberty measures that the court has the right to take against the delinquent juvenile are represented as follows:

**Blame and reprimand:** This is what is called reprimand in Egyptian law. This involves the court blaming the juvenile for what he or she did and warning them not to repeat such behavior again. The researcher believes that the Jordanian legislator does not specify a precise method for implementing the measure or the phrases with which it is implemented, making it necessary to leave the matter to the judge.

**Extradition:** Extradition is one of the protection measures intended to protect the juvenile from delinquency and its danger. Its purpose is to monitor the behavior of the juvenile to prevent him or her from returning to deviant behavior. It is preferable to resort to this measure as long as there is no need to resort to other measures, as this measure would create an atmosphere of cooperation between the court and the party to which it is delivered after the concerned agencies pledge to protect the juvenile.

Judicial supervision: In some comparative legislation, it is called judicial probation, which is a punitive system based on treatment primarily aimed at rehabilitation. Judicial supervision assumes the restriction of freedom by imposing obligations and submitting to the supervision of a person. The judicial test is based on two elements: restricting freedom, including the supervision and control it entails and the experiment in relation to the possibility of deprivation of freedom when it fails (Al-Rifai, 1964).

#### d. Juvenile penalties and appeals

The Jordanian Juvenile Law includes new provisions in the Penal Code, giving a special type of crime priority in applying non-deprivation of liberty measures as a general rule and excluding resorting to criminal sanctions and restricting them to specific crimes. Juvenile penalties and appeals are addressed through the two subtopics: penalties imposed on juveniles in Jordanian legislation and penalties imposed on juveniles in Egyptian legislation.

- Penalties imposed on juveniles in Jordanian legislation

**Adult Penalty:** The Jordanian legislator has assigned lenient punishments to teenagers in this age group between twelve and fifteen, taking into account the gradual progression of punishment in Article (26) of the Jordanian Juvenile Law. It is prohibited to impose the death penalty on a teenager, and if he or she commits a felony that requires the death penalty, they must be sentenced to be placed in a juvenile rehabilitation center for a period ranging between (6-10 years). Previously, the penalty in the abolished Juvenile Law was detention for a period ranging between 4-10 years, Article 19. This is an undesirable trend for the Juvenile Law currently applied in raising the minimum penalty (Jordanian Juvenile Law No. 32 of 2014).

However, if the teenager commits a felony that requires temporary hard labor or detention, he or she shall be detained for one to three years. The Jordanian Juvenile Law, in Paragraph (C) of Article (26), allows the court, if it finds discretionary mitigating reasons, to replace the punishment with any non-deprivation of liberty measures. Likewise, if the teenager commits a misdemeanor, the court must decide on the case using any of the non-deprivation of liberty measures mentioned in Article 24 of the Jordanian Juvenile Law (Jordanian Juvenile Law No. 32 of 2014).

**Adolescent Penalty :**The Jordanian legislator in the Jordanian Juvenile Law, in Article 25, deals with the penalties imposed on a juvenile, adolescent between the ages of fifteen and eighteen, with reduced penalties, taking into account the gradual progression of punishment and preventing the death penalty from being imposed on the adolescent. It is also decided that if he or she commits a felony that requires the death penalty, they will be sentenced to be placed in a juvenile rehabilitation center for a period ranging between (8-12) years.

However, if the adolescent commits a felony that requires life imprisonment with hard labor, he or she will be sentenced to be placed in a juvenile rehabilitation center for a period ranging between (5-10) years. Also, if the adolescent commits a felony that requires temporary hard labor, temporary detention, or detention, he or she will be sentenced to be placed in a juvenile rehabilitation center for a period ranging between (3-5) years. Moreover, if the adolescent commits a misdemeanor that requires imprisonment in a juvenile rehabilitation center for a period not exceeding one-third of the penalty period stipulated in the Penal Code, the court may, if

discretionary mitigating reasons are available, replace these penalties with any non-deprivation of liberty measures stipulated in Article 24 of the Juvenile Code.

Besides, if the adolescent commits a violation, the court may issue a reprimand only (paragraphs E and F of Article 25 of the Jordanian Juvenile Law). As gleaned from the said discussion, the researcher shows the extent of harmony between juvenile law and international standards by preventing the imposition of the death penalty on juveniles. The researcher also demonstrates the extent of consistency in giving priority to the non-deprivation of liberty against juveniles and excluding criminal penalties in certain cases.

- Penalties imposed on juveniles in Egyptian legislation

In Egyptian legislation, specifically the Children's Law of 1996, as amended in 2008, Articles (111 and 112) stipulate that if a child reaches the age of fifteen but does not reach the age of sixteen and commits a misdemeanor punishable by imprisonment, he or she shall be sentenced to one of the other two measures mentioned in Article (101). When a felony is committed, the penalty for which is death or life or temporary hard labor, he or she shall be sentenced to imprisonment. However, if he or she reaches the age of sixteen but has not yet reached the age of eighteen and commits a felony punishable by death, they shall be sentenced to imprisonment for not less than ten years, and if the penalty is temporary hard labor, they shall be sentenced to imprisonment.

In the same context, the Egyptian legislator has permitted court imprisonment in criminal cases instead of issuing a penalty, where the child is sentenced to placement in a social care institution. Accordingly, a court may choose one of the means to correct the child, and there is no restriction on the court in exercising this authority. The court may decide to place the child in custody for one year, even if the crime committed by the child is for which the legislator decided the death penalty (Al-Abaji, 2017). If a child over fifteen years of age commits a crime punishable by death life imprisonment or aggravated imprisonment, he or she shall be sentenced to imprisonment. However, if the penalty for the crime is imprisonment, the child in this case shall be sentenced to imprisonment for not less than three months (Article (111) of the Egyptian Child Law No. 12 of the year).

## 7. CONCLUSION

In a few words, as the current paper addresses the criminal protection of juveniles in the judiciary, methods of applying it, and analyzing and organizing it in the courts as a comparative study between Jordan and Egypt, various key results related to criminal protection of juveniles are attained. The said discussion shows that the Egyptian legislator and the Jordanian legislator have established specialized courts for juveniles to reform and socially rehabilitate them. In Egypt, a court is formed in every governorate of the Republic to try juveniles. However, in Jordan, it is stipulated that a juvenile magistrate court and a court of first instance shall be formed in each juvenile governorate if the need arises to consider felonies and misdemeanors whose punishment exceeds two years.

Significantly, it also shows that Jordan and Egypt have a specialized public prosecution that combines the powers of accusation and investigation, has original jurisdiction in that, and is the one who carries out the preliminary investigation. Another key point is that the Egyptian legislator has delved into the details of the juvenile's presence before the investigating judge and the Public Prosecution in general while informing the juvenile of each procedure. However, the Jordanian legislator does not

specify in the instructions to the Public Prosecution how to deal with juveniles, but rather it is stated in the basic rules that prosecutors are assigned to look into juvenile cases.

Importantly, it is demonstrated that criminal protection for a juvenile during trial highlights several aspects and guarantees created by the Egyptian legislator and the Jordanian legislator. In Jordan and Egypt, as well as most civilized countries, modern legislation has begun to issue specialized laws pertaining to juveniles, guaranteeing their appearance before special and specialized courts with a special composition in procedures, rules, and sessions that are distinguished from other ordinary trials.

Notably, it is found that the most important procedural rule is that the juvenile or child shall be brought before a specialized judge equipped with a sufficient amount of information in the social and human sciences. Jordanian and Egyptian legislators have established special courts for juveniles that can deal with juvenile problems and excel in all procedures to achieve the best interest, as they are considered one of the most important guarantees for juveniles in Egypt and Jordan.

More importantly, the current research indicates that measure differs from punishment in many elements. If the original purpose of punishment is to achieve responsibility and deterrence, then the measure aims primarily to reform. Also, the punishment is directed to the past, while the measure is directed to the future to achieve preventive purposes to prevent crimes from minors, incompetents, and offenders.

## 8. RECOMMENDATIONS

Given the previous discussion and concluding remarks attained, the research recommends abolishing all measures that may be imposed on a child according to Egyptian legislation when he is under the age of twelve if he or she commits a felony or misdemeanor because the measures are part of the penalties. In the researcher's opinion, a child under the age of twelve is not fully mature, so it is advisable to cancel any measure that may be imposed on him or her at this age because reform and putting them back on the road is the ultimate goal. Another key recommendation is the use of the word "juvenile" instead of "child" in Egyptian legislation in the field of criminal protection because the word "juvenile" includes all stages of juvenility and is common in the scope of criminal responsibility in the Arab world as well.

Importantly, the Jordanian legislator is recommended not leaving the matter of forming courts related to juveniles at their various levels to general rules and working to take into account the nature of the formation of juvenile courts by having at least two judges, starting with the magistrate courts, and demonstrating the text in the Jordanian juvenile law, as the Egyptian legislator does in the children's law. More importantly, the research recommends applying the best interest of the juvenile in all legal procedures and methods used against the juvenile when he commits a criminal offense. This so-called principle "the best interest of the juvenile" should not be applied in a certain part of the procedures and marginalized in another part of the procedures, as the best interest of the juvenile must be comprehensive and applied in all criminal procedures against the juvenile.

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