

The Impact of Criminal Irresponsibility on Legal Proceedings a Comparative Study

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Abstract. This study aims to highlight the legislative approach and general framework adopted by the Jordanian criminal legislator in its procedural handling of defendants who lack criminal responsibility and to assess the legislator's ability to formulate procedural legal provisions that ensure proper treatment of such individuals. This approach must align, on the one hand, with the underlying purpose of the principle of criminal responsibility and, on the other hand, with the demands of justice pursued by criminal legislation. To achieve the intended objective, the study adopted descriptive, analytical, and comparative methodologies. It examined the legal provisions governing this issue in Jordanian criminal legislation and compared them with the corresponding provisions in Algerian criminal legislation. The study ultimately reached several conclusions, the most significant of which is that, although the Jordanian criminal legislator included a specific procedural provision in Article 233 of the Code of Criminal Procedure addressing the issue of insanity, it failed to grant the public prosecutor or attorney general the authority to halt the prosecution of a defendant suffering from such a condition. This shortcoming may be considered a legislative deficiency in this respect. Moreover, the legislator, in drafting paragraph five of the same article, demonstrated inconsistency with its other paragraphs by requiring the attendance of an insane defendant at trial sessions rather than placing them in a psychiatric hospital. The researcher presented several recommendations to the criminal legislator, including the addition of a specific paragraph within Article 233 of the Code of Criminal Procedure that would enable the public prosecutor or attorney general—once the case falls within their jurisdiction—to issue a decision preventing the prosecution of a defendant if medical assessment confirms the presence of a psychological or mental illness. The study also recommends including a dedicated paragraph in the Juvenile Law obligating both the public prosecutor and the court to prohibit the attendance of a juvenile defendant at investigation and trial proceedings without legal counsel, regardless of the type of offense. The presence of a defense lawyer should be mandatory at all stages of the proceedings, in line with the approach adopted by the Algerian legislator in the Child Protection Law.

1. INTRODUCTION

Crime and its devastating consequences—particularly for individuals and generally for societies—constitute one of the most dangerous social phenomena and practices that states strive to combat using all available means. In this regard, states enact the necessary legal legislation to confront crime in a way that ensures its elimination, or at least reduces its severity and impact.

There is no doubt that all forms of legal legislation take into account, during the drafting of penal provisions, the need to consider all relevant aspects without exception. This is done to ensure the realization of criminal justice without infringing upon the rights of any party, while also recognizing that exceptions must be considered when applying penal laws to perpetrators of crimes.

Like other lawmakers, the Jordanian criminal legislator has taken into consideration the principle of criminal responsibility while drafting the Penal Code, viewing it as one of the foundational pillars upon which the rules of criminal jurisprudence are based. This principle significantly impacts both the procedural and punitive dimensions of criminal policy. The legislator addressed this matter in Chapter Four of the Penal Code by specifying the categories of persons who are criminally liable, as well as the cases in which criminal responsibility is excluded and punishment does not apply.

The legislator defined the cases and forms of criminal irresponsibility based on their effect on the elements of criminal responsibility (awareness and will). These include moral coercion, necessity, mental and psychological illnesses (referred to as insanity), and, finally, cases involving intoxication or poisoning with drugs and psychoactive substances. Meanwhile, diminished responsibility is addressed in a special law—namely the Juvenile Law—although it was previously governed under the Penal Code itself.

To ensure a cohesive legal framework, the Jordanian legislator organized the procedures for some cases of criminal irresponsibility under the Code of Criminal Procedure, while addressing others in special laws, such as the Juvenile Law. The legislator approached these matters by considering the impact of each case on the course of criminal proceedings.

Based on the above, this study aims to examine the extent to which various forms of criminal irresponsibility affect the procedures of criminal proceedings and to assess the success of the Jordanian legislator in addressing these matters under both the Code of Criminal Procedure and the Juvenile Law.

2. RESEARCH PROBLEM

The Jordanian criminal legislator has regulated the course of criminal proceedings and laid out the pathway from the moment a crime occurs—beginning with the preliminary procedures conducted by law enforcement officers, passing through the investigation stage conducted by the public prosecution, and ending with the trial stage before the courts.

Undoubtedly, these procedures are relatively clear when dealing with defendants who possess full criminal responsibility. However, the situation is far less clear when it involves individuals suffering from one or more conditions of criminal irresponsibility, as addressed by various legal theories and defined in the Jordanian Penal Code No. 16 of 1960 and its amendments.

Thus, the core issue of this study lies in identifying the approach and procedures adopted by the Jordanian criminal legislator in dealing with defendants who lack criminal responsibility. The study seeks to determine the extent to which criminal responsibility exemptions influence criminal proceedings and whether their effects vary based on the nature and philosophy of each condition. Accordingly, the main research questions are as follows:

1. What procedures has the criminal legislator prescribed during the preliminary and primary investigation stages (in the Code of Criminal Procedure or related laws) for dealing with defendants lacking criminal responsibility?
2. How did the legislator regulate trial procedures before the courts for such defendants—whether their criminal responsibility was negated due to lack of will and volition, or due to absence of discernment and understanding?

3. RESEARCH HYPOTHESIS

The hypothesis of this study suggests that the expected answers to the research questions may indicate that the Jordanian criminal legislator adopted a fundamentally different approach when dealing with defendants who lack or possess diminished criminal responsibility, as compared to those with full responsibility. This approach stems from the requirements of justice, which are essential to all forms of criminal legislation, both procedurally and substantively.

However, despite this tailored approach, the legislator did not address several practical procedural challenges—for instance, the measures to be taken before the initiation of a primary investigation by the public prosecutor, or those to be followed by the prosecution or court in certain cases of criminal irresponsibility.

4. SIGNIFICANCE OF THE STUDY

The significance of this research lies in its focus on the procedures followed in handling defendants who lack criminal responsibility. It sheds light on the general policy adopted by the Jordanian criminal legislator in this regard, in recognition of the pivotal role played by the concept of criminal responsibility in legal proceedings and its considerable impact on the decisions and judgments rendered by the prosecution and trial courts throughout the stages of criminal litigation.

5. OBJECTIVES OF THE STUDY

This study aims to clarify the legislative approach and overarching framework adopted by the Jordanian criminal legislator in the procedural treatment of defendants who lack criminal responsibility. It seeks to evaluate the legislator's capacity to craft appropriate procedural legal provisions that ensure the fair and proper handling of such individuals—provisions that align with both the fundamental aims of the principle of criminal responsibility and the broader demands of justice that criminal laws aim to uphold. Ultimately, the study seeks to determine how successful the legislator has been in this regard, and whether any legislative shortcomings exist.

6. RESEARCH METHODOLOGY

To achieve the objectives of this study, the researcher employed a descriptive-analytical method in conjunction with a comparative approach. This involved examining and analyzing the relevant legal texts within Jordanian criminal legislation and comparing them to the corresponding legal provisions in Algerian criminal law, with the aim of drawing meaningful conclusions and offering appropriate recommendations.

7. STRUCTURE OF THE STUDY

The researcher adopted a dual-division structure for this study. It is divided into two main sections:

- The first section addresses the exemptions from criminal responsibility and their effect on pre-trial procedures, focusing on the impact on pre-investigation procedures (Section 1) and on investigation procedures conducted by the public prosecution (Section 2).
 - The second section is dedicated to examining the impact of criminal responsibility exemptions on trial procedures, highlighting their effects on the trial process for defendants lacking responsibility due to absence of will (Section 1) and for those lacking responsibility due to absence of discernment (Section 2).
- The study concludes with the key findings and recommendations derived from the analysis.

7.1. Chapter One

7.1.1. Exemptions From Criminal Responsibility and Their Impact on Pre-Trial Procedures

This chapter addresses the procedures undertaken in public criminal cases before they reach the trial stage. These include the investigative and evidence-gathering procedures related to crimes, as well as the preliminary investigation procedures carried out by the Public Prosecution¹. The chapter focuses on examining the extent to which the absence of criminal responsibility on the part of the suspect or the accused affects the actions taken by law enforcement officers or the public prosecutor against them.

7.2. Section One

7.2.1. The Preliminary Investigation Stage

From the moment a crime is committed, a crucial phase of the criminal case begins, carried out by law enforcement officers

¹ Tharwat, J. (1983). *Fundamentals of Criminal Procedures* (1st ed.). Beirut: Al-Jami'a Publishing House, p. 87.

in accordance with the procedural rules stipulated in the Code of Criminal Procedure.² This phase is commonly referred to in criminal jurisprudence as the “investigation and information-gathering stage.” It involves preliminary steps undertaken by law enforcement officers to collect evidence related to the crime, track down and identify the perpetrators, and refer them to the judiciary.³

These procedures begin with the reception of reports and complaints, followed by the collection of information about the crime and investigations concerning the suspected offenders. Referring to the legal provisions governing this matter, it is evident that the criminal legislator considers a formal complaint to be one of the restrictions on initiating a public criminal action. Accordingly, if a complaint is required, the Public Prosecution may not proceed with prosecuting the perpetrator directly unless such a complaint has been duly filed.⁴

The legislator also clarified who has the right to file a complaint in cases where the victim is under the age of fifteen or suffers from a mental disability. In such instances, the complaint shall be submitted by the legal guardian, curator, or trustee if the offense pertains to financial matters. In cases of conflict of interest between the victim and their representative, or if the victim has no legal representative, the Public Prosecution shall assume that role on their behalf. If the victim is a legal entity, the complaint is submitted by its legal representative.⁵

The Algerian legislator also addressed the issue of complaints as one of the restrictions imposed on the Public Prosecution in initiating criminal proceedings. The legislator identified the types of offenses subject to a formal complaint² and assigned the responsibility for receiving such complaints and taking the necessary actions to the Public Prosecution, law enforcement officers, and public prosecutors.⁶

Upon examining all the relevant provisions issued by both legislators, it becomes evident that neither has established any special procedures specifically addressing cases involving the criminal irresponsibility of the accused. There are no legal provisions, for example, requiring the discontinuation of a complaint if it becomes apparent to the Public Prosecution or law enforcement authorities that the accused lacks or is deprived of criminal responsibility.⁷ The researcher views this approach as legally sound in dealing with public criminal cases, as there is no justification for establishing distinct rules or procedures for handling individuals lacking criminal responsibility at this early investigative stage.⁵ One of the fundamental objectives of criminal proceedings is ultimately to reach a conviction or impose a preventive measure on the accused should their guilt be established in subsequent trial stages.⁸

Nevertheless, given that the Algerian legislator considers minority (young age) as a factor negating criminal responsibility,⁹ it is worth noting that the Jordanian legislator has taken this into account by requiring that all criminal proceedings involving juveniles, including the reception of complaints, be handled by a specialized police unit dedicated to this group. This unit, known as the “Family and Juvenile Protection Department,” is responsible for carrying out all investigations and follow-ups related to juvenile crimes during this stage of the proceedings.⁸ In contrast, Algerian legislation—namely the Child Protection Law and the Code of Criminal Procedure—does not contain provisions for the establishment of a specialized body to investigate juvenile offenses similar to that found in Jordanian law.¹⁰ As a result, the responsibility for investigating juvenile crimes remains under the jurisdiction of the judicial police, in coordination with juvenile services across the various departments of the Republic.¹¹

Once law enforcement authorities become aware of the occurrence of a crime, they begin the process of gathering information through all legally permissible means, including searches of persons and residences, and the arrest of suspects in connection with the crime. These actions serve as the fundamental basis and the true starting point of the public criminal case.

7.2.2. First - On Searches

If law enforcement officers determine, based on the type and nature of the crime, along with any documents or items found with the suspect or accused, that these can assist in identifying the perpetrator, they have the right to approach the suspect's residence, enter, and conduct a search. They are also authorized to search the person of the suspect or any individuals present who are suspected of involvement in the crime. Furthermore, they may enter the residence of any person believed to be the perpetrator, an accomplice, or an instigator, or someone connected to items relevant to the crime. In fact, the legislator requires officers to conduct searches in certain circumstances related to crimes committed in flagrante delicto.¹²

The Algerian legislator, following the same path as the Jordanian legislator, has also established procedural rules for searches carried out by law enforcement officers under the Code of Criminal Procedure. However, this regulation generally limits searches to residences, rather than persons. For instance, the Algerian legislator did not include provisions for searching female suspects as the Jordanian legislator did in Article (86/2) of the Code of Criminal Procedure. Therefore, the general rules for searches are followed in Algeria without additional specific procedures for female suspects.¹³

From the perspective of searching individuals, and considering that the legislator has taken into account the dignity of female

² See Articles (8–10) of the Jordanian Code of Criminal Procedure No. 9 of 1961 and its amendments, which outline the definition and duties of the judicial police. These correspond to Articles (12–17) of the Algerian Code of Criminal Procedure, promulgated and amended by Ordinance No. 66-155, dated June 8, 1966.

³ Najm, M. S. (2000). *Code of Criminal Procedure No. 9 of 1961: Its Application and Content* (1st ed.). Amman: Dar Al-Thaqafa for Publishing and Distribution, p. 190.

⁴ Al-Mutairi, S. M. A. (2009/2010). *The Complaint as a Condition for Initiating Criminal Proceedings in Jordanian, Kuwaiti, and Egyptian Penal Law* (Master's thesis). Middle East University, Amman, pp. 45–50.

⁵ Article 3(1) of the Jordanian Code of Criminal Procedure.

⁶ Article 3(1) of the Jordanian Code of Criminal Procedure.

⁷ For further reference, see: Anissa, M. (2015/2016). *Crimes Requiring a Complaint under Algerian Law* (Master's thesis). University of Mohamed Khider – Biskra, Algeria, pp. 9–11.

⁸ Article 36 of the Algerian Code of Criminal Procedure.

⁹ Article 4(b) of the Juvenile Law No. 32 of 2014 and its amendments states: “Notwithstanding any other legislation, no child under the age of twelve shall be subject to criminal prosecution.” The equivalent in Algerian legislation is Article 56 of Law No. 12-15, dated July 15, 2015, on the Protection of the Child: “A child who has not completed ten years of age shall not be subject to criminal prosecution.”

¹⁰ Article 3 of the Juvenile Law No. 32 of 2014 and its amendments states: “A special police department shall be established within the Public Security Directorate to handle juvenile affairs under this law.”

¹¹ Law No. 12-15 on the Protection of the Child, dated July 15, 2015.

¹² See Articles (33–36 and 46) and Articles (81–87) of the Jordanian Code of Criminal Procedure.

¹³ Tawahri, I. (2014/2015). *Lectures on the Explanation of the Algerian Code of Criminal Procedure*. Algeria: Faculty of Law and Political Science, University of El Oued, n.p., p. 39.

suspects by ensuring that searches are conducted respectfully and in line with public morals¹⁴, the question arises as to whether the Jordanian criminal legislator has established specific rules for searches involving suspects or accused persons who have not reached the age of criminal responsibility, given the particular nature of this age group?¹⁵

Upon reviewing the aforementioned legal texts, including those related to searching persons and residences, as well as the provisions in the Juvenile Law according to Jordanian legislation and its counterparts in Algerian law (in the Child Protection Law and the Code of Criminal Procedure), it becomes clear that no special rules or procedures are provided for individuals lacking criminal responsibility in general, and particularly for juveniles. As a result, the personal search procedures applied to ordinary individuals are the same as those applied to minors who have not reached full criminal responsibility. The researcher believes that this procedural equality in the treatment of minors and adults is a legislative shortcoming that requires intervention. This is necessary to keep pace with recent legislative developments related to child protection, which must be addressed in a manner distinct from that used for adults.

7.2.3. Second - On Arrests

There is no doubt that the legislator has assigned law enforcement officers the responsibility of preventing crimes, maintaining public order, and securing society from any assault. In this context, the legislator has granted law enforcement officers the authority to arrest anyone suspected of committing a crime. Article (28) of the Code of Criminal Procedure defines a crime committed in *flagrante delicto* as "a crime observed during its commission or immediately after its commission."

The legislator also specified the circumstances under which law enforcement officers may arrest a present suspect against whom sufficient indications exist to charge them with a felony, or in cases of flagrant misdemeanors punishable by more than six months of imprisonment. Arrest is also permitted in the case of misdemeanors punishable by imprisonment when the suspect is under police surveillance or does not have a known address within the Kingdom, as well as in crimes such as theft, assault, fraud, resistance to public authority, and offenses related to lewd conduct and violations of public morals.¹⁶

The legislator further outlined all the necessary procedures to be followed with an arrested individual, including drafting a legally compliant arrest report, hearing the suspect's statement by the investigating officer, and other actions aimed at ensuring public reassurance—without violating the rights of the arrested person—under penalty of nullity.¹⁷

Based on the foregoing, it becomes evident that the Jordanian criminal legislator has granted law enforcement officers the authority to arrest suspects in cases of *flagrante delicto*, also known as crimes caught in the act. This is paralleled in Algerian legislation by Article (51/4) of the Code of Criminal Procedure, which stipulates that if there are strong and consistent indications pointing to a person's involvement in a crime, the judicial police officers may arrest and refer the suspect to the Public Prosecutor.¹⁸ Accordingly, in Algerian law, arrest is essentially an administrative measure carried out by judicial police officers for the purpose of transferring a suspect to the Public Prosecutor to be temporarily detained until a suitable decision is made, paving the way for referral to the Public Prosecution.¹⁹

In light of the above, it may be said that both the Jordanian and Algerian legislators adopt a similar approach in not establishing specific rules or procedures for the arrest of suspects who lack criminal responsibility, regardless of the reason for such irresponsibility. The researcher believes this position is not subject to criticism, as law enforcement officers, according to the above legal provisions, are not tasked with issuing criminal judgments against arrested individuals. Their role is confined to crime prevention measures, which are more administrative in nature than judicial.²⁰ Therefore, as long as the arrest is legally valid and properly executed, the suspect's mental or legal status—whether fully responsible, partially responsible, or not responsible at all—has no bearing on the legality or validity of the arrest itself.

However, while the absence of criminal responsibility may not significantly affect these fundamental procedures at this early stage of the criminal process, the situation may differ in the subsequent stages of the case.

7.3. Section Two

7.3.1. The Preliminary Investigation Stage

The Code of Criminal Procedure does not require the Public Prosecutor to follow a specific sequence of procedures. Accordingly, the prosecutor has the discretion to take any action deemed necessary against the accused in order to uncover the circumstances surrounding the criminal incident, provided that all such procedures are in full compliance with the law. One of the most prominent of these procedures is the interrogation, which involves confronting the accused with the available evidence and questioning them in detail in order to uncover the facts and circumstances of the crime and reveal the truth.²¹

The criminal legislator has surrounded the interrogation process with a number of safeguards and guarantees that the Public Prosecutor must adhere to. These include informing the accused of the charges against them and advising them of their right to remain silent until they consult with a lawyer.²² Furthermore, the accused must not be subjected to any physical, verbal, or psychological harm by the Public Prosecutor, nor may any form of coercion be exercised against them. These guarantees, among others, are also affirmed in Algerian legislation, where the Code of Criminal Procedure stipulates that the investigating judge must inform the accused of the charges brought against them and of their right to remain silent unless a lawyer is present.²³

¹⁴ Najm, M. S. (previously cited), p. 220.

¹⁵ Article 4(b) of the Juvenile Law No. 32 of 2014 and its amendments states: "Notwithstanding any other legislation, no child under the age of twelve shall be subject to criminal prosecution." The equivalent in Algerian legislation is Article 56 of Law No. 12-15, dated July 15, 2015, on the Protection of the Child: "A child who has not completed ten years of age shall not be subject to criminal prosecution."

¹⁶ Article 99 of the Jordanian Code of Criminal Procedure.

¹⁷ Articles 100–103 of the Jordanian Code of Criminal Procedure.

¹⁸ Najm, M. S. (previously cited), p. 205.

¹⁹ Ouhaibiya, A. (2017–2018). *Explanation of the Algerian Code of Criminal Procedure* (Vol. 1). Algeria: Houma Publishing House, pp. 246–248.

²⁰ Najm, M. S. (previously cited), pp. 204–210.

²¹ Article 4 of the Jordanian Code of Criminal Procedure defines the "accused" as: "Any person against whom a public right lawsuit is filed. He is called a suspect (*zan'in*) if charged with a misdemeanor, and an accused (*muttaham*) if charged with a felony."

²² Tharwat, J., & Abdel-Moneim, S. (1996). *Fundamentals of Criminal Procedures – Criminal Lawsuit* (1st ed.). Beirut: The University Institution for Studies, Publishing, and Distribution, pp. 502–504.

²³ Articles 63 and 63 bis of the Jordanian Code of Criminal Procedure. See also Court of Cassation – Criminal Case No. 1379 (Five-Judge Panel), dated 21/08/2022, and Criminal Case No. 690 (Five-Judge Panel), dated 14/04/2022. Published on Qistas Legal Platform.

An analysis of the provisions of the Code of Criminal Procedure leaves no room for doubt that the legislator did not overlook the significance of the accused's condition in this crucial stage of prosecution. Referring to Article (233) of the Code, the legislator requires the Public Prosecutor—if it becomes apparent that the accused is suffering from a psychological disorder or mental disability, or if such a condition is brought to the prosecutor's attention by the accused's guardian or legal representative—to order the accused to be placed under medical observation to assess their mental and psychological soundness.²⁴

However, it should also be noted that, according to the final clause of the same article, such special measures taken by the Public Prosecutor in response to this particular status of the accused do not suspend or hinder the continuation of other investigative procedures against them.²⁵

In this context, the question arises as to whether the Public Prosecutor has the authority to issue a decision to prohibit the trial of the accused if it is established that the accused suffers from a mental disability or mental illness.

Referring to Article (130/a) of the Code of Criminal Procedure, the legislator specifies the cases in which the Public Prosecutor may prevent a trial. However, when this provision is read together with Articles (91 and 92) of the Penal Code, it becomes clear that insanity, as defined by the legislator, constitutes a complete impediment to criminal responsibility. Consequently, it does not fall within the scope of Article (130) of the Code of Criminal Procedure. This means that the Public Prosecutor lacks the authority to issue a decision to prevent the trial of an accused person suffering from such a condition. Moreover, according to the same provisions, the Public Prosecutor also does not have the power to issue a decision to dismiss the investigation files, as Article (61) of the Code of Criminal Procedure explicitly limits the cases where the Public Prosecutor may dismiss investigation files, and the absence of criminal responsibility is not among them.²⁶ The same reasoning applies to the decision to prohibit the trial that may be issued by the Attorney General regarding felony cases referred to him by the Public Prosecutor, pursuant to Article (133/4) of the same Code.²⁷

The researcher views the legislator's restriction of the Public Prosecutor under Article (233) of the Code of Criminal Procedure to placing the accused under necessary medical supervision only—without the power to prevent the trial when it is confirmed that the accused suffers from a mental or psychological illness—as a form of deficiency and contradiction. This is because referring the investigation file to the competent court to commence the trial of a person lacking criminal responsibility serves no practical purpose.

Supporting this view, the legislator also obliges the Public Prosecutor under Article (67/1) of the same Code to decide on any defenses raised by the accused during the investigation within one week of their submission. Among these defenses, according to the aforementioned text, is the defense that the act does not warrant punishment. Reading this provision together with Articles (130/a) and (133/4) makes it unequivocally clear that neither the Public Prosecutor nor the Attorney General has the authority to issue a decision to prohibit the trial of an accused person who is insane. This is because the prior texts do not grant them the power to act on the public prosecution except in accordance with the specific controls established by those provisions. Consequently, the researcher further considers the phrase “does not warrant punishment” in Article (67/1) to be ineffective and lacking practical impact, given the existing state of Articles (130) and (133).

Upon examining the relevant provisions of Algerian legislation, we find that the legislator likewise did not overlook the status of the accused when such a condition is present. Article (47) of the Algerian Penal Code considers insanity a cause for the exclusion of criminal responsibility. Furthermore, Article (21) of the same law stipulates the possibility of placing an accused person suffering from such a mental illness in a specialized psychiatric hospital if the investigating judge determines that the individual under investigation suffers from that condition.²⁸ Moreover, Article (21) clarifies that the determination of such mental illness is a technical matter to be decided by qualified medical professionals—an interpretation consistently upheld by the Algerian judiciary.²⁹

Contrary to Jordanian legislation, as previously explained, part of Algerian legal scholarship holds that the investigating judge may issue a decision to close the case file if it is proven that the accused is suffering from insanity. This position is based on Article (47) of the Penal Code, which asserts that insanity is a bar to criminal responsibility. Therefore, prosecuting the accused would serve no legal purpose unless the individual presents a significant danger, in which case they may be referred to the competent court.³⁰

While the researcher acknowledges the soundness of this opinion, it is argued that such an approach contradicts the procedural provisions governing this issue. Under the current Algerian legislation, this view would result in an overly broad interpretation of procedural rules, extending their application beyond their intended scope. For instance, an analysis of Article (163) of the Algerian Code of Criminal Procedure reveals that the investigating judge does not have the authority to decide against prosecuting an accused person who suffers from a condition that negates criminal responsibility.³¹

Returning to the issue of interrogation, the Jordanian legislator has also acknowledged another attribute of the accused that, when present, constitutes a barrier to criminal responsibility—namely, the status of being a juvenile. In this regard, the law assigns responsibility for investigating minors at this stage exclusively to judges specializing in juvenile cases. Accordingly,³² the researcher concurs with the view that the Jordanian legislator's decision to designate specialized juvenile judges represents a progressive step in genuinely addressing the needs of this group. This approach recognizes the child as more of a victim than a criminal and

²⁴ Articles 100–108 of the Algerian Code of Criminal Procedure.

²⁵ For further discussion on concepts related to mental and psychological illnesses, their degrees of severity, and their impact on the personality of the accused, see: Ibrahim, A. N. (1998). *Criminal Psychology* (2nd ed.). Amman: Dar Al-Thaqafa for Publishing and Distribution, pp. 92–136. It is also worth noting that judicial precedents have established that the relevant mental or psychological illness in practice is the one that affects the neurological or psychological state of the accused—not merely an organic illness. See Court of Cassation – Criminal Case No. 3768 (Five-Judge Panel), dated 18/11/2022. Published on Qistas Legal Platform.

²⁶ Articles 61(1) and (2) of the Jordanian Code of Criminal Procedure.

²⁷ Article 133(4) of the Jordanian Code of Criminal Procedure. For further reference, see: Al-Khudairi, A. I. (2019). *Defenses Raised before the Public Prosecutor in Jordanian Legislation* (Master's thesis). Amman Arab University, pp. 81–85.

²⁸ Boutaleb, F. Z. (2015). *Insanity as a Ground for Exemption from Criminal Responsibility* (Master's thesis). Kasdi Merbah University – Ouargla, Algeria, p. 23.

²⁹ See Supreme Court Decision, First Criminal Chamber, No. 550-35, dated 20/11/1984, as cited in the previous reference, p. 27.

³⁰ Boutaleb, previously cited, pp. 23–24.

³¹ Article 163 of the Algerian Code of Criminal Procedure.

³² Article 7 of the Juvenile Law.

aligns with the principle of the child's best interest.

Nevertheless, upon examining the provisions of both the Code of Criminal Procedure and the Juvenile Law concerning interrogation, there is no indication that the Public Prosecutor is required to interrogate a juvenile suspect in the presence of a lawyer at this stage.³³ Therefore, legal counsel for the minor at this stage is only appointed either at the minor's request or in felony cases where the minimum sentence is ten years—just as in the case of adult suspects—pursuant to the provisions of Articles (63) and (63 bis) of the Code of Criminal Procedure, as previously discussed.

While the Algerian legislator shares similarities with the Jordanian legislator on this matter,³⁴ he did not stop there. Instead, he went further by explicitly stating that a child may not be interrogated unless a lawyer is present, regardless of the type of crime under investigation. In the researcher's opinion,³⁵ this places the Algerian legislator ahead of the Jordanian legislator in this regard, as mandating the presence of legal counsel during this stage provides greater protection and a genuine procedural safeguard when interrogating this vulnerable group.

Supporting this opinion is the notion that a person being interrogated must possess procedural capacity, which is based on their ability to comprehend the criminal procedures being conducted by the Public Prosecutor and to understand the legal consequences of those procedures.³⁶ Accordingly, since this category of accused persons (juveniles) falls under individuals lacking or having diminished criminal responsibility, the matter requires the legislator to provide them with special guarantees that exceed those applicable to adults. Interrogating such individuals without a lawyer could lead to false confessions or admissions of crimes they did not commit, thereby risking invalid confessions.

If that is the stance adopted by both the Jordanian and Algerian legislators concerning the interrogation procedures for individuals with diminished or lacking criminal responsibility—whether due to being a minor or suffering from a mental illness—then the situation appears quite different for those lacking responsibility due to coercion, necessity, or intoxication by narcotics or alcohol.³⁷ The provisions of the Jordanian Code of Criminal Procedure and the Algerian Code of Criminal Procedure lack any specific procedural rules addressing such cases at this stage.

Accordingly, if the accused exercises their right under Article (67) of the Jordanian Code of Criminal Procedure (as previously discussed) and raises a defense before the Public Prosecutor that they were involuntarily intoxicated, acted under coercion, or committed the act out of necessity—all of which are considered grounds that eliminate criminal responsibility and do not warrant punishment—the Public Prosecutor cannot issue a decision to close the investigation file or to halt the prosecution. This is due to their obligation to adhere to Article (130/A) of the same law. The same restriction applies to the Attorney General when handling cases transferred to them under Article (133) of the same code.

Furthermore, the Public Prosecutor is required to record such defenses in the investigative minutes and to hear witness testimonies regarding them, ensuring that the indictment decision at the end of the investigation reflects these claims. This allows the trial court to be fully informed of the circumstances under which the crime was committed, potentially assisting the court in forming its subjective conviction about the facts of the case.

Another procedure undertaken by the Public Prosecutor at this stage is hearing witnesses. Upon reviewing and analyzing these procedures—which cannot all be detailed here due to contextual limitations—there is no indication that the Public Prosecutor is required to follow any specific procedures if the accused lacks or has diminished criminal responsibility. All procedures remain the same, whether the accused is fully responsible or not.³⁸

Similarly, upon reviewing the Algerian Code of Criminal Procedure concerning the hearing of witnesses during the preliminary investigation stage, the Algerian legislator has also included general and detailed procedural provisions without designating any specific rules for hearing witnesses in cases involving accused persons who lack or have diminished criminal responsibility. As a result, the same procedures apply to such individuals as to any other ordinary person.³⁹

As for pre-trial detention, the Jordanian legislator has outlined, within the Code of Criminal Procedure,⁴⁰ the conditions, limitations, and underlying purposes of this exceptional measure—specifically in Paragraphs 2 and 3 of Article 114. A careful reading of this provision reveals that the legislator did not explicitly prescribe any special procedures concerning the detention of an accused person who lacks criminal responsibility, regardless of the cause. Nevertheless, this raises a critical question: To what extent does the absence of criminal responsibility due to a mental or psychological illness affect the legality or applicability of such detention measures? Furthermore, is there any potential conflict between this article and Article 233 of the same law?

The researcher finds that when Article 114(2) of the Code of Criminal Procedure is read in conjunction with Article 233, it becomes evident that the Public Prosecutor cannot issue a detention warrant against an accused person suffering from a mental or psychological illness unless it has been medically verified that the individual does not, in fact, suffer from such a condition. This is because the decision to detain is intrinsically linked to a prior procedural step—interrogation. Indeed, Article 114(2) begins with the phrase: "After interrogating the suspect," implying that no person may be detained without first being interrogated. However, in the case of a suspect with a confirmed mental disorder, interrogation is not feasible unless proven otherwise. Therefore, there

³³ Sabah, N. S. (2017). *Guarantees of Pre-Trial Investigation with Juveniles in Jordanian and Iraqi Law* (Master's thesis). Middle East University – Amman, pp. 76–79.

³⁴ The Algerian legislator stipulated in Article 61 of the Child Protection Law that the interrogation of a child defendant shall be conducted by judges specialized in juvenile cases, who are appointed by a decision of the Minister of Justice. It is worth noting that, according to Article 2 of the same law, a "child" is defined as any person who has not yet completed eighteen years of age.

³⁵ Article 76 of the Algerian Child Protection Law.

³⁶ Persons considered procedurally incompetent include minors lacking discernment, the insane or those with mental disabilities, and individuals under the influence of alcohol or drugs, as they lack awareness and understanding during interrogation. For further discussion, see:

Al-Haddad, M. W. (2016). *The Legal Value of a Confession by a Defendant Deprived of Freedom During Interrogation in Jordanian Criminal Law*. *Zarqa Journal for Research and Human Studies – Zarqa University*, 16(1), p. 125.

³⁷ See Articles 85–93 of the Jordanian Penal Code No. 16 of 1960 and its amendments.

³⁸ See Articles 68–79 of the Jordanian Code of Criminal Procedure.

For further reference on the procedural organization of witness hearing by the public prosecutor during this stage, see: Najm, previously cited, pp. 306–309.

³⁹ See Article 88 and Articles 90–97 of the Algerian Code of Criminal Procedure.

For more details on these procedures, see: Ouhaibiya, previously cited, pp. 344–347.

⁴⁰ See Article 8 of the Jordanian Constitution and Article 114 of the Jordanian Code of Criminal Procedure. For further discussion on the impact of detention on human rights and freedoms, and the importance of the public prosecutor's role in observing these rights, see: Al-Dabbas, A., & Abu Zaid, A. (2005). *Human Rights and Freedoms and the Role of Procedural Legitimacy of Police Actions in Their Promotion*. Amman: Dar Al-Thaqafa for Publishing and Distribution, pp. 100–104.

exists no legal inconsistency between the two provisions, as they must be read and interpreted as complementary parts of a unified legal framework.⁴¹

On the other hand, the Algerian legislator has comprehensively regulated this issue and has established clear rules and guidelines that must be followed by the investigating judge, as outlined in Articles 123 to 126 of the Algerian Code of Criminal Procedure.⁴² Nevertheless, upon examining these articles, we find that none of them provide for any special procedures specifically addressing pre-trial detention in cases where the accused is affected by one or more of the conditions that negate criminal responsibility, as previously discussed.

Despite this, Algerian law, much like its Jordanian counterpart, ties the legality of detention to the act of interrogation. Accordingly, if the accused is found to be suffering from a mental or psychological illness—as evidenced by a medical report—the investigating judge will not proceed with pre-trial detention. Instead, the judge will resort to placing the individual under medical supervision, in accordance with the provisions of Article 21 of the Algerian Penal Code, as previously explained.⁴³

As for cases in which the accused is a minor who falls within the category of individuals with diminished criminal responsibility, the Jordanian Juvenile Law stipulates specific procedures governing the detention of juveniles by the Public Prosecutor.⁴⁴ Similarly, the Algerian legislator has also taken into account the need for special safeguards and procedures for the detention of minors, distinct from those applicable to adult offenders, in recognition of the legal implications associated with diminished criminal responsibility at this stage of the criminal proceedings.⁴⁵

7.4. Chapter Two

7.4.1. Grounds For Criminal Irresponsibility and Their Impact on Trial Procedures

This chapter addresses the procedural course of trials involving individuals who lack criminal responsibility due to absence of free will (*Section One*), followed by a discussion on trial procedures for individuals deemed criminally irresponsible due to a lack of awareness or perception (*Section Two*).

7.5. Section One

7.5.1. The Trial of a Defendant Lacking Free Will⁴⁶

According to the framework adopted by the Jordanian Penal Legislator in addressing grounds for criminal irresponsibility, it is evident that coercion—referred to as "overpowering force and moral compulsion"—and the state of necessity are classified as conditions negating criminal liability based on the absence of the defendant's free will. The legislator considers both cases as exempting the individual from punishment.⁴⁷

Article (88) of the Jordanian Penal Code stipulates that no person shall be punished for an offense committed under the threat of immediate death, or imminent and severe physical harm likely to result in permanent disability or disfigurement, provided that such coercion was not willfully self-induced.⁴⁸

This provision clearly outlines the conditions required for coercion to constitute a ground for criminal irresponsibility: the coercion must not be the result of the coerced person's own actions or error, it must be irresistible and unforeseeable, and the threat must directly endanger the individual's life or physical safety to an extent that could result in the loss or severe disfigurement of a limb.⁴⁹ Judicial precedent, particularly rulings by the Court of Cassation, has affirmed that the fulfillment of these conditions is essential for a trial court to correctly apply Article (88) of the Penal Code.⁵⁰

Similarly, the Algerian legislator has also recognized coercion as a ground for criminal irresponsibility, explicitly stating in Article (48) of the Penal Code that a person who commits an offense under an irresistible force shall not be punished. Unlike its Jordanian counterpart, however, the Algerian provision lacks detailed conditions, although Algerian legal scholarship has addressed and clarified the parameters under which this defense applies.⁵¹

It is noteworthy that the Algerian Penal Code, in Article (48), uses the phrase: "*No punishment shall be imposed on anyone*

⁴¹ See Court of Cassation – Criminal Case No. 3556/2018 (Five-Judge Panel), dated 31/12/2018. Published on Qistas Legal Platform.

For further reference on detention safeguards, see: Judicial Institute of Jordan. (1997, November 17–19). *Detention Safeguards and Bail Standards*. Proceedings of the Seminar, Amman, pp. 34–37.

⁴² In Algerian criminal legislation, the term "temporary imprisonment" is used instead of the term "detention" adopted by the Jordanian legislator, as the principal term during the preliminary investigation stage. The term "garde à vue" (custodial police detention) is used when referring to arrest by judicial police officers in cases of flagrante delicto or observed crimes. This type of detention is limited to 48 hours upon the order of the Public Prosecutor, and may be extended in specific crimes such as drug offenses, money laundering, and terrorism. See Articles 50, 51, and 51 bis of the Algerian Code of Criminal Procedure.

For further reading on custodial detention, see: Cheroun, H., & Ben Mechri, A. (2017). *Garde à Vue in Algerian Legislation*. Mohamed Khider University – Biskra, *Journal of the Kuwait International Law College*, (Issue 2), pp. 209–211.

⁴³ Tawahri, I. (previously cited), pp. 57–60.

⁴⁴ Articles 8 and 9 of the Jordanian Juvenile Law.

⁴⁵ See Articles 72 and 73 of the Algerian Child Protection Law.

⁴⁶ The researcher does not use the term "accused" in the narrow sense of referring only to a person being tried for a felony, as defined in Article 4 of the Jordanian Code of Criminal Procedure. Rather, the term is intended to encompass both the "accused" (*muttahaam*) and the "suspect" (*zanin*). The researcher has chosen to adopt this unified terminology throughout the study for consistency of context and expression.

⁴⁷ A group of legal scholars—whose opinion the researcher supports for the reasons stated—believe that the Jordanian legislator erred in using the term "grounds for non-punishment" (*mawāni' al- iqāb*) instead of "grounds for non-responsibility" (*mawāni' al-mas'ūliyya*). This is because such grounds are not limited to exemption from punishment alone; rather, they relate to the essential elements of criminal responsibility—namely, awareness and intent. See: Al-Saeed, K. (2022). *Explanation of the General Provisions in the Penal Code* (5th ed.). Amman: Dar Al-Thaqafa for Publishing and Distribution, pp. 492–493.

⁴⁸ Article (88) of the Penal Code.

⁴⁹ Al-Saeed, *Op. cit.*, pp. 500–503.

⁵⁰ See on this principle: Court of Cassation, Criminal Decision No. 150/2017 (Five-Judge Panel), dated 24/4/2017, published on Qistas Legal Portal.

⁵¹ See also: Habas, Abdelkader. (2006/2007). *Coercion and Its Impact on Criminal Responsibility – A Comparative Study between Maliki Jurisprudence and Algerian Criminal Law* (Master's thesis). Oran, Algeria: University of Oran, pp. 52–72.

compelled to commit an offense by a force he could not resist," thereby referring to coercion in the same way the Jordanian legislator does in Article (89) under the term "necessity." Despite differences in terminology, it is apparent—as many Algerian scholars have pointed out—that both provisions aim at the same legal effect. In fact, interpreting Article (48) expansively leads to the same conceptual framework underlying coercion as a ground for criminal irresponsibility in Jordanian law,⁵² specifically under Articles (88) and (89).⁵³

Furthermore, Articles (89) and (90) of the Jordanian Penal Code extend the applicability of the necessity defense beyond threats to the person, covering imminent threats to property and the lives or property of others. These articles require certain conditions to be met: the danger must be grave and imminent, not self-induced, proportional to the act committed, and the individual must not be someone legally obliged to face such a risk.⁵⁴

Following this brief, non-exhaustive overview of the legal constructs of necessity and coercion—as adopted by the Jordanian legislator as grounds for criminal irresponsibility rooted in the absence of free will—the fundamental question arises: How does the legislator address the procedural treatment of defendants who fulfill these conditions? Has the Code of Criminal Procedure introduced specific provisions governing their trial?

The Jordanian Code of Criminal Procedure regulates the trial process before the competent court—across all degrees and types of courts—through an integrated set of provisions ensuring fair trial standards. These provisions guarantee the defendant's rights, including public hearings, the right to defense, and the ability to cross-examine witnesses, among other essential procedural safeguards.⁵⁵

When the court initiates trial proceedings in misdemeanors, it begins by reading out the charges and asking the defendant to respond. The defendant may not delegate a lawyer to attend in their place for this initial hearing or the one in which their testimony is to be heard. The trial must be conducted in public unless exceptional circumstances justify a closed session, typically for reasons related to public order or morality.⁵⁶

Accordingly, the court is legally obliged, under all circumstances, to convene a dedicated session to inform the defendant of the charges and hear their statement—regardless of the defendant's status or condition. In other words, even if the case file provided by the Public Prosecution contains irrefutable evidence showing that the offense was committed under moral coercion, or that the act was necessitated by an unavoidable danger, the court does not possess the authority to summarily rule on the defendant's non-liability. Instead, it must initiate a full and public trial, in line with the prescribed procedural norms.

Importantly, the trial procedures in misdemeanor cases mirror those in felony trials, with only minor differences that do not fundamentally alter the court's approach to defendants invoking coercion or necessity as grounds for the absence of criminal responsibility.

The researcher finds no legal requirement obligating the court to initiate special procedures for the trial of an accused or suspect who pleads a state of necessity or coercion. Applying the standard procedures in such cases does not, in any way, prejudice these defenses or diminish the guarantees of a fair trial. On the contrary, the court's act of listening to the defendant's statements and defense regarding the criminal incident, as well as hearing witness testimonies—particularly those of the defense witnesses—demonstrates its commitment to uncovering the truth before delivering a verdict. It would be unacceptable for the court to issue a judgment regarding the incident without that judgment being based on personal conviction formed through evidence and the testimony of witnesses who were heard and cross-examined before it, even if the case file itself includes evidence confirming the existence of such a condition.

Moreover, in the researcher's view, this confirms that the phrase "does not require punishment" contained in Article 67 of the Jordanian Code of Criminal Procedure—previously discussed in Chapter One—is an unnecessary burden on the legal text and calls for legislative intervention. How can the Public Prosecutor be expected to rule on such a plea when even the court itself does not have the authority to do so prior to issuing its judgment?

This principle of fair trial is well-established in the provisions of the Jordanian Code of Criminal Procedure, which affirm that the court may only base its ruling on evidence presented and discussed publicly before it during the course of the trial.⁵⁷ This principle has also been repeatedly confirmed by the Court of Cassation in its various decisions, through its oversight of first-instance courts.⁵⁸

Turning to Algerian legislation, we find that the Algerian legislator has also laid down a clear framework for trial procedures, both in felonies and misdemeanors. Chapter Six of the Algerian Code of Criminal Procedure outlines the process, stating explicitly that trials must be conducted publicly unless such publicity poses a threat to public order or morality. It also mandates that a defense attorney must be appointed for the accused in felony trials, and clarifies that admissible defenses at this stage are those capable of establishing that the alleged criminal act never occurred. Such defenses must be raised by the accused before the trial proceeds on the merits.⁵⁹

In Article 338 of the same code, the legislator states that in misdemeanor cases, the person arrested for the offense shall be brought before the court, where the judge must inform them of their right to request time to prepare a defense. If such a request is made, a three-day period must be granted before the trial commences. Moreover, Article 354 provides that the court is obligated to hear and cross-examine all witnesses in the presence of the parties, as part of the procedural safeguards designed to ensure that the trial is fair and based on all relevant evidence presented by and against all parties involved.

Upon reviewing these and other procedural provisions concerning trial procedures, it becomes clear that there is no indication that the Algerian legislator has assigned special procedures for the trial of defendants who meet the conditions of necessity as defined in Article 48 of the Algerian Penal Code. This leads the researcher to conclude that there is a substantial degree of

⁵² Another school of thought in Algerian legal scholarship holds that the Algerian legislator failed to address the state of necessity as a ground for exemption from criminal responsibility, which constitutes a legislative gap requiring rectification. See in this regard: Ezzedine, Bouchra. (2020). *Grounds for Criminal Irresponsibility in Islamic Jurisprudence and Algerian Penal Law* (Master's thesis). Algeria: Mohamed Boudiaf University – M'sila, pp. 46–48.

⁵³ Aghislan, Arab, & Touji, Yacoub. (2016). *The State of Necessity as a Justification or a Ground for Exemption from Criminal Responsibility* (Master's thesis). Algeria: Mouloud Mammeri University – Tizi Ouzou, pp. 34–36.

⁵⁴ Al-Abdalat, Hasan Abdel-Halim. (2007). *The State of Necessity in the Jordanian Penal Code – A Comparative Study with the Laws of Egypt, Lebanon, and Syria* (Master's thesis). Jordan: Amman Arab University, pp. 129–133.

⁵⁵ See Articles (168–183) of the Code of Criminal Procedure.

⁵⁶ Articles (168 & 171) of the Penal Code.

⁵⁷ Article (148) of the Code of Criminal Procedure.

⁵⁸ Court of Cassation – Criminal Decision No. 354/2014 (Five-Judge Panel), dated 21/04/2014. Published on Qistas Legal Portal.

⁵⁹ Articles (285, 292, and 331) of the Algerian Code of Criminal Procedure.

convergence between the Jordanian and Algerian legislators regarding the procedural approach to handling such cases of exemption from criminal responsibility.

Upon examining the aforementioned provisions, as well as other procedural texts related to trial processes, it becomes evident that the Algerian legislator has not allocated specific or distinct procedures for the trial of defendants who meet the conditions of necessity as stipulated in Article 48 of the Algerian Penal Code. This leads the researcher to observe a considerable degree of alignment between both Jordanian and Algerian legislators in terms of procedural approach to handling such cases of exemption from criminal responsibility.

However, this does not preclude us from noting that while the Jordanian legislator has not established special trial procedures for defendants who are under coercion or acting out of necessity, he has not overlooked a critical procedural measure in such cases. This measure pertains to the court's disposition of the criminal case if it is established that the defendant indeed acted under such circumstances. Specifically, the legislator clarified that the appropriate course of action in such a situation is for the court to render a verdict of non-responsibility, on the grounds that there is no justification for imposing punishment. This is set forth in Article 236(2) of the Jordanian Code of Criminal Procedure. Naturally, this also entails the release of the defendant, provided that there are no other grounds for detention.⁶⁰

Moreover, the absence of specific procedures regarding this matter at this stage of the trial implies—by contrary interpretation—that the Jordanian legislator has granted the court full discretion to establish the existence of such a condition, in accordance with general rules of evidence.⁶¹

The Algerian legislator has followed the same approach, clarifying that the appropriate judicial action to be taken by the criminal court in such cases is to issue a verdict of non-responsibility if it is proven that the act was committed under a state of necessity. Furthermore, the legislator did not impose any specific evidentiary procedure upon the court, but rather granted it full discretion in establishing the existence of such a condition.⁶²

While this represents the stance of both the Jordanian and Algerian legislators concerning coercion and necessity, the situation may differ when it comes to grounds of non-responsibility based on the absence of awareness or consciousness—an issue that will be addressed in the final section of this study.

7.6. Section Two

7.6.1. Trial of the Accused Lacking Awareness or Consciousness

Upon examining the provisions of the Jordanian Penal Code, it is evident that the legislator considers insanity and involuntary intoxication due to alcohol or narcotics as cases in which criminal responsibility is negated due to a loss of awareness or consciousness.⁶³ This is the same rationale adopted in the Juvenile Law, which exempts from criminal prosecution any person who has not yet reached the age of eighteen.⁶⁴

7.7. First: The Case of Insanity

A review of the Jordanian Penal Code provisions related to criminal responsibility reveals that the legislator addressed a matter of critical importance—namely, the soundness of mind and the individual's ability to comprehend the nature of their actions. The law presumes that a person is mentally sound unless proven otherwise.⁶⁵ Based on this presumption, the legislator ruled that a lack of mental soundness at the time of committing the crime, to the extent that the person loses the ability to discern and comprehend the nature of their actions, constitutes a condition that nullifies criminal responsibility and, accordingly, exempts the individual from punishment.

It should be noted that the Jordanian legislator employed multiple terms to describe this ground for exemption from criminal liability, although it placed all such terms under the general heading of “insanity.” The researcher considers this legislative choice excessive and unnecessary, particularly since mental and psychological disorders vary widely in form, and what ultimately concerns the legislator is the legal consequence—namely, the individual's inability to discern or comprehend their actions.⁶⁶

The Jordanian Penal Code limits its treatment of this issue to defining insanity as a ground for exemption from criminal responsibility due to a loss of consciousness. It further stipulates that if such exemption is applicable, the individual shall be confined in a psychiatric hospital until their recovery is confirmed through a medical report issued by a specialized committee, demonstrating that they no longer pose a threat to public safety.⁶⁷ Judicial precedent has established that the recovery referred to in the text is social recovery—meaning the person is capable of reintegrating into society.⁶⁸

It appears that this specific ground for exemption from criminal responsibility has received more attention from the Jordanian legislator than other previously mentioned cases. The legislator has provided it with a distinct procedural framework, particularly regarding the trial process for individuals diagnosed as insane, as outlined in Article 233 of the Jordanian Code of Criminal Procedure.⁶⁹ According to this article, if the court suspects that the accused is suffering from a psychological or mental illness—or if this is claimed by the accused or their legal representative—it must place the accused under medical observation by three public-sector specialists for a period deemed necessary to produce a medical report on the accused's condition.

If the court finds, based on the medical report, that the accused is mentally ill and incapable of understanding the trial proceedings, it must issue a preparatory decision (non-final) ordering the accused to be placed in a psychiatric hospital until they are deemed fit to stand trial. It should be noted that this decision does not suspend the proceedings against other defendants in

⁶⁰ Article (238) of the Code of Criminal Procedure

⁶¹ Al-Saeed, Kamel. *Previously cited reference*, p

⁶² Article (364) of the Algerian Code of Criminal Procedure.

⁶³ Articles (91–93) of the Jordanian Penal Code.

⁶⁴ Article (4/b) of the Juvenile Law.

⁶⁵ Article (91) of the Jordanian Penal Code.

⁶⁶ For further insight on these concepts and scientific terms, see: Ismaili, Yamna, & Sabir, Qachouch. (2018). *Criminal Psychology* (Arabic Edition). Amman: Al-Yazouri Scientific Publishing and Distribution, pp. 181–192.

⁶⁷ Article (92/2) of the Jordanian Penal Code.

⁶⁸ Court of Cassation Criminal Decision No. 562/2010 (General Panel), dated 26/5/2010, published by Adalah Center.

⁶⁹ Article (233/2) of the Code of Criminal Procedure.

the same case ⁷⁰. However, if the report concludes that the accused's condition is incurable, the court must order their indefinite placement in a psychiatric facility, and trial proceedings shall only resume if the accused recovers and becomes fit for trial ⁷¹.

Furthermore, if it is established that the accused committed the act while suffering from a mental illness that rendered them incapable of understanding the nature of their actions, the court must issue a verdict of non-responsibility in accordance with Article 92 of the Penal Code. The accused must then be released immediately upon confirmation of recovery and assurance that they no longer pose a threat to public safety ⁷². However, the legislator did not clarify whether the time spent in the psychiatric hospital is to be deducted from any future sentence, if applicable ⁷³.

The legislator also stated in Paragraph 5 of the aforementioned article that if the court, based on medical observation, determines that the accused suffers from a mental disability, then the trial may not proceed unless a legal guardian is present. If this is not possible, a defense attorney must be appointed. If it is then established that the accused committed the act, the court shall declare them not criminally responsible and place them under the supervision of a probation officer for a period ranging from one to five years.

This raises an important question regarding the possible contradiction between this procedural paragraph and the rest of the provisions within Article 233, as previously discussed. Paragraph 5 appears to require the physical presence of the mentally disabled accused during trial proceedings, whereas the preceding paragraphs uniformly indicate that the court must place a mentally ill defendant in a psychiatric hospital until recovery is achieved.

This issue was addressed by the judiciary, as the Court of Cassation ruled that a distinction must be made between psychological illness and mental disability, the latter being specifically addressed by the legislator in Paragraph 5 of Article 233 of the Code of Criminal Procedure. The legislator treated mental disability as a medically distinct condition from mental or psychological illness and other disorders listed in the same article. As a result, this situation was excluded from the general procedural framework used by the legislator to regulate cases of insanity. ⁷⁴

The researcher finds that Paragraph 5 of Article 233 constitutes an inconsistency in the legislator's overall approach to regulating this issue. It deviates from the established procedural rules set out in the previous paragraphs of the same article. Even if the legislator intended the term "mental disability" to refer to a condition different from the other terms previously used, he should have included a separate provision clarifying the intended meaning of each term. Since this was not done, the researcher upholds the previously stated opinion that the legislator used multiple terms to indicate insanity as a ground for exemption from criminal responsibility without necessity. This leads to the conclusion that the Court of Cassation's interpretation—aimed at reconciling the legislator's intent in Paragraph 5—represents an overly expansive reading of the text. This is especially problematic given that both psychological illness and mental disability result in the same legal outcome: the loss of awareness and discernment.

The Algerian legislator has also addressed this specific case of exemption from criminal responsibility within the context of legal grounds for such exemption. He considered that no punishment shall be imposed on a person who was insane at the time of committing the crime ⁷⁵. Notably, the legislator did not use multiple terms to refer to insanity in the Penal Code, limiting the terminology to "mental disorder" (*trouble mental*), although mental illness is mentioned indirectly within the Algerian Code of Criminal Procedure. ⁷⁶

Article (21) of the Algerian Penal Code, as referenced in Article (47) of the same law, stipulates that a defendant suffering from such a condition that negates criminal responsibility shall be placed in a specialized mental health facility, provided that the illness is proven to have existed at the time of the crime or developed afterward. The court must issue a placement order regardless of the verdict—be it conviction, pardon, acquittal, or even if prosecution is terminated—since the primary purpose of such institutionalization is to eliminate the criminal threat posed by the individual, protect society, and contribute to the person's treatment and reintegration. ⁷⁷However, when the verdict is acquittal or termination of prosecution, the court must establish that the defendant played a material role in the criminal act before issuing a judicial placement order. ⁷⁸

7.8. Second: Intoxication and Drug Poisoning

This condition is considered one that negates a person's awareness and thus exempts them from punishment for the criminal act committed under its influence, as stated in Article (93) of the Jordanian Penal Code. Based on this provision, the Jordanian legislator has classified intoxication—whether due to alcohol or narcotics of various types—as a ground for exemption from criminal responsibility, since it impairs a person's consciousness and may also affect their volition. The result is a loss of concentration and, consequently, the individual's freedom of choice, which leads to the commission of the criminal act without awareness or deliberate intent.

It is evident from the above provision that the legislator requires, as a condition for applying this exemption, that the intoxication by alcohol or drugs be involuntary—that is, not of the actor's choosing—or that it occurred without the person's knowledge. Voluntary intoxication is not subject to special regulation under the Jordanian law and is therefore governed by general rules ⁷⁹. Additionally, the effect of intoxication or drug use must be present at the time of the act, a requirement expressed by the legislator using the term "coma," which refers to the actual influence that causes loss of focus and deprives the individual of awareness and volition. Any deviation from these conditions does not absolve the offender from criminal responsibility or punishment, as consistently upheld in multiple rulings by the Court of Cassation. ⁸⁰

Anyone who closely examines the provisions of the Penal Code, the Code of Criminal Procedure, or other relevant legal texts

⁷⁰ Article (233/3) of the Code of Criminal Procedure

⁷¹ Article (233/4) of the Code of Criminal Procedure. See also: Court of Cassation (Criminal Division) Decision No. 3164/2022 (Regular Panel), dated 6/11/2022, and Decision No. 2663/2022 (Regular Panel), dated 27/9/2022, published on Qistas Legal Platform.

⁷² Al-Saeed, Kamel. *Previously cited reference*, pp. 552–553.

⁷³ Court of Cassation Criminal Decision No. 246/2019 (Regular Panel), dated 19/3/2019, published by Adalah Center.

⁷⁴ Court of Cassation Criminal Decision No. 246/2019 (Regular Panel), dated 19/3/2019, published by Adalah Center.

⁷⁵ Article (47) of the Algerian Penal Code.

⁷⁶ Article (68) of the Algerian Code of Criminal Procedure.

⁷⁷ Mahmoudi, Nour El Huda. (2010/2011). *Precautionary Measures and Their Impact on the Criminal Phenomenon* [Master's thesis, University of Hadj Lakhdar Batna], Algeria, pp. 61–63.

⁷⁸ Article (21) of the Algerian Penal Code.

⁷⁹ Al-Saeed, Kamel. *Previously cited reference*, pp. 566–567.

⁸⁰ See Court of Cassation Criminal Decision No. 4363/2021 (Regular Panel), dated 2/3/2022, and Decision No. 2212/2018 (Regular Panel), dated 22/10/2018, published on Qistas Legal Platform.

will observe that there is no special or independent regulation addressing this particular case of exemption from criminal responsibility in terms of trial procedures. This implies, by way of contrary interpretation, that a defendant who raises such a defense before the court will not benefit from any special procedures as in the case of insanity, for instance. All that is required from the court in such a situation is to verify the validity of the claim by any means it deems appropriate.

Upon reviewing the provisions of the Algerian Penal Code, particularly those that address grounds for exemption from responsibility—as outlined in Chapter II under the title “Criminal Responsibility,” Articles (47–51)—and other related provisions in the same law or in the Code of Criminal Procedure, it becomes evident that there is no dedicated legal framework for this case of lack of criminal responsibility. Moreover, the Algerian legislator has not addressed this condition explicitly in this context. However, as the researcher sees it, this does not mean that the Algerian legislator disregards the legal effect of a defendant who proves to the court that they committed the crime under the influence of drugs or alcohol, regardless of the type.

If such a condition is established and it is proven that the defendant lacked free will or awareness at the time of the crime due to this influence, this would inevitably undermine one or both elements of criminal responsibility (awareness and will). Accordingly, this case would fall under the general rules, even if not explicitly mentioned by the legislator—as was done in Jordanian law. This position is further reinforced by Algerian jurisprudence, which considers such a case as one of those that nullify criminal responsibility, similar to the explicitly stated cases such as insanity and coercion.⁸¹

Additionally, the Algerian legislator has addressed intoxication in the context of recidivism and in certain offenses related to family law, thereby affirming through those provisions that such behavior is explicitly condemned and regulated within Algerian law.⁸²

7.9. Third: The Minimum Age of Criminal Responsibility

The Jordanian legislator, through the Juvenile Law No. 32 of 2014, currently in force, has clearly stipulated that a child who has not yet reached the age of twelve⁸³ shall not be criminally prosecuted. The logical conclusion drawn from this provision is that the Public Prosecution’s decision in cases involving a juvenile under the age of twelve must be to discontinue prosecution.

However, in cases where the juvenile has exceeded this age threshold and is charged with a crime before a court, trial proceedings shall commence but in a manner and procedural framework entirely different from that applied to adults—as long as the individual has not yet reached the age of eighteen.

previously explained—is considered one of the grounds for lack of criminal responsibility if the child has not yet reached the age of twelve. However, once this age is exceeded, the situation is regarded as one of diminished responsibility, which requires the juvenile justice system to apply special procedures during trial.

Under this law, it is strictly prohibited for a juvenile to be detained or tried alongside adults at any stage of the proceedings.⁸⁴ Furthermore, the juvenile may only be tried before juvenile courts,⁸⁵ and the trial must be conducted in secrecy, with any violation resulting in the nullity of the proceedings. Once the trial begins, the court is prohibited from adjourning the sessions for more than one week, unless a necessary justification exists.⁸⁶

Among the procedural consequences of this *diminished responsibility*, is the mandatory appointment of legal counsel for a juvenile in felony cases. In addition, the juvenile may not be tried unless one of their parents, legal guardian, custodian, or caregiver is present—alongside the probation officer and defense attorney.⁸⁷

As for the impact on final judgments, the legislator stipulates that if a juvenile is found guilty of a crime punishable by the death penalty, the sentence shall instead be confinement in a juvenile rehabilitation center for not less than eight years and not more than twelve years. Thus, the punishments imposed on juveniles are mitigated and not equivalent to those imposed on adults, following a graduated framework as outlined in Articles 25 and 26 of the Juvenile Law,⁸⁸ which has been consistently upheld by juvenile courts in numerous rulings.⁸⁹

In fact, the procedural implications may extend even further. The judge responsible for executing sentences may release a juvenile placed in a rehabilitation center after consulting with its director, subject to specific conditions, as per Article 32 of the same law.

The Algerian legislator has also addressed this case of lack of criminal responsibility with notable care, particularly through special procedures for juvenile trials under the Child Protection Law enacted in 2015⁹⁰. A close examination of this law—especially Chapter III—leaves no doubt that this situation has significantly influenced the procedural approach to trying a juvenile over the age of ten.

Among the key guarantees provided are the requirement of confidentiality in trial proceedings, with the sole exception being the sentencing hearing, and the establishment of a graduated system of penalties that differs from those imposed on adults for the same crimes. The law also allows for the implementation of protective and corrective measures in both felonies and misdemeanors involving juveniles, along with other procedural differences that cannot be fully detailed here.⁹¹

However, the public nature of the sentencing hearing has been subject to criticism, given that such publicity may negatively affect the juvenile’s psychological state⁹². In the researcher’s view, maintaining public access to this hearing—as per Article 89 of

⁸¹ Bouchra, *Previously cited reference*, pp. 23–24.

⁸² Article (27/4) and Article (330/1) of the Algerian Penal Code.

⁸³ Article (4/b) of the Jordanian Juvenile Law.

⁸⁴ Article (5) of the Juvenile Law.

⁸⁵ Article (15/a) of the Juvenile Law.

⁸⁶ Articles (17) and (20) of the Juvenile Law.

⁸⁷ Article (22) of the Juvenile Law.

⁸⁸ Juvenile definition: According to Article (2) of the Juvenile Law, a young person is defined as a juvenile who has reached the age of fifteen but has not yet completed eighteen years, whereas an adolescent is one who has completed twelve years but not yet fifteen.

⁸⁹ See Cassation Criminal Decision No. 3274/2019 (Five-Judge Panel), dated 31/12/2019, and Decision No. 3031/2019 (Five-Judge Panel), dated 25/11/2019, published by the Adalah Center.

⁹⁰ Article (147) of the Child Protection Law states: “The provisions of the Code of Criminal Procedure shall apply insofar as they do not conflict with the provisions of this law.” Article (81) of the same law provides that the procedures set out in this law shall apply to infractions, misdemeanors, and felonies committed by a child.

⁹¹ See Articles (80–90) of the Algerian Child Protection Law regarding these procedures.

⁹² Ghattas, Latifa. *Juvenile Delinquency in Algerian Legislation* (Master’s thesis, 2015/2016), Kasdi Merbah University – Ouargla, Algeria, pp. 21.

the Child Protection Law—is inconsistent with the objective of trial confidentiality set out in Article 81 of the same law.

In this regard, the Jordanian legislator has shown greater sensitivity to this issue. Article 17 of the Jordanian Juvenile Law does not require the sentencing session to be public, which the researcher considers to be a more progressive and child-sensitive approach compared to Algerian legislation, and one that better aligns with the special nature and legal guarantees required in juvenile proceedings.

8. CONCLUSION

This study addressed the cases of *lack of criminal responsibility* as outlined in the Jordanian Penal Code, in comparison with the Algerian Penal Code, by examining the extent to which such cases influence the procedures of criminal litigation—from the preliminary investigation stage to the final trial phase before the court.

The topic was analyzed through its procedural effects on actions taken by law enforcement during preliminary investigation, then moved on to the impact of these cases on prosecutorial procedures in the initial investigation phase, including interrogations, detention, witness testimony, and other legal steps. Finally, the study examined their effects on court proceedings. The research culminated in several key findings and recommendations as outlined below.

8.1. First: Findings

1. The *grounds for lack of criminal responsibility* were found to have no significant influence on the procedures conducted by law enforcement officers during the preliminary investigation phase—whether in Jordanian or Algerian legislation. It is not considered a flaw that legislators did not prescribe special procedures for this stage, except for the lack of specific provisions regarding the search of juvenile suspects, which is critical given the special nature of such cases of *lack or diminished criminal responsibility*.

2. *Mental illness or insanity* represents a case of lack of criminal responsibility that has a clear impact on criminal procedures during the preliminary investigation stage—particularly in relation to interrogation and decisions on pre-trial detention. The Jordanian legislator has addressed this in a specific procedural provision under Article (233) of the Code of Criminal Procedure. However, the legislator failed to authorize prosecutors to terminate proceedings against a defendant proven to be mentally ill, which is a legislative shortcoming. There is no value in prosecuting someone conclusively found not criminally responsible due to insanity, and this legislative silence contradicts Article (67/1) of the same law. The same critique applies to Algerian legislation, despite differing views among legal scholars.

3. *Juvenile age* is considered a case of diminished criminal responsibility, with substantial procedural implications, especially during the preliminary investigation phase. While the Jordanian legislator has accounted for this in the Juvenile Law—particularly in detention and bail procedures—it did not, unlike the Algerian legislator, require mandatory legal representation for juveniles during this stage, limiting such provision to felonies punishable by over ten years, as with adult suspects.

4. The Jordanian legislator established a dedicated procedural framework for juvenile trials that ensures the best interest of the child and recognizes this case as requiring special legal treatment. In contrast, while the Algerian legislator addressed the matter in the Child Protection Law and required the presence of legal counsel at all stages, it excluded the sentencing session from the requirement of confidentiality. This led to criticism, as the public nature of the sentencing could negatively affect the juvenile.

5. Although Article (233) of the Jordanian Code of Criminal Procedure includes a special provision for trying mentally ill defendants, Paragraph 5 contradicts the rest of the article. It requires defendants with intellectual disabilities to attend trial sessions, whereas other paragraphs require such individuals to be placed under medical observation and hospitalized until full recovery. The Court of Cassation attempted to interpret the article by distinguishing between intellectual disability and mental illness, but the legislator failed to clearly define the multiple terms used to indicate lack of responsibility—resulting in inconsistencies and legislative deficiencies not found in Algerian law.

6. While the Jordanian Penal Code recognizes *duress*, *necessity*, and *involuntary intoxication* by alcohol or drugs as causes for lack of criminal responsibility, these cases do not appear to significantly influence criminal procedure, except in terms of the court's final ruling of non-responsibility if such conditions are proven. The absence of procedural provisions implies, by default, that the court has full discretion in establishing such claims in accordance with justice. This observation applies similarly to Algerian legislation, which does not explicitly consider intoxication a ground for lack of responsibility.

8.2. Second: Recommendations

In light of the findings presented, the researcher offers the following recommendations to the Jordanian criminal legislator:

1. Introduce a specific paragraph within the Code of Criminal Procedure addressing personal search procedures, mandating law enforcement officers to consider the special status of juvenile suspects during searches, consistent with the philosophy of this category of lack of criminal responsibility.

2. Add a provision to Article (233) of the Code of Criminal Procedure allowing prosecutors—and public prosecutors, where applicable—to terminate proceedings if medical assessment proves the accused suffers from a psychological or mental disorder, with the legal basis being the absence of culpability, without impacting proceedings against other defendants.

3. Amend the Juvenile Law to include a mandatory provision that prohibits conducting investigative or trial procedures involving juveniles without the presence of a defense lawyer, regardless of the offense type.

4. Redraft Paragraph 5 of Article (233) to ensure coherence with the rest of the article and reflect the legislator's original intention: that a defendant incapable of understanding their actions due to mental or psychological illness cannot be tried. The new wording should clarify that such a defendant cannot attend trial sessions unless medically confirmed to be free from or recovered from the illness.

5. The researcher advises the Algerian legislator to explicitly include in the Penal Code a provision recognizing *involuntary intoxication by alcohol or drugs* as a ground for lack of criminal responsibility, and to revise Article (89) of the Child Protection Law to ensure full confidentiality of all juvenile court sessions, including the sentencing session.

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