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The Role Of The Judiciary In Controlling The Guardianship Of Money

دور القضاء في السيطرة على وصاية المال

Le rôle du pouvoir judiciaire dans le contrôle de la tutelle monétaire

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Abstract :

The judiciary has a central role in preserving people's money in the exercise of guardianship of money, as those who are subject to it need assistance during this phase, the guardian shall take care of the minor's money, taking into account the substantive and procedural aspects that the family affairs judge shall respect by virtue of his authorities to control and supervise the guardianship of the money, and the need to take into account the necessity and interest in issuing permission to carry out some important actions, as well as the role of family courts in the settlement of disputes on guardianship, and the monitoring of legal sanctions in the event of violation of its system, with the need to adjust the judicial work in this regard texts more flexible taking into account all the details of changing constantly.

keywords: Guardianship of money, Permission, Interest, Auction .

Abstrait:

Le pouvoir judiciaire a un rôle central à jouer pour préserver l'argent des citoyens dans le cadre de l'exercice de la tutelle; ceux-ci ayant besoin d'aide pendant cette phase, le tuteur veille au respect de l'argent du mineur, en tenant compte des aspects de fond et de procédure le juge des affaires familiales doit respecter, en vertu de ses pouvoirs, de contrôler et de superviser la tutelle de l'argent, ainsi que la nécessité de prendre en compte la nécessité et l'intérêt de donner l'autorisation de mener à bien certaines actions importantes, ainsi que le rôle des tribunaux de la famille dans le règlement des litiges en matière de tutelle, et le suivi des sanctions judiciaires en cas de violation de son système, avec la nécessité d'ajuster le travail judiciaire à cet égard des textes plus souples tenant compte de tous les détails de l'évolution constante.

Mots-clés: tutelle de l'argent, permission, intérêt, vente aux enchères.

ملخص

يتولى القضاء مهمة محورية في الحفاظ على أموال الأشخاص في نطاق ممارسة الولاية على المال، ذلك أن من يخضعون لها يحتاجون للمساعدة خلال هذه المرحلة، فيتولى الولي رعاية مال القاصر مُراعياً في ذلك جوانب موضوعية وإجرائية يسهر قاضي شؤون الأسرة على احترامها من خلال ما يحظى به من صلاحيات للرقابة والإشراف على ولاية المال، وضرورة مُراعاه للضرورة والمصلحة في إصدار الإذن لمباشرة بعض التصرفات المهمة، فضلاً على دور القضاء الأسري في تسوية المنازعات المنصبة حول الولاية،

ورصد العقوبات القانونية في حال المساس بنظامها، مع ضرورة ضبط العمل القضائي في هذا الشأن بنصوص أكثر مرونة تستجيب لجميع التفاصيل المتغيرة باستمرار.

الكلمات المفتاحية: الولاية على المال، الإذن، المصلحة، المزداد العلني.

INTRODUCTION

The Algerian legislator gave great importance to the preservation of funds, through various texts in the legislative system, and to monitor the many mechanisms through which the conduct of the funds, especially the implementation of guardianship of money, being serious in protecting the money of the persons subject to it.

However, the practice of guardianship of money requires submission to a number of controls, perhaps the most important supervision of the judiciary on all aspects related to the substantive and procedural aspects, so the subject : "The role of the judiciary in the control of guardianship of money, is a research act that takes into account all the procedural details that must be taken into account by the judiciary on the occasion of its hard work in supervising and monitoring the practice of guardianship of money in order to achieve the objective of protecting minors' funds from infringement . In particular the subordination of the guardian to a number of restrictions provided by law despite his authority to dispose of the minor's money as he is keen to safeguard his interests.

Judicial work on the follow-up of all details of guardianship of money is derived from the substantive and procedural rules stipulated in the various articles of various laws, the interest of the legislator to give

transparency to the work of the judge during the supervision of a guardian in the exercise of his authorities on the money, And the arrangement of legal sanctions in the event of a breach, and can raise the issue of this as follows: How sufficient authority granted to the judiciary in the follow-up details of guardianship of money?, and a few sub-questions stem from the main question: What are the most important procedural aspects to be observed by the guardian and the judiciary in the exercise of guardianship over funds?- What are the limits of practicing the judiciary to control the guardianship of money?-The extent of the judiciary's authority to determine what is necessary, in particular the penalty prescribed by law, and to adapt the responsibility of the guardian?.

This topic is of importance from all the details of the guardian's role in the guardianship of money, as well as the control of the judiciary, through the civil procedure code, the family code. In order to achieve the desired interest, especially since many family disputes between individuals because of money, especially between spouses on the money of children, as well as the dispute over guardianship in the event of divorce and the consequent keenness of the parties to take guardianship of the money for the benefits they may receive, therefore, the judiciary intervenes in order to restrict some

of the actions of the guardian in order to prevent abuse, and therefore judicial work should be detailed in everything that would be fruitful in exercising trusteeship in the best of circumstances.

This subject requires reliance on the analytical method, in order to identify all the procedural details followed by the guardian as well as the judge, and this is for the purpose of detail and not just descriptive only, especially as the judiciary takes into account the finer details in subordination to the guardian-contrary to some previous studies, which treated the simple substantive aspects without elaborating in highlighting the role of the judiciary in supervising the guardianship of money to safeguarding rights.

These points can be dealt with in accordance with a plan that includes procedural controls in the exercise of jurisdiction and dropping it on the minor's money (First requirement), and the need for the guardian to be subject to judicial procedures for the protection of minors' property (Second requirement), As well as the settlement of jurisdictional disputes over the minor's property (Third requirement), And talk about infringement of the minor's money and the penalty included (Fourth requirement).

First requirement :Procedural controls in the exercise of trusteeship and dropping them on the minor's property.

The minor undergoes a special stage that prevents him from doing his normal works, during which he needs a help provided for in the legislation for specific persons to maintain himself and his money, which involves the legal prosecution that aims at this, and among its images the guardianship that can be on the minor's self or his money.

The family law is interested by the guardianship, where it is practiced by the father if he is alive and has not been interdicted, followed by the mother in the event of his death or an occurring Inhibitor without the need to obtain a judgment for carry out on the minor¹, this is referred to in article 87 of the family code:"The father is the guardian on his minor children, and after his death, the mother is legally replaced .In case of father's absence or obstruction, the mother is replaced by urgent matters relating to the children"².

It is clear from the text of the article that carrying out the guardianship by a father or a mother does not require the implementation of any procedure because they are exclusively concerned with the interests of the children.

The guardianship's transfer to the mother is linked to the father's death or an occurring Inhibitor to him, which can be inferred from the supreme court's decision that:"It is legally prescribed that" The father is the guardian on his minor children, and after his death, the mother is legally replaced ". and As it was fixed - in the case of the issue - That the judges when they accepted the appeal of mother's contestants against them, and she was not a party to the litigation, and the contestant against him is still a minor and his father is his guardian according to the law and has not yet died so that the mother can act on his behalf. the judges, as they did, violated the fundamental forms of procedure and the law, which would have to be overturned"³.

However, the idea of dropping the guardianship subjects to certain details to be included by submitting a request for dropping it (First section), as well the effect

of the emergency measures in the achieving interests of the minor (Second section).

First Section: Submitting a request for dropping the guardianship.

The dropping the guardianship requires specific procedures singled out by the algerian legislator in some detail through the code of civil and administrative procedures in many articles, this can be detailed by specifying the steps to be followed to drop it and to report by its decision, according to the following:

First: Steps to be followed for dropping the guardianship.

An application of suit for temporary withdrawal or dropping of the guardianship may be made by a parent or public prosecution or interest through an expedited lawsuit, in accordance with article 453 of the code of civil and administrative procedures: "Submit an application for termination exercise of the guardianship or its temporary withdrawal by a parent Or the representative of the Public Prosecution or by any interested party by an urgent action"⁴.

The text of the article clearly shows that it was extended, in light of the detail of article 87 of the family code, which defined the beneficiaries of the exercise of the guardianship, by inserting the father and in the case of an exception to the death or Inhibitor moved to the mother, as well as the detail provided in the same article in its third paragraph by assigning the mandate to the custodian by stipulating: "... in the case of divorce, the judge shall grant the

guardianship for who has been given custody of the children".

Accordingly, the father may apply for the dropping of the guardianship after the divorce against the mother, because she deserves the custody according to the order adopted by the article 64 of the family code for the entitlement of the nursery, stating: "Mother is first custody of her son, then father...", and withdraws the same to speak to the mother who may be required to do so in the form of when the father received custody, without forgetting those who are included in article 453 of the code of civil procedure and administrative non-parents, which is a matter of bad faith to seize the minor's money.

It is recommended that an urgent action be brought In front of court within the jurisdictional jurisdiction headquarters exercise of the guardianship, and the family affairs judge shall decide on the applications in the counseling room, with the representative of the public prosecution and the attorney of the litigants, in accordance with article 458 of the code of civil and administrative procedures, Taking into account a number of measures taken by the judge according to article 454, which can be connected to:

- 1- In the interest of the minor, the judge may hear the parents or any person.
- 2- If the minor's condition allows his testimony to be taken, he may also be heard.
- 3- The judge may, with his authority and in the context of ensuring the safety of the minor and his funds, may use a social investigation or medical examination to ascertain the actual situation of the minor.

The article is comprehensive for parents or any person who benefits from a desirable benefit or one member of the public prosecutor, the judge can do so on his own initiative, which is a control on the guardian in not neglecting the minor's money⁵.

Second: The need to report the order to drop the guardianship.

The judge shall rule on the dropping of the guardianship on the basis of an urgent order, which the party concerned must seek to report his opponents by an official report through the bailiff within thirty days from the date of the judgment, this is referred to in article 455 of the code of civil and administrative procedures, which stipulates: "The urgent order is officially reported issued in accordance with Article 453 above, by the opponent who is interested in expediting to the rest of the litigants within thirty (30) days from the date of its pronouncement, under the penalty of the fall of the order", failure to report within the legally prescribed period results in its fall and lack of validity⁶.

Article 456 of the code of civil and administrative procedures allowed the litigants to appeal the decision within 15 days from the date of report, and from the date of its pronouncement to the public prosecution, the appeal shall be adjudicated within reasonable limits secret in the counseling room to preserve the interests of the minor even in his absence⁷.

Including the judge's authority in this aspect, may seek to collect necessary information about the conduct of the minor's family, it may also assign temporary custody to one of its entrants covered by article 64 of the family code, with the possibility of amending this procedure to the benefit of the minor⁸.

Second Section: The impact of urgent procedures in achieving the interests of the minor.

According to the first paragraph of article 460 of the code of civil and administrative procedures, after collecting the information of the minor, the judge can take any action related to the guardianship and aims to achieve his interest, including the provision of temporary custody of a parent⁹, In particular the father who, according to the nature of the stage during which the minor lives during the examination period and the mother leaves the marital home, and for the sake of his interests, the judge may temporarily assign him or to those whom the interest requires¹⁰, pursuant to the second paragraph of article 460.

This temporary procedure shall be based on an urgent adjudicate, and the judge may amend it with a waiver or at the request of the guardian or the distinctive minor, public prosecution or any person who has the protection of the minor in accordance with article 460.

The father of a minor who has been deprived of guardianship may submit a request to the judge containing the termination or temporary withdrawal of the rights associated with the exercise of the guardianship in whole or in part, in accordance with article 481 of the code of civil and administrative procedures.

The adjudicating session shall be in the chamber of deliberations or the office of the Judge, with the submission of its applications by the Public Prosecution and with the possibility of appeal within 15 days in accordance with article 463 of the code of civil and administrative procedures.

With the need briefing of the judge of all that has to do with the dropping of guardianship of any of the assignees, which was the decision of the supreme court, which provided for: "...but since the judges of the council had caused their decision sufficiently as they were based on the lack of evidence to drop the guardianship on the contestants against her, especially she has a daughter younger than the son subject request for dropping guardianship, and the appellant did not provide proof of the level of the appellant against her, and it is unreasonable to drop guardianship on mother based on mere statements that do not amount to the directory rank..."¹¹.

Second requirement: The guardian must be subject to judicial

procedures to protect minors' property.

The guardian shall assume his duties directly to the minor in order to protect his funds, provided that this is subject to legal arrangements that ensure the judiciary of its control, and control of the guardian in certain actions that may affect the financial liability of the minor, therefore, the guardian must take into account the procedural aspects of guardianship of the minor's money (First section), and the supervision of the judiciary in the maintenance of the minor's money (Second section).

First Section: Procedures followed by the guardian over the minor's money.

The guardian must abide by the legal limits on the disposal of the minor's property, since a minor who has not reached the age of distinction, his actions shall be null and void in all whatever their nature in terms of benefit or damage, and shall dispose of him by his guardian or his testamentary

guardian¹², as referred to in article 42 of the civil code:" He is not entitled to direct his civil rights to those who have lost the distinction of age, dementia or madness. Is considered to be immature from the age of 13 years "¹³, as well as article 81 of the family code, which stipulates:"A person who is disqualified or incomplete for a young age, madness, dementia, or a prodigality, shall be legally represented by a guardian, testamentary guardian or curator in accordance with the provisions of this Law"¹⁴.

The guardian shall conduct the financial acts of the minor in a restricted manner and subject to a number of procedures, as being associated with the family affairs judge, and the guardian must obtain the judge's permission if it concerns some of the acts mentioned under article 88 of the family code, including the sale, division and mortgage of the property, and reconciliation on it, as well as with regard to the movables of particular importance, and investing the minor's money in lending, borrowing or contributing to a company, and all that relates to the rental of the minor's property for more than three years and extends for more than one year after reaching the legal age of majority, the judge must also take into account the interest and necessity, taking into account that the protection of the rights of minors is from the public order.

First: Obtaining permission.

The guardian shall always take into account in his actions the interest of the minor, and the legislator restricts him by the need to obtain judicial authorization in some of the acts mentioned in article 88 of the family code, he must obtain permission to sell the property, divide it, mortgage it and

make a reconciliation on it, invest money in lending or borrowing and contribute to a company, and rent the property for a period of more than three years and extend for more than one year after reaching the legal age of majority¹⁵, on the other hand, in the event of granting permission, the judge must take into account the necessity and interest in accordance with article 89 of the family code, which states: "The judge shall take into account the necessity and interest and the sale of the property by public auction".

The guardian must address to the family affairs judge of the court within the jurisdiction of which the place of guardianship is exercised, a request in the form of an order for a petition, as referred to in article 479 of the code of civil and administrative procedures which provided for: "the pre-authorization provided by law, relating to certain acts of the guardian, shall be granted by the family affairs judge by order of a petition", and that the petition be in two copies to justify his request with the documents he relied upon in accordance with article 311 of the code of civil and administrative procedures, as follows: "The petition shall be submitted in two copies. It must be well-publicized, include references to the documents being invoked, and if the petition is submitted in respect of an existing dispute, the court before which the dispute is brought must be mentioned. The order must be on a substantiated petition and be enforceable based on the original".

Second: Necessity.

In accordance with article 89 of the family code, obtaining the permission requires that the urgent necessity dictated by that act be fulfilled in the interest of the minor and that such conduct is necessary, the guardian must

justify his request and the dismissal remains at the heart of the judge's work, as the origin in the actions of the guardian to sell the property is true until proven otherwise¹⁶.

Third: Achieving the interest of the minor.

All actions of the guardian should be in the best interests of the minor, on this basis, when depositing the petition for authorization, the guardian should justify such conduct, and to prove the interest of that action, and it remains for the judge to appreciate that, in case of non-realization, the authorization is not granted for the guardian, in particular in cases provided for by law, in accordance with the convention on the rights of the child ratified by Algeria, whose articles referred to giving priority to the best interest of the child, article 3 states: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration"¹⁷.

In the event of a conflict between the guardian and the minor, the matter is referred to the judiciary for decision through article 83 of the family code, which stipulates: "... in case of conflict, the matter shall be brought to justice".

The authority granted to the judge is reflected in the fact that he sees a conflict between the guardian and the minor by appointing an administrator at the request of an interest holder such as relatives or the public prosecution¹⁸, in accordance with article 90 of the Family Code, which stipulates: "If the interests of the guardian and the interests of the minor conflict,

automatically Or at the request of an interested party".

Nor can the guardian take advantage of his authority to sell himself something to the minor without recourse to the judge, article 410 of the civil code states: "subject to the special provisions, the person represents another person by virtue of a convention, a legal provision or a decision of the competent authority

can buy neither directly by himself, nor by person even by auction, which he is responsible for selling as a representative, unless authorized to do so by justice decision", taking into account the need for the consent of the minor, which is covered by article 77 of the civil code, which states:"subject to the contrary provisions of the law and rules on trade, no one can, in the name of he represents, contract with himself, either for his own account or for the account of others, without the authorization of the principal, who may, however, in this case, ratify the contract".

However, the conflict between the two parties must be serious and established, otherwise it is useless to appoint the administrator by the judge, this is what the supreme court noted in its decision:"Since the guardianship of the mother is a guardianship granted to her by law and is not transferred to others unless her interests are proved to be in conflict with the interests of her minor children in accordance with article 90 of the family code, Since the two interests were not proven to be incompatible with the case, the judiciary by granting guardianship to another or by appointing a special administrator automatically was considered illegal (arts. 87 and 90 of the family code), the judge of the subject, when

he decided to appoint the contestants (AB) as a guardian and curator on his minor grandchildren, and appellate judges in their defense of the rights of the contestants against him in the application for the appointment of an administrator to his or her grandchildren, their sentence contravenes articles 87 and 90 of the above law, which shall have the effect of nullifying and nullifying the contested decision ..." ¹⁹.

Second section: Supervision of the judiciary in the maintenance of the minor's money.

The funds of the minor are directly monitored by the family affairs judge, as well as the role of the guardian in ensuring that these funds are not wasted, therefore, monitoring the disbursement of minor funds is considered to be the core competency of the judiciary, taking into account some procedures to be followed to ensure the proper management of his wealth and not miss it, this control is manifested through the control of the judiciary for the guardianship of the minor's property, as well as the authorization of the minor to initiate financial actions.

First: Adjusting the judiciary for the procedures of the state on the minor's money.

The authority granted to the family affairs judge is broad in the control of the guardian who is responsible for the management of the minors' funds, as stipulated in article 465 of the code of civil and administrative procedures, which states:"the judge can control the state on his own or at the request of the representative of the public

prosecution or at the request of any person concerned by an interest placed under guardianship", the article expanded to include anyone who has an interest, including relatives, when the minor's interest is harmed by the guardian or otherwise , upon request submitted to the judge for the safeguarding of his property²⁰ .

If the judge conducted the control of the minor's money automatically or at the request of the public prosecution, he has to call for all that would be useful in that, otherwise, the assignment of attendance shall be the responsibility of the plaintiff.

Within the scope of the supervisory judge's authority over the minor's money, he can take measures that prevent the loss of the minor's money, in particular the preservation of situations that can not be remedied, before adjudication of the matter by an order not subject to any of the remedies²¹ .

Moreover, the judge has the authority to sell the property owned by the minor by auction, in order to collect the highest price²², taking into account the procedures for auctioning, knowing that there are no special provisions for the sale of the minor's property by public auction, and therefore work according to the real estate, which may prejudice the right of the minor because there is no guarantee in the judicial sales if it was auctioned²³, in a clear reference to the contents of article 385 of the civil code, which states:"there shall be no guarantee of a defect in judicial sales, nor in administrative sales if it is in the auction", and the possibility of suspending the auction proceedings in an expeditious manner²⁴, as indicated in article 743 its first paragraph and 744 paragraph 1 of the civil code.

The role of the judge extends to the possibility of dividing the real estate between the partners, since the guardian can not divide the minor's property if he does not obtain the judge's permission in accordance with article 723 of the civil code: "if the partners agree, they can share the common money in the way they see it. if they are among those who are underqualified, the procedures imposed by law must be observed".

This is what the supreme court has upheld in accordance with the decision that:"it is legally established that the division of a minor's property is among the actions in which the guardian is authorized by the judge, it is also decided that the judge may decide on his own behalf that there is no permission to bring the case when necessary, since it is established -in the case of the issue- that the appellant did not seek permission from the court to divide the minors' property and to file the case, and that the judges of the council, by supporting the ruling on the validity of these proceedings, violated the law. and to overturn the contested decision "²⁵ .

The judicial role also appears in the form of whether among the heirs is a minor, where the division is judicial, in accordance with article 181 of the family code in its second paragraph, which states:"...in the case of a minor among the heirs, the division must be done by the judiciary", in the absence of a guardian or trustee, the public prosecution or any interested party has the right to file an application to liquidate the estate and appoint a provider, the president of the court shall adjudicate the application, place seals, deposit money and objects of value, in accordance with article 182 of the family code.

Second: The judge's authorization of the minor to conduct financial actions.

The judiciary can play another role, no less important than censorship, in the authorization of the minor to act in his own money in accordance with his interests, as indicated in article 84 of the family code, which states: "the judge may authorize a person of the age of distinction to partially or completely dispose of his money, at the request of an interested party, and may return the permission if proven to have a justification for that.

The court's permission is specific to the conduct between the benefit and the harm in accordance with a request from of interest as the guardian for example, in the case of the opinion of the judge damaged the interest of the minor was able to withdraw permission, under the request of the interest or the prosecution or relatives of the minor, in the case of the collusion between the guardian with others to infringe on the minor's money, this is within the competence of the family affairs judge or the president of the court under his power to issue petitions²⁶.

This is an experience for the minor who is distinguished in the management of his money, in which case if the target was achieved, but if he did not act well, the judge could withdraw the permission on the basis of a causal injunction²⁷.

The judiciary may also carry out another task represented in rationalizing the minor, that is, by making it rational on the basis of a causal injunction, the minor who has attained the age of eighteen years may start the business, provided that the father's permission is obtained if he is alive, or by

the mother in the event of the death or absence of the father or the loss of his authority due to an objection to eligibility, or permission from the family council provided that he is certified by the court²⁸, as indicated in article 5 of the commercial code, which states: "...nor can he be considered an adult for the undertakings he makes on business:- if he has not previously obtained the permission of his father or his mother or a decision of the family council ratified of the court, whether his father is dead or absent, parental authority has been lost or impeded by him or in the absence of father and mother..."²⁹.

Taking into account that the authorization may be absolute or restricted, the minor shall be bound by the limits of the authorization, the acts exercised by him under the authorization shall be valid and earn him the trait of the merchant, however, outside the scope of the authorization, and concerning the property he can only act by taking into account the procedures for the sale of minors' funds and protecting the minor's money.

Third requirement: Settlement of disputes concerning the jurisdiction over the minor's property.

In many cases disputes arise over trusteeship, the judge should therefore settle the case in order to achieve the objective of its practice, namely, to preserve the property of the minors until they reach adults, a motive for some of those who want to take advantage of the circumstance experienced by the minor and the seizure of wealth or waste, it was therefore imperative for the judiciary to ensure serious follow-up to the settlement of guardianship disputes (first section) and the importance of the role of the

judiciary in the settlement of guardianship disputes (second section).

First Section :Follow-up of the judiciary to resolve the disputes of the guardianship.

If the guardianship in conflict, it is worth resorting to the courts, in accordance with article 83 of the family code, which states:"... in case of dispute, the matter shall be referred to the judiciary", and the family law did not specify the adequacy of the competent judge, whether he is the family affairs judge or the president of the court, and the civil and administrative procedures addressed this.

First:The judiciary authority to settle the disputes of the guardianship over the property of the minor.

In the event that the guardian fails to perform the guardianship of the minor's property, the judge has the right to take whatever he deems appropriate in accordance with article 473 of the code of civil and administrative procedures:"if the guardian, testamentary guardian or curator fails to perform his duties, the judge shall take all necessary interim measures to protect the interests of the minor under a causal injunction".

The case for the dispute over the guardianship of the minor's property shall be brought before the family affairs judge, in case of urgency, the emergency procedures shall be followed³⁰, this is what is stated in article 474 of the code of civil and administrative procedures.

Second: The judicial authority of emergency in the settlement of the mandate of the minor.

Referring to the provisions of article 57 bis of the family code, which states that:" the judge may dismiss as a matter of urgency by order of a petition n all temporary measures, especially those related to maintenance, custody, visitation and housing", the legislator has pointed to the possibility of the way of emergency in some rights, especially alimony, custody, visitation and housing, but that this is just a few examples, as evidence that the delay may cause disputes custody of the minor's money that is not mentioned in the core of this article.

The family affairs judge may be dismissed in the relevant urgent matters without the need for the president of the court, who is usually the head of the emergency section.

Provided that this is done by means of an order on a petition, to be executed within three months from the date of its issuance, otherwise it is without effect and can be revoked and amended by the judge who issued it, by filing a petition against him by each interested party³¹, in accordance with article 312 of the code of civil and administrative procedures .

Second Section :The importance of the role of the judiciary to adjudicate guardianship disputes.

The family affairs judge plays an important role in determining disputes concerning guardianship of minors' funds. he must always take care of the interests of the minor, especially if there is a dispute over the minor's money and thus the possibility of infringement by the guardian

himself or others, and the judge is therefore subject to certain rules for settling the dispute, as well as to deal with matters within the scope of the dispute over guardianship.

First: The controls of the family affairs judge to resolve the guardianship disputes.

One of the reasons for disputes over the minor's money is that some seek to make his money under his authority, therefore, if there is a dispute about this and especially the calculations that followed, the matter should have been brought before the family affairs judge, as referred to in article 476 of the code of civil and administrative procedures, the case may be filed against the guardian because he is not entitled to supervise the minor's money, especially if the liar has proved the manipulation of the guardian in the funds and accounts, therefore, the family affairs judge may resort to accounting experience³², since he has the authority to seek the assistance of any person who may be of benefit to him, especially if the uploader of case considers it expeditious, disaggregated by ordinary or urgent nature and subject to appeal, in accordance with article 473 of the code of civil procedure and administration.

Second: The issues that he addresses Judge of Family Affairs in the disputes of the guardianship.

The issue of the adjudication of guardianship disputes over the minor's property is the prerogative of the family affairs judge in accordance with article 476, which states: "All disputes relating to guardianship accounts shall be brought before the family affairs judge." however,

such disputes may vary according to the claimant which may be the minor, and the difference depending on age, that is, the difference between the age of distinction and the age of majority.

Referring to article 478, which provides that: "disputes concerning the conduct of a minor shall be brought up after the age of distinction before the family affairs judge", a minor may bring the case after reaching the age of legal distinction of 13 years in accordance with article 42 of the civil code, therefore, any act of the minor, useful or harmful may be subject to dispute after reaching the age of distinction, It would have been better for the minor to have argued

When the disposition has taken the place of conflict Because he is represented by the legal representative, and not to leave the matter and postpone it after reaching the age of distinction in order to preserve the rights and the possibility of the disappearance of some of the temporal details³³.

In the dissenting sense, if the minor has not reached the age of distinction, he can not file a claim in the context of the dispute over the guardianship of his property, where his guardian could do it, but according to the literal text of the article it is not available, and the significance of excluding of non-distinction phase is not known.

The minor may also dispute the question of guardianship of his property after reaching or rationalizing him, in accordance with article 477 of the code of civil and administrative procedures: "disputes relating to guardianship accounts shall be raised by the minor, after reaching or rationalizing him, before the family affairs judge", it is

meant here is that the rationalization mentioned therein is that of the exercise of trade under article 5 of the commercial code, and not that relating to marriage referred to in article 7 of the family code, The legislator did not specify a certain period of time after reaching the age of majority that the minor can raise his case, but open the door, and to keep from dealing with him a judicial claim for compensation for damage and to take into account the obsolescence of the case or the right³⁴.

Fourth requirement: Infringement on the minor's money and the penalty included.

The guardian remains under the supervision of the judiciary on the occasion of performing his guardian function, he had to be responsible for his actions, as dictated by the law, it is subject to civil liability (first section), and is subject to criminal liability (second section), in case of violation of the limits prescribed by law, and to ensure the elimination of follow-up.

First section: The subordination of the guardian to civil liability.

The guardian must be a trustee for the minor's money, he must have the qualities that make him here, and be aware of legal matters that require him to pay attention to anything that might harm his money, being responsible in the eyes of the law.

First: What should be in the exercise of guardianship guardian.

The task of the guardian in managing the minor's money is not simple, by virtue of his responsibility for the actions of the minor, therefore, article 88 of the family code states that the guardian must take care of the diligent man and lay man, through its first

paragraph:"the guardian must act in the funds of the minor behavior of the diligent man, and be responsible in accordance with the requirements of public law, for acts of management or simple conduct, he should act as if he were acting in his own money to the benefit of the minor and would not harm him, and if he committed a mistake, fraud or defamation, he would be subject to civil and criminal liability³⁵.

This does not mean that the guardian is always restricted, but has a margin of freedom provided that he obtains permission from the judge in the acts that the legislator has determined to be of a qualitative and serious nature and does not act without recourse to the family affairs judge in accordance with article 88, paragraph 2, of the family code.

Second: The nature of the civil responsibility of the guardian.

Since the guardian is subject to civil liability and because he may be negligent in his task because of his fault that may cause harm in the exercise of guardianship of the minor's property, his responsibility is a tort liability, where the guardian is held accountable for the gross and simple error in accordance with the requirements of public law, the responsibility of the guardian is not contractual, on the grounds that the contract is not a source³⁶, but a legal prosecution, due to the circumstance experienced by the minor, the law recommended the appointment of the guardian responsible for the management and management of funds, the guardian is obliged not to harm the interests of the minor or else he is subject to the legal sanction set forth in article 124 of the civil code, which is to compensate:"any act of any kind committed by a person in

error and causing harm to third parties shall be liable to cause compensation."

Liability shall be vested in the judge in such scope automatically or at the request of the public prosecution or any person having an interest, in accordance with article 465 of the code of civil and administrative procedures.

In the event that the guardian overrides his responsibility in the guardianship of the minor's property, especially in the actions that require the permission of the judge, without reference to him, since this act is binding on the minor and not the guardian, if the judge does not seek permission, the action is null and the minor may claim his right after reaching the age of majority or rationalization, in accordance with article 479 of the code of civil and administrative procedures³⁷.

When the guardian was found to have been shortened or mismanaged, he or she had jurisdiction over the family and within his or her authority to drop the guardianship on the basis of a request to take action, in accordance with article 453: "An application for termination of the practice of guardianship of the minor or temporary withdrawal shall be made by a parent or the representative of the public prosecution or by any interested party on an urgent case".

The option of dropping guardianship from the guardian who is not eligible is one of the serious options for the family affairs judge, while maintaining judicial follow-up and seeking compensation in accordance with the rules of tort. the removal of guardianship from the guardian is one of the aspects of termination, as referred to in article 91 of the

family code on: "ending the function of the guardian:... 4 - to drop guardianship of him".

Second Section: Subjugation to the criminal responsibility of the guardian.

If the guardian exceeds the limits of that jurisdiction over the minor's property and damages his financial capacity, he shall be subject, in addition to civil liability to criminal liability, and the exploitation and misappropriation of the minor's money such as the crime punishable by law.

First: Proving the commission of the guardian is a crime that exploits the minor's need.

The breach of the guardian shall be considered as a breach of what is required of him during the exercise of trusteeship, especially on the minor's property, if it is proved that he has been mismanaged in bad faith and circumvention, he was charged with the crime of exploiting the minor's need.

It is a full-fledged crime, the material element is that the victim is a minor, that is, under the age of 19 under the provisions of article 40 of the civil code, without distinction between male and female.

The victim shall act as a guardian in the conduct of the financial affairs of the minor, such as bonds of debt that the victim frees himself for the offender or for other money or movables, or discharge of others from the minor under the influence of the guardian, the authority of that is linked to the judge's assessment, and to exploit the need of the minor because of his inclination or hue himself or lack of experience, the offense shall cease if the exploitation which remains at the discretion of the discretionary judge is

not proved, where the minor's injury is an essential element in proving the crime.

And on the moral pillar, it is the fact that the guardian is intended to harm the acquisition of an illegal benefit, and to know the circumstances of the minor, the offense shall not cease if the minor is able to claim that the undertaking has been rescinded, the possibility of non-claim makes damage possible at the time of the commission of the crime, which is sufficient to satisfy the requirement of injury³⁸.

Second: The judge's authority to decide the penalty.

The judge shall, in accordance with his discretion, investigate the elements of this crime, and shall have adjudicated in the case, the subject of which is the criminalization of the guardian because of violation of the system that protects the minor's money, and the penalty imposed by article 380 of the penal code, which states: "Anyone who exploits the need for a minor who has not completed the nineteenth year or a term or a hobby or lack of experience in order to dispose of him obligations or discharge from them or any other actions that carry his financial burden, three months to three years and a fine of 500 to 10,000 dinars the penalty shall be one to five years' imprisonment and a fine of 1,000 to 15,000 dinars if the victim is subject to the care, supervision or authority of the offender and in all cases provided for in this article, the offender shall be deprived of one or more of the rights received in article 14 and from residence, for at least one year and five years at most"³⁹.

In the context of the judge's discretion, he can adjust the breach of the guardian's

functions as a betrayal of the trust entrusted to him. article 376 provides for a sentence of imprisonment from three months to three years and a fine of 500 to 20,000 dinars. article 378 also tightens penalties for anyone who manages the money of others for illegal benefits, especially if the guardian runs a company owned by the minor, where the penalty can be 200,000 dinars and 10 years imprisonment, taking into account the provisions of article 381 of the penal code, which referred to the possibility of falsification of the papers in blank.

CONCLUSION.

Algerian legislator tried to protect the minor's money through a number of legal texts among the protections are the practice of guardianship, which is restricted by legislation by a number of measures that ensure that the minor's money is not wasted by the guardian and imposed a serious oversight of the judiciary to deter those who seek to seize, custody of the minor until he reached a rational, which reflects the effective and central role played by the judiciary in protecting the minor's money through guardianship through control and supervision, however, some additions are required that govern the guardian more for not infringing the minor's financial situation. the most important findings and recommendations can be reached as follows:

First: The most important results.

1-The first to exercise guardianship of minor children is the father, who, in the event of his or her death or the occurrence of a contravention of the mother, shall be dropped at the request of one of the parents or the representative of the public

prosecution or any person who has an interest under an expedited proceeding.

2-The family affairs judge has broad authorities to take what is necessary in the application for dropping guardianship, by listening to anyone who benefits, including the minor, or by conducting a social investigation.

3-The judiciary limited the authorities of the guardian through the need to obtain permission in some serious actions that affect the money of the minor, and take into account that the judge necessity and interest, and sell the minor's property by auction to obtain the highest price for the benefit of the minor.

4- All disputes concerning guardianship shall be handled by the family affairs judge to the court within whose jurisdiction the jurisdiction is exercised, including the urgency thereof.

5- The guardian is subject to legal liability, represented by civil liability that may result in compensation for the minor, and criminal liability, which may include imprisonment and a fine.

Second: The most important recommendations.

1-The necessity of giving the judge the authority to request the financial situation on an exceptional basis from the guardian on the status of the minor's money, and presenting it to the accounting experience at unusual times for the guardian, to avoid fraud and to attempt to blur the effects of infringement on the minor's money.

2- Enable the minor non-privileged litigation in the event of conflict over guardianship as the guardian is represented, and not limited to the age of distinction or after the rationalization or reach adult.

3- work to restrict the legal texts regarding persons who have the authority to intervene in the procedures for the exercise of guardianship on the property of the minor, and not to leave this part extended and bear the interpretation which would lead to disputes.

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