

Legislative safeguards for the protection of a minor's real estate property in Algerian Law

Nafissa Menagguer¹ and Sabah Hamaiti²

¹ Doctor of Law, University of El Oued, El Oued, Algeria.

Email: nafissamenagguer@gmail.com

² Doctor of Law, Lecturer Class A, University of El Oued, El Oued, Algeria.

Email: hamaiti-sabah@univ-eloued.dz

Abstract---Most modern legal systems, including Algerian legislation, provide a comprehensive set of legal safeguards designed to protect a minor's real estate assets. These protections focus primarily on regulating who is authorized to manage such assets in order to prevent their loss or misuse. The financial protection of a minor involves appointing a legal guardian or custodian with the authority to manage the minor's property and bear the legal consequences of such management. Furthermore, Algerian law requires judicial oversight in specific transactions that involve the minor's property. In such cases, the guardian or custodian must first obtain the court's authorization before proceeding. This reflects the principle that decisions made on behalf of a minor are not left to full discretion but must be conducted under judicial supervision. The law thereby imposes restrictions to prevent abuse and to ensure that any act concerning a minor's real estate serves their best interest.

Keywords---Protection of the minor, real estate property, legal guardianship, judicial oversight

Introduction

Real estate ownership is a broad and complex topic due to its significant impact across economic, political, and social sectors. For this reason, the law stipulates that any legal action involving real property requires full legal capacity. Legal capacity, a fundamental attribute of legal personality, may be lacking in certain individuals. This is especially the case for minors or for those affected by conditions such as mental impairment, insanity, or legal incompetence.

How to Cite:

Menagguer, N., & Hamaiti, S. (2025). Legislative safeguards for the protection of a minor's real estate property in Algerian law. *The International Tax Journal*, 52(5), 1836–1848. Retrieved from <https://internationaltaxjournal.online/index.php/itj/article/view/198>

The International tax journal ISSN: 0097-7314 E-ISSN: 3066-2370 © 2025

ITJ is open access and licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License.

Submitted: 16 July 2025 | Revised: 18 August 2025 | Accepted: 07 September 2025

1836

Given this vulnerability, the legislator has paid special attention to this category by enacting specific legal provisions to safeguard their rights. Persons with reduced capacity are often unable to understand or act in their best interests. Therefore, legal protection is extended to them, especially when their real estate is involved. The nature of real property demands extra caution and legal control.

When a legal guardian or custodian intends to manage or dispose of a minor's real estate, they must obtain prior authorization from the court. This judicial permission is only granted when necessity and clear benefit are proven. The purpose is to ensure transparency, prevent any potential collusion, and safeguard the minor's property from mismanagement.

This brings us to the central question of this study: What are the legal protections established by Algerian law to safeguard a minor's real estate? What legislative guarantees exist to ensure this protection? To address these questions, this study adopts an analytical approach based on a review of the legal texts governing the matter. The research is structured into two main sections:

- **Section One:** Legal Guardianship and the Protection of a Minor's Property
- **Section Two:** Judicial Oversight of the Guardian's Powers

Section One: Legal Representation for the Protection of a Minor's Property

As previously mentioned, a minor is someone who does not have the legal capacity to manage their property. This incapacity results from their incomplete legal status. A minor is either partially capable, such as a discerning child, or entirely incapable, such as a child who has not yet reached the age of discernment.

Given this legal deficiency, the Algerian legislator has imposed specific guarantees to protect the minor's property from exploitation. Among the most important of these guarantees is what is known as legal representation. This involves appointing a legal representative who is responsible for overseeing the minor's affairs, especially financial matters.

Legal representation for a minor operates under two systems: guardianship (*wilaya*) and custodianship (*wasaya*). These two systems will be addressed in detail in the following sections.

First Requirement: The Guardianship System (Wilaya)

The Algerian legislator established the guardianship system as a mechanism to protect a minor's property and to safeguard their interests. A minor, due to their legal status, requires someone to act on their behalf.

First Subsection: Definition of Guardianship (Wilaya)

Linguistically, the Arabic word *Wilaya* may be pronounced in two ways: with a *kasrah* on the first letter (*wilāyah*) or with a *fathah* (*walāyah*). Both forms are correct, and each carries a specific meaning.

When pronounced with a *kasrah*, the term refers to governance, authority, or leadership. It implies control, management, and the exercise of official duties¹ As for *wilayah* when pronounced with a **fathah**, it refers to *support* and *affection*. The term *wali* is derived from the root word *wali*, with a *sukun* on the letter *lām*, meaning *closeness* or *nearness*. It is said: *he is his wali*, meaning he is close to him. The phrase *awlaytubu iyyah* means *I brought him close*. The expression *wali al-amr* is used when someone takes charge of a matter. Similarly, *tawallā al-amr* means *he assumed responsibility for it*.²

As for the legal definition of guardianship (*wilāyah*), it is a legal framework established by the Algerian legislator under the provisions of the Family Law. It is addressed in Articles 81 and 87 through to

¹ Arabic Language Academy, *Al-Mu'jam Al-Wasit* (The Intermediate Dictionary), Volume on the letter Waw, 4th Edition, Al-Shorouk International Library, 2004, p. 1058.

Majda Mustafa Shabana, *Legal Representation: A Study in Civil Law and Guardianship Law on Property*, Dar Al-Fikr Al-Arabi, Alexandria, 2004, p. 56.

² *Fiqh Encyclopedia*, Volume 45, 2nd Edition, Dar Al-Salasil, Kuwait, p. 135.

Article 91 of the same law. However, it is worth noting that the legislator did not explicitly define *wilāyah* in a specific article but instead focused on setting out its rules and provisions.

From the wording of Article 87, one can infer that *wilāyah* refers to the legal authority granted to a specific person to carry out legal acts on behalf of another person who lacks full legal capacity. The aim of this authority is to protect the latter's property from misuse or exploitation.

Guardianship over a minor is compulsory. It is a legal measure whereby an adult manages the personal and financial affairs of the minor. It takes two main forms: guardianship over the person and guardianship over property. The latter is the focus of this study. It involves supervising the financial affairs of the minor and conducting legal acts such as sale, lease, mortgage, and similar transactions.

Some legal scholars have also defined it as: "The authority granted to a person to perform legal acts involving the property of another, on their behalf³ Others have defined it as: "A person's ability to carry out legal acts on behalf of another, in a way that produces effects in relation to third parties. It applies to those who lack legal capacity, those with diminished capacity, and those under legal guardianship⁴ .

Subsection Two:

The Right to Guardianship

Referring to Article 87 of the Family Code mentioned earlier, guardianship over a minor is granted first and foremost to the father. This is based on his position as the head of the household and his presumed ability to manage family affairs.

In the event of the father's death, guardianship automatically transfers to the mother by force of law, without the need for judicial intervention. This is due to her presumed commitment to the welfare of her children.

In such cases, the guardian — whether father or mother — is considered the minor's legal representative. However, they must act within the limits of their authority. For this reason, the legislator has set boundaries that the guardian is not allowed to exceed. These limits are part of the broader legal framework for protecting the minor's property.

Moreover, Article 90 of the Family Code states: "If the interests of the guardian conflict with those of the minor, the judge shall appoint a special administrator, either on their own initiative or upon request by an interested party."

Based on this provision, guardianship may not be transferred to another person while a guardian is still in place, unless a conflict of interest between the guardian and the minor can be clearly demonstrated.

It is important to note that the legislator did not specify the conditions required of a guardian in the Family Code. Instead, it provided such conditions only in relation to the custodian, as outlined in Article 93.

As a result, reference is made to Islamic jurisprudence in accordance with Article 222 of the Family Code. Islamic legal scholars agree on a set of conditions that are based on reason and logic and aim to ensure the highest level of protection for the minor.

According to this view, the guardian must be an adult, of sound mind, and of the same religion as the minor. They must also be trustworthy, responsible, and not negligent in their duties. Guardianship cannot be given to someone who is a minor, mentally unfit, or legally incompetent, since such individuals are themselves in need of guardianship and therefore unfit to serve in that role for others⁵.

³ Majda Mustafa Shabana, *Legal Representation: A Study in Civil Law and Guardianship Law on Property*, Dar Al-Fikr Al-Arabi, Alexandria, 2004, pp. 56–57.

⁴ Bibia Ben Hafiz, "Original Guardianship over the Minor's Property," *Journal of Human Sciences*, Vol. 31, No. 1, University of Frères Mentouri Constantine 1, June 2020

⁵ Jamal Mahdi Mahmoud Al-Aksha, *Civil Liability of Parents for Minor Children in Islamic Jurisprudence and Positive Law*, Dar Al-Jamia Al-Jadida, Alexandria, 2006, p. 200..

Subsection Three:

Termination of Guardianship

Referring to Article 91 of the Family Code, it specifies certain cases—listed exhaustively—under which the duties or functions of the guardian come to an end.

They are as follows:⁶

1. **Incapacity:** According to Article 91(1), “The guardian’s role ends upon his incapacity.” However, the legislator did not explicitly define the meaning of incapacity. It remains unclear whether this refers to physical incapacity or mental incapacity. It is likely that the legislator intended to cover both types.

On this basis, a guardian who considers himself unable to perform his duties due to health reasons may request the court to relieve him of guardianship. This is in accordance with Article 91(1) of the Family Code and Article 80 of the Civil Code, which states: “If a person is deaf and mute, or blind and deaf, or blind and mute, and is unable to express his will due to this condition, the court may appoint a judicial assistant to help him with actions necessary for his interest.

Any legal act carried out by the person who is assisted without the presence of the assistant, after the assistance order is recorded, may be annulled.”

From this, it follows that a guardian who requests assistance due to incapacity to manage the minor’s property must have his guardianship terminated according to Article 91(1) of the Family Code, or the guardianship must be transferred to the next eligible person.

2. **Death:** Guardianship ends upon the guardian’s death and passes to the next in line. Therefore, if the father dies, guardianship automatically transfers to the mother by law.

3. **Legal Incapacity (Curatorship):** A guardian, custodian, or curator is appointed for the person declared legally incapacitated. It would be unreasonable for such a person to remain a guardian over others. The Algerian legislator regulated these procedures in Articles 101 to 108 of the Family Code.

4. **Removal of Guardianship:** If the judge finds that the minor’s interests are at risk due to the guardian’s injustice, incompetence, or lack of honesty, the judge shall revoke the guardianship. Guardianship is linked to the minor’s best interest; if that interest ceases, the guardianship must be terminated.⁷ The removal of guardianship may also occur as a criminal sanction if the guardian commits a crime that threatens the minor’s interests, whether psychological or financial. This is in accordance with Article 337 bis of the Penal Code⁸ This includes immoral acts committed between relatives. The legislator has considered such acts a cause for depriving both the father and the mother of guardianship.

5.

It is stated that: “Sexual offenses committed between close relatives are considered as such... and the ruling issued against the father or mother includes the loss of parental or legal guardianship rights.”

Furthermore, the judge may revoke guardianship based on a civil ruling. This can be done upon the request of an interested party, the public prosecutor, or by order of the family court judge.

In addition to these legislated cases for terminating guardianship, guardianship also ends when the reason for appointing the guardian ceases to exist. For example, when the minor reaches the age of majority or is declared legally competent. Here, the end of guardianship means the completion of the task for which the guardian was appointed—either because the term expired or the objective was fulfilled.

Guardianship may also end through the guardian’s resignation. The guardian has the right to request this from the family court judge who appointed him. If the judge finds no harm will come to the minor, he may approve the resignation. This might occur if the guardian becomes preoccupied with other

⁶ Article 91 of the Family Code states: “The guardian’s function ends by: 1) incapacity; 2) death; 3) judicial interdiction; 4) removal of guardianship.”

⁷ Yusuf Delanda, *Family Law—Supported by the Latest Principles and Jurisprudence of the Supreme Court on Personal Status and Inheritance*, Dar Houma for Printing and Publishing, Algiers, 2002, p. 154.

⁸ Decree 66-156 dated 18 Safar 1386 AH (June 8, 1966), including the amended and supplemented Penal Code, Official Gazette No. 94 of 1966

matters and is unable to properly care for the minor's affairs and property, which require constant attention and care.

Section Two: The System of Custodianship

Custodianship is a form of legal representation designed to protect the minor's property. It is similar to guardianship because both aim to safeguard the minor's assets. However, guardianship is primarily based on kinship and compassion and takes precedence. Custodianship involves the custodian's will replacing that of the minor to preserve and invest the minor's property for their benefit.

The Algerian legislator has regulated the provisions of custodianship in Articles 92 to 98 of the Family Code.

1. Definition of Custodianship

Linguistically, custodianship (*wasaya*) comes from the root verb meaning "to entrust" or "to will." It refers to giving someone the right to manage or act on one's behalf after death concerning rights they had during their lifetime, such as settling debts or returning deposits.

For example, the term "*wasaya*" (custodianship) is used when one entrusts another with certain rights to act on their behalf after death. The Prophet Muhammad said, "Treat women well, for they are entrusted to you," illustrating the sense of care and responsibility implied in the term⁹.

Custodianship, in technical terms, is a legal system established to protect the minor, whether concerning their person or their property. It aims to safeguard their interests, which are entrusted to various bodies under the supervision of a judge, the custodian, the family council, and others.

The custodian is any individual who acts in place of the legal guardian. The custodian may be appointed by the guardian before their death or designated by the judge.

There are different types of custodians:

- The judicial custodian (appointed custodian): This is the person appointed by the judge to oversee the affairs of the minor and their estate.¹⁰ In cases where neither the father, grandfather, nor their guardians exist, the guardianship transfers to the judge by virtue of his general authority. The judge may directly manage the minor's assets in a manner that serves the minor's best interests. However, in practice, the judge does not personally oversee the minor's property. Instead, the judge appoints a guardian known as the "judicial guardian" or "appointed guardian." This guardian acts with the same authority as a chosen guardian, managing and preserving the minor's assets and working to increase their value.

The chosen guardian is the person selected by the father before his death to oversee and manage the minor's assets until the minor reaches adulthood. This is stipulated in Article 92 of the Family Code, which states: "The father or grandfather may appoint a guardian for the minor child if the child's mother is absent or legally disqualified from assuming this responsibility. If multiple guardians are appointed, the judge shall select the most suitable among them, while considering the provisions of Article 86 of this law."

As for the legal definition of guardianship, the law, like in the case of guardianship by representation, does not explicitly define it, although the legislator addresses its provisions. Therefore, one must refer to legal texts that discuss guardianship to infer its meaning.

Guardianship is a legal mechanism granted to a person entrusted with the care of the minor's interests. This appointment is made by the father or grandfather during their lifetime if there is no mother to exercise guardianship over the minor¹¹ Guardianship requires the approval of the family judge to safeguard the minor's assets after the death of the person who appointed the guardian. The source of

⁹ Arabic Language Academy, *Al-Mu'jam Al-Wasit* (The Intermediate Dictionary), Volume 2, p. 1038. .

¹⁰ Ramadan Ali Al-Sayyid Al-Shamabasi, *Family Provisions in Islamic Sharia*, Al-Helabi Legal Publications, Lebanon, 2002, p. 441 .

¹¹ Souria Gharbi, *Protection of the Minor's Financial Rights in Algerian Family Law*, Master's Thesis in Advanced Private Law, University of Aboubakr Belkaid, Tlemcen, 2014, pp. 168–189.

this representation is the judiciary, as it grants the guardian the legal authority to act on behalf of the minor's assets. This is based on Article 92 of the aforementioned Family Code.

Guardianship differs from guardianship by law (*wilayah*) in that it is optional; the appointed guardian may accept or refuse this role. It is a personal position that does not transfer to heirs. In contrast, guardianship by law is compulsory, and the guardian's authority is directly derived from the law.

Thus, guardianship can be understood as a delegation by the person entitled to act, assigning responsibility to another to manage affairs after their death for the benefit of someone who cannot manage their own matters. Referring again to Article 92 of the Family Code, guardianship is a form of representation exercised by either the father's guardian or the grandfather's guardian.

2. The Right to Guardianship

The father or grandfather has the right to appoint a guardian for the minor child if the child has no mother or if the mother is legally proven unfit to act as guardian. When multiple guardians are appointed, the judge selects the most suitable among them¹²

In accordance with the provisions of Article 86 of the aforementioned Civil Code, Article 92 of the Family Code stipulates: "The father or grandfather may appoint a guardian for the minor child if the child does not have a mother to oversee their affairs or if the mother is legally proven unfit for this role. If multiple guardians are appointed, the judge shall select the most suitable among them. In this case, the guardian is referred to as the appointed guardian." Article 94 of the Family Code further states: "Guardianship must be presented to the judge immediately upon the father's death for confirmation or cancellation."

This article also clarifies that although the father and grandfather are granted the authority to choose the guardian, this choice is subject to the judge's confirmation or annulment, requiring judicial approval. The appointed guardian has full discretion to accept or reject the guardianship proposed by the father or grandfather. However, if the guardian accepts it during the life of the testator—whether father or grandfather—they do not have the right to renounce it after the death of either.

3. Conditions of the Guardian

The right granted by the legislator to the father and grandfather to appoint a guardian is conditional, bound by the requirements outlined in Article 93 of the Family Code. These conditions are derived from Islamic jurisprudence to ensure greater protection of the minor's rights. The article mandates that the judge must remove a guardian who does not meet these criteria. It states: "The guardian must be Muslim, sane, of legal age, capable, trustworthy, and of good conduct. The judge may remove the guardian if these conditions are not met."

These conditions will be detailed as follows:

- a) The guardian must be Muslim: A non-Muslim cannot be a guardian over a Muslim minor. Since guardianship, like guardianship by law (*wilayah*), requires a successor to be morally and religiously sound¹³.
- b) The guardian must be of sound mind: Guardianship cannot be granted to a mentally incapacitated person or someone similarly impaired. This is because such a person is unable to manage their own affairs properly, and thus cannot be entrusted with the care of another.¹⁴
- c) The guardian must be an adult: Guardianship cannot be assigned to a minor or to a person who has been legally incapacitated after reaching the age of majority.
- d) The guardian must be trustworthy and capable of sound management: Supervising another's interests requires integrity, honesty, diligence, and wise judgment comparable to

¹² Suleiman Boukandoura, *Compulsory and Judicial Real Estate Sales: Their Procedures and Impact on Ownership Transfer in Light of the Civil and Administrative Procedure Code and Related Laws*, Dar Houma, Algiers, 2015, p. 112.

¹³ Nabil Saqr, *Family Law: Text, Jurisprudence, and Judgments*, Dar Al-Huda, Algiers, p. 296

¹⁴ Jomaa Samhan Al-Halabawi, *Legal Capacity, Its Defects, and General and Special Guardianship*, Dar Al-Huda, Algiers, p. 65. The legal age of majority is reached at 19 full years, according to Article 40 of the Family Code mentioned above.

that of an average responsible person. Accordingly, once these conditions are met in the guardian¹⁵ The judge has the authority to place the minor under guardianship. This guardianship is subject to the supervision of the family affairs judge, according to the provisions of Articles 464 and the following articles of the Code of Civil and Administrative Procedures.

4. Termination of the Guardian's Duties

The duties of the guardian end according to the cases stipulated in Article 96 of the Family Code, which are as follows:

1. Death of the minor, or loss of the guardian's legal capacity, or the guardian's death.
2. The minor reaching the age of majority, unless a court issues a ruling declaring them legally incapacitated.
3. Completion of the tasks for which the guardian was appointed.
4. Acceptance of the guardian's excuse to relinquish their duties.
5. Removal of the guardian upon the request of an interested party, if the guardian's conduct is found to threaten the minor's interests.

From this article, it is clear that guardianship over the minor ends either for reasons related to the minor or for reasons related to the guardian themselves, as follows:

First: Death of the minor. Once the minor passes away, the guardian's duties cease. There is no longer a reason for the guardian to remain in their position. The guardian must hand over all of the minor's assets in their possession to the heirs, after presenting the death notice to the family affairs judge.

Second: The minor reaches the age of majority. When the minor attains the legal age of majority¹⁶ When the minor reaches the age of majority and becomes capable of managing their own assets, the guardian's duties, as well as the court's guardianship over the minor's affairs, come to an end. The guardian must then hand over the minor's assets to them.

Third: Death or loss of capacity of the guardian. Upon the guardian's death, their duties end entirely. Guardianship is then transferred to another person appointed by the family affairs judge, based on a request from an interested party. The minor's assets must be handed over to the new guardian to safeguard and manage them. If the guardian loses their legal capacity and this is proven by legal means, the guardianship also terminates. A person lacking or deprived of legal capacity cannot oversee the minor's assets, as capacity is a fundamental condition for guardianship. Thus, guardianship ends with the loss of capacity.

Fourth: Completion of the tasks for which the guardian was appointed. The guardianship ends once the appointed task is complete or the reason for the appointment ceases to exist. In such cases, the court orders the termination of the guardian's duties. Guardianship may also end if it was granted for a limited period.

Fifth: Acceptance of the guardian's excuse to relinquish their duties. The guardian has the right to request resignation from the family affairs judge who appointed them. The judge has discretion to accept or reject this request. If the judge finds valid justification for the resignation and believes it serves the minor's best interests, they may approve it and issue a decision to remove the guardian. It is worth noting that Algerian law does not specify particular reasons sufficient to justify a guardian's resignation but grants discretionary power to the family affairs judge to take all necessary measures to protect the minor's assets.

Sixth: Removal of the guardian. Removal entails dismissing the guardian from their duties if any of the conditions for guardianship are no longer met, or if the minor is subject to abuse, neglect, loss, damage, or misappropriation of assets, or if the guardian's continued service poses a risk to the minor's interests. Guardianship is inherently linked to the minor's welfare. Removal is a sanction imposed by the family

¹⁵ In addition to the conditions stipulated in Article 93 of the Family Code concerning the guardian, the legislator did not specify gender. Instead, the term used is general and applies to both male and female guardians. This is because the word "guardian" in the article is a general, unrestricted term.

¹⁶ The legal age of majority is 19 full years, according to Article 40 of the Family Code mentioned earlier.

affairs judge to protect the minor's interests, and it can be requested by any party with an interest in the matter.

Additionally, upon termination of the guardian's duties for any of the above reasons, the guardian must hand over all assets under their care and provide a detailed account with supporting documents to their successor, the minor upon reaching majority, or the heirs. This must occur within two months from the date of termination. The guardian must also submit a copy of this account to the court. In the event of the guardian's death or loss of capacity, their heirs must hand over the minor's assets through the court to the rightful party, in accordance with Article 97 of the Family Code¹⁷ The guardian shall be held responsible for any damage caused to the minor's assets due to their negligence, in accordance with the provisions of Article 98 of the same law¹⁸.

Article 472 of the Code of Civil and Administrative Procedure further obliges the guardian, the public prosecutor's representative, the minor who has reached the age of discernment, or any person concerned with the minor's interest, to notify the judge regarding the confirmation or rejection of the guardianship following the father's death. In the event of rejection, the judge shall appoint a custodian in accordance with Article 471 of the same code.¹⁹ 'The judge may take all necessary precautionary measures while awaiting the appointment of the custodian. The judge is also authorized to place the minor under the guardianship of the chosen guardian, provided that the guardian meets the legally established conditions. All disputes regarding the appointment of the guardian are resolved by an urgent order, which is subject to all forms of appeal except opposition, since urgent orders cannot be contested by opposition or objection to immediate enforcement²⁰.

Section Two: Judicial Oversight of the Legal Representative's Powers over the Minor

Due to the significant legal status of real estate, the legislator has mandated that any person dealing with such property must follow specific procedures to acquire and transfer ownership, provided that the person acting is a fully competent adult. However, if the person acting is a minor, the legislator grants special protection, as the rights of minors are considered matters of public order²¹ Therefore, the law requires obtaining judicial permission from the legal guardian before any transaction involving the minor's property can be authorized. The legislator obliges the legal representative, whether a guardian or custodian, to seek the judge's approval prior to disposing of the minor's assets under their supervision. This requirement reflects the potential risks these transactions pose to the minor's financial estate.

Although the law grants the legal representative broad powers to perform their duties effectively, these powers are subject to legal restrictions. These restrictions aim to reinforce protection and ensure that the representative acts strictly within the scope intended by the law.

¹⁷ Article 97 of the Family Code states: "The guardian whose mission has ended must hand over the property in their custody and provide an account, supported by documents, to their successor, the minor who has reached majority, or the heirs, within no more than two months from the end of the mission. A copy of this account must be submitted to the judiciary. In the event of the guardian's death or disappearance, their heirs must hand over the minor's property through the judiciary to the concerned party."

¹⁸ Article 98 of the Family Code states: "The guardian is responsible for any damage caused to the minor's property due to negligence."

¹⁹ Paragraph one of Article 471 of the amended Civil and Administrative Procedure Code states: "The judge appoints the petitioner by a guardianship order after ensuring his consent."

²⁰ Boukandoura Suleiman, *Compulsory and Judicial Real Estate Sales*, op. cit., p. 114.

²¹ Moawad Abdel-Tawab, *Encyclopedia of Personal Status*, Volume Three, Al-Maaref Publishing, Alexandria, 7th Edition, 1997, p. 1484.

First Requirement: Forms of Judicial Oversight over the Legal Representative's Powers

Referring to the legal principles, the legislator has specified certain legal acts for which the guardian or custodian must obtain judicial permission before execution. The legislator has emphasized that the person entrusted with overseeing the minor's property must act as a prudent individual—similar to a family head who diligently cares for the interests and well-being of their household²² According to Article 88 of the Family Code, “The guardian must manage the minor's property with the care of a prudent person and shall be held accountable according to the provisions of the general law. The guardian must obtain the judge's permission before carrying out the following transactions:

- Selling, partitioning, mortgaging the minor's real estate, or making a settlement;
- Selling movable property of special significance;
- Investing the minor's funds through lending, borrowing, or participating in a company;
- Leasing the minor's real estate for a period exceeding three years or extending beyond one year after the minor reaches the age of majority.”

Below, we will address each of the cases outlined in the article:

Section One: Selling, Partitioning, Mortgaging the Property, and Making Settlements

First: Selling the Minor's Property: The sale of real estate is considered one of the most serious legal transactions performed by a legal representative, as it results in the transfer of ownership. Therefore, the legislator has restricted the disposal of property owned by a minor by requiring court authorization. The court reviews the application, evaluates the transaction, and its justifications. The court president is empowered by law to grant permission for such transactions, as this falls within his guardianship jurisdiction.²³ In granting permission, the judge must carefully consider the urgency and the best interest of the minor. Furthermore, to ensure protection of the minor's rights, the property must be sold through a public auction, as this offers greater safeguards. This is stipulated in Article 89 of the Family Code, which states: “The judge must take into account the necessity and the interest in granting permission.”²⁴

The sale of the property must be conducted through a public auction. This requirement is also specified in the first paragraph of Article 783 of the Code of Civil and Administrative Procedures, which states: “The sale of real estate and/or real rights subject to judicial authorization shall be conducted by public auction for missing persons, incapacitated individuals, and bankrupts, according to a list of sales conditions deposited at the court registry. This list is prepared by the judicial officer upon request of the guardian, custodian, or legal representative, or by the bankruptcy trustee, as appropriate...” These safeguards are particularly intended to ensure that the property owned by the minor is sold at the highest possible price.

Division of the Minor's Property and Reconciliation Procedures: The Algerian legislator has adopted a similar judicial authorization requirement for the division of property when a minor is among

²² Layla Talba, *Private Real Estate Ownership*, Dar Houma, Algiers, 2010, p. 70.

The case of necessity and interest stated in Article 89 of the Family Code refers to any urgent procedural act or transaction that must be done immediately to prevent serious harm, especially concerning minors, when urgent necessity requires it. Interest refers to the benefit of the minor and preventing harm to them. This is supported by Article 467 of the Civil and Administrative Procedure Code: “The judge may, before ruling on the matter, order provisional measures to protect the minor's interests. This order is not subject to any appeal.”

²³ Moudi' Muhammad Amin, “Protection of the Minor's Property in Light of Amendments to the Algerian Family Code,” *Journal of Legal and Political Research*, Vol. 5, No. 1, University Center of Tipaza, January 2021, p. 59..

²⁴ The case of necessity and interest mentioned in Article 89 of the Family Code means any urgent procedural act or transaction that must be done immediately to avoid serious harm, particularly when it concerns minors and urgent need arises. Interest here means the benefit of the minor and prevention of harm. Article 467 of the Civil and Administrative Procedure Code confirms this by stating: “The judge may, before ruling on the case, order temporary measures to protect the interests of the minor. This order is not subject to appeal.”

the co-owners, paralleling the provisions related to property sales. This is articulated in Article 723 of the Civil Code: “If the partners unanimously agree, they may divide the common property as they see fit. However, if any of them lacks legal capacity, the procedures prescribed by law must be observed.” Consequently, the guardian or custodian must file a division lawsuit on behalf of the minor only after obtaining judicial permission; otherwise, the procedure is invalid. This is in line with the second paragraph of Article 181 of the Family Code, which stipulates: “...In cases where a minor is among the heirs, the division must be carried out through the judiciary.”

The same applies to reconciliation procedures involving the property of the minor, where judicial permission is required to protect the minor’s interests in the settlement. The judge must appoint an expert to evaluate and inspect the shares on-site during property division or reconciliation. Typically, these processes necessitate submitting a division or settlement plan, which includes technical drawings. Since the judge cannot independently verify such technical matters, appointing an expert is essential to safeguard the child’s rights and enable the judge to issue an informed ruling on the division or settlement²⁵.

Second: Mortgage of the Minor’s Property: According to Article 88 of the aforementioned Family Code, the legislator also requires judicial authorization for mortgaging a minor’s property. This is because a mortgage is considered a complex transaction. The aim is to protect the minor’s interests and safeguard their assets. However, it is noteworthy that Article 88 does not specify whether the debt secured by the mortgage pertains to the guardian or the minor; the provision is general. Therefore, whenever a minor’s property is mortgaged, the guardian must seek the court’s permission.

In cases where the mortgage benefits the minor, and the minor is the creditor secured by the mortgage, this situation falls outside the scope of Article 88. Hence, judicial authorization is not necessary since the mortgage is in favor of the minor. This is because a mortgage in this context is considered an act of administration rather than a disposition²⁶.

Third: Sale of Movable Property of Significant Importance: The legislator requires the legal representative to obtain permission before selling a minor’s movable property of considerable importance. However, the law does not explicitly define what constitutes movable property. Instead, it provides a definition for immovable property in Article 683 of the Civil Code²⁷ Everything that is not classified as immovable property is considered movable property²⁸ The legislator did not establish a specific standard for the meaning of “significant importance” regarding a particular movable asset. This is because such importance varies from one person to another. What a poor person considers important may be deemed insignificant by a wealthy individual. Therefore, the legal representative must obtain judicial authorization before selling any movable property owned by the minor, regardless of the value, whether high or low.

Fourth: Investment of the minor’s funds through lending, borrowing, or participation in a company. If the legal representative intends to invest the minor’s funds or contribute them to any type of company, judicial approval is required. However, it is worth noting that it would have been preferable for the legislator to limit these transactions to a specific period to avoid harming the minor’s interests. It is unreasonable for the minor to reach adulthood only to find themselves bound by commitments for several years.

²⁵ Ahmed Dawood Ruqayya, *Legal Protection of the Child Between Algerian Family Law and International Treaties*, Master’s thesis in Private Law, 2002–2003, p. 122

²⁶ Issa Ahmed, “Judicial Jurisprudence in the Field of Guardianship over the Minor’s Property,” *Journal of Legal and Political Research*, Vol. 1, No. 1, University of Blida 2, January 2011, p. 92.

²⁷ Article 683 of the Civil Code: “Everything that is fixed in its place and cannot be moved without damage is real estate; everything else is movable property. However, a movable item placed by its owner on real estate, to serve or exploit that property, is considered immovable by way of designation.”

²⁸ Layla Talba, *Private Real Estate Ownership*, op. cit., p. 72.

Fifth: Leasing the minor's property for a period exceeding three years or extending more than one year beyond the age of majority.

If the guardian or custodian seeks to lease the minor's property for more than three years, judicial authorization is mandatory.

Section Two: Judicial Oversight Procedures

By these procedures, we mean the identification of the competent judicial authority to which the legal representative submits a request for judicial authorization to initiate the process. Referring to the provisions of the Civil Code and the Family Code, the legislator did not specify the procedures for obtaining such authorization. Instead, this matter was delegated to the Civil and Administrative Procedure Code, which addresses it with precision. Among the relevant articles is Article 424, which explicitly assigns the Family Affairs Judge the responsibility of safeguarding the interests of minors. It states: "The Family Affairs Judge is specifically entrusted with overseeing the protection of the interests of minors."

Accordingly, based on jurisdictional rules, the Family Affairs Division holds exclusive competence over matters related to the minor's financial affairs. This includes the priority and authority to consider requests for authorization, as per Article 479 of the same code, which states: "The prior authorization prescribed by law, concerning certain acts of the guardian, shall be granted by the Family Affairs Judge by order upon petition."

Article 474 of the same law further provides that disputes regarding guardianship over the minor's assets shall be brought before the Family Affairs Judge, who may decide the case by expedited procedures in urgent circumstances.

These articles confirm that the Family Affairs Judge holds exclusive subject-matter jurisdiction over financial matters concerning minors, especially regarding judicial authorization for transactions involving their real estate, notably sales. This jurisdiction is explicitly conferred by the Civil and Administrative Procedure Code to the Family Affairs Judge of the court of first instance.

Regarding territorial jurisdiction, the general rule for the competent court to hear the legal representative's request for judicial authorization is the court located in the place where the guardianship is exercised. This is stated in Article 426(9) of the Algerian Civil and Administrative Procedure Code: "The competent court territorially... 9- in matters of guardianship, is the court where the guardianship is exercised." Article 464 of the same code similarly provides: "Territorial jurisdiction shall lie with the court within whose jurisdiction the guardianship over the minor's assets is exercised."

However, this general rule is subject to an exception concerning real estate owned by the minor. Therefore, the provisions of Article 40 of the Civil and Administrative Procedure Code must be applied, which states: "In addition to the provisions of Articles 37, 38, and 46 of this Code, lawsuits shall be brought before the judicial authorities listed below and no others:"

In matters related to real estate, construction work concerning real estate, rental disputes including commercial leases related to properties, and claims related to public works, jurisdiction lies with the court in whose district the property is located or the court in whose district the work is carried out.

Accordingly, the territorial jurisdiction for the legal guardian's request to obtain judicial authorization for selling the minor's real estate is determined by the location of the property. This judicial authorization must be requested by way of an order upon petition, as provided by Article 479 of the aforementioned Civil and Administrative Procedure Code. Thus, the Algerian legislator, through this

article, did not specify the detailed procedures that the applicant for authorization to sell the minor's property must follow before the Family Affairs Judge. Instead, it only stipulates that the process takes place by an order upon petition. This confirms the provisions set forth in Article 89 of the aforementioned Family Code.

Conclusion

In conclusion, this modest study reveals that the legislator has sought to safeguard minors and protect their rights, including their financial rights. The task of managing and disposing of a minor's real estate assets is entrusted exclusively to legally designated persons. These individuals are not granted absolute authority to act freely. Conversely, the judge is granted a vital and broad role in appointing legal guardians, defining their responsibilities, supervising their conduct, holding them accountable, and removing them if they exceed their authority.

From the foregoing, several key findings emerge:

- The financial protection of the minor under the law primarily refers to appointing someone—such as a guardian—who manages the minor's assets.
- The purpose of stipulating financial protection in the Family Code is to ensure greater security for the minor's real estate assets against loss or misuse.
- Financial protection is principally aimed at the minor due to their young age.
- The judge plays an active role in overseeing the financial protection of the minor's real estate through monitoring the actions of the guardian or custodian.
- The legislator has imposed certain penalties for guardians or custodians who exceed their authority when managing the minor's assets, including compensation and removal from office.
- Anyone entrusted with managing a minor's property does not have unlimited powers. The legislator has explicitly listed specific cases requiring judicial authorization, such as the sale of the minor's real estate.

Based on these findings, the following recommendations are proposed:

- Clearly specify the powers of the custodian without referring to the guardian's authorities, since guardianship and custody differ in their legal provisions.
- The legislator should clearly define the qualifications and conditions for the role of guardian.
- Although the legislator has addressed financial protection for minors' assets, the current protections remain insufficient. Therefore, future amendments should enhance these safeguards by providing stronger guarantees to better protect minors' interests.

References

- Ahmed Dawood Ruqayya, *Legal Protection of the Child Between the Algerian Family Law and International Treaties*, Master's thesis in Private Law, 2002–2003.
- Arabic Language Academy, *Al-Mu'jam Al-Wasit* (The Intermediate Dictionary), Volume on the letter Waw, 4th Edition, Al-Shorouk International Library, 2004.
- Article 683 of the Civil Code.
- Article 91 of the Family Code.
- Article 97 of the Family Code.
- Article 98 of the Family Code.
- Bibia Ben Hafiz, "Original Guardianship over the Minor's Property," *Journal of Human Sciences*, Vol. 31, No. 1, University of Frères Mentouri Constantine 1, June 2020.
- Boukandoura Suleiman, *Compulsory and Judicial Real Estate Sales: Procedures and Their Effects on Ownership Transfer in Light of the Civil and Administrative Procedure Code and Related Laws*, Dar Houma, Algiers, 2015.

- Decree 66-156 dated 18 Safar 1386 (June 8, 1966), containing the amended and supplemented Penal Code, Official Gazette No. 94 of 1966.
- Delanda Yusuf, *Family Law—Supported by the Latest Principles and Jurisprudence of the Supreme Court on Personal Status and Inheritance*, Dar Houma for Printing and Publishing, Algiers, 2002.
- Fiqh Encyclopedia*, Volume 45, 2nd Edition, Dar Al-Salasil, Kuwait.
- Issa Ahmed, “Judicial Jurisprudence in the Field of Guardianship over the Minor’s Property,” *Journal of Legal and Political Research*, Vol. 1, No. 1, University of Blida 2, January 2011.
- Jamal Mahdi Mahmoud Al-Aksha, *Civil Responsibility of Parents for Minor Children in Islamic Jurisprudence and Positive Law*, Dar Al-Jamia Al-Jadida, Alexandria, 2006.
- Jomaa Samhan Al-Halabawi, *Capacity, Its Defects, and General and Special Guardianship*, Dar Al-Huda, Algiers.
- Layla Talba, *Private Real Estate Ownership*, Dar Houma, Algiers, 2010.
- Magda Mustafa Shabana, *Legal Representation: A Study in Civil Law and Guardianship Law on Property*, Dar Al-Fikr Al-Arabi, Alexandria, 2004.
- Moawad Abdel-Tawab, *Encyclopedia of Personal Status, Volume Three*, Al-Maaref Publishing, Alexandria, 7th Edition, 1997.
- Moudi’ Muhammad Amin, “Protection of the Minor’s Property in Light of Amendments to the Algerian Family Code,” *Journal of Legal and Political Research*, Vol. 5, No. 1, University Center of Tipaza, January 2021.
- Nabil Saqr, *Family Law: Text, Jurisprudence, and Judgments*, Dar Al-Huda, Algiers.
- Paragraph One of Article 471 of the amended and supplemented Civil and Administrative Procedure Code.
- Ramadan Ali Al-Sayyid Al-Sharnabasi, *Family Provisions in Islamic Sharia*, Al-Helabi Publications, Lebanon, 2002.
- Souria Gharbi, *Protection of the Minor’s Financial Rights in Algerian Family Law*, Master’s thesis in Advanced Private Law, University of Aboubakr Belkaid, Tlemcen, 2014.