



CONSTITUTIONAL PROTECTION OF CHILDREN IN ALGERIA

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Abstract:

Children are regarded as the true treasure of any nation, embodying a vital component within both society and the state. Consequently, it has become essential to prioritize child protection by developing a comprehensive legal framework that addresses every aspect pertinent to child welfare. Based on this imperative, the Algerian constitutions were formulated to safeguard the paramount rights of children, with subsequent laws such as the family and civil status laws elaborating these protections in detail. Nonetheless, the efficacy of these laws hinges on their rigorous enforcement, a responsibility that falls to entities such as the Human Rights Advisory Committee, various associations, and the broader civil society sector.

Constitutional safeguards are paramount in safeguarding children's rights, as the constitution holds the highest rank of legal power and embodies a comprehensive array of vital assurances for rights and freedoms universally, and specifically for the rights of children. Nonetheless, the Algerian constitution is characterized by its shortcomings and omissions concerning child protection. These shortcomings can largely be ascribed to the limited number of constitutional texts that address these rights, which are often vague and lack precise definitions.

Keywords: Child; Constitutional Protection; Rights.

INTRODUCTION:

Children, envisaged as the future custodians of society, are divine blessings bestowed upon humanity, for whom individuals strive and persevere. Recognized as the invaluable treasure of any nation, children are essential components of both society and the state apparatus. Consequently, emphasizing child protection becomes an indispensable obligation, facilitated through the development of a comprehensive legal framework that addresses all facets of child-related issues.

In this regard, the Algerian constitutions have been structured to fortify the most crucial rights of children, complemented by other legislative measures such as family law and civil status law. However, these laws are rendered ineffective without the assured implementation enforced by entities like the Human Rights Advisory Committee, various associations, and civil society initiatives.

Constitutional safeguards are paramount in safeguarding children's rights, as the constitution holds the highest rank of legal power and embodies a comprehensive array of vital assurances for rights and freedoms universally, and specifically for the rights of children. Nonetheless, the Algerian constitution is characterized by its shortcomings and omissions concerning child protection. Yet, the Algerian constitution is criticized for its notable inadequacies and lapses in the sphere of child protection, primarily due to the limited constitutional provisions concerning these rights, characterized by their ambiguity and lack of explicitness.

These provisions reflect the significant value attributed to children and the extent of protection guaranteed to safeguard their rights. This document will examine the constitutional safeguards implemented for children within the Algerian legal context and the systems established to monitor their enforcement.



First Section: Constitutional Protection of Child in Algerian Legal System

Since gaining independence, Algeria, along with many other countries, has actively strengthened the protection of children by creating a comprehensive legal structure. This structure carefully delineates a broad range of their basic rights.

First Subsection: Child Protection Provisions in Algerian Constitutions

Algerian jurisprudence has consistently prioritized children, structuring their rights within legal frameworks and affording them specialized protections. These legal measures vary in their protective scope, each reflecting a distinct perspective on childhood. The Algerian legislature has ensured children's rights are safeguarded and systematically regulated through constitutional texts. These texts delineate a comprehensive set of principles targeting the core rights of children.

Additionally, these frameworks extend legal protections that encompass and ensure the safeguarding of children's rights across all facets of their existence—be it civil, familial, social, or legal aspects. The aim is to provide unwavering protection for children from their birth until they reach adulthood. Before delving into the specifics of these protections, it is crucial to establish a clear definition of a child.

First Sub-subsection: Definition of a Child

Islamic scholars define a child as any human who has not yet reached the age of fifteen or displayed the physiological changes associated with puberty. For female children, the age is specified as under nine years."¹

Childhood is recognized as the critical period of human growth, where the individual relies on others for their fundamental needs. This phase is acknowledged as the lengthiest developmental stage across all species. The Algerian Civil Code, in Article 40, specifies the legal age of adulthood as nineteen years.

Second Sub-subsection: The Rights of Child in Algerian Constitutions

Firstly: Education

A child's upbringing necessitates comprehensive care through education to foster strong physical and cognitive development. The Algerian constitutions have persistently underscored this element of child welfare.²

This requirement was further reinforced in the Constitution of 1989, which clearly outlined the duties of parents in fostering and caring for their children.³

The 2020 Constitution, delineated in Article 71, emphasizes that the state safeguards the family and stringently upholds the rights of children, with a central focus on the child's best interests.⁴

Article 71, paragraph 3, amplifies this pledge by dictating that, under the penalty of criminal prosecution, guardians are compelled to ensure the proper upbringing of their children. This historical progression in constitutional provisions demonstrates an evolving and deepening commitment to child education and protection within the Algerian legal framework, ensuring that these foundational rights are progressively reinforced and explicitly articulated over time.

Secondly: Learning

Learning stands as a quintessential human right and an end unto itself. In the wake of regaining national sovereignty, the Algerian state has consistently upheld the right to free education across all constitutions, from 1963 to the contemporary 2020 version, encompassing all educational stages up to the university level, with the exception of private institutions. This constitutionally enshrined right significantly elevates the value of learning in Algeria, contributing substantially to the cultivation of citizens who are well-prepared to serve the nation and enhance societal well-being.⁵

Additionally, the Algerian constitutions have uniformly highlighted the significance of healthcare and the overall living conditions of its citizens.

Thirdly: Healthcare

Reviewing the 1963 Constitution, it is noted that there was no specific mention of the right to healthcare.



The 1976 Constitution openly acknowledged every citizen's entitlement to healthcare, which it declared to be complimentary, underscoring the state's deep-seated commitment to the health sector.

The Constitutions of 1989 and 1996 briefly addressed healthcare rights, with the 1989 Constitution confirming that citizens have a right to healthcare. This provision was consistently upheld in the subsequent 1996, 2002, 2008, and 2016 Constitutions under Article 66.⁶

It is noteworthy that the term "free healthcare" was omitted in these later constitutions, indicating a shift from previous provisions and possibly suggesting a reduction in the extent of children's rights to comprehensive healthcare. Nonetheless, this change does not necessarily signify a reduced state interest in healthcare, as evidenced by increasing annual financial allocations to the health sector.

The 2020 Constitution, specifically in Article 63, paragraph 2, distinctly addresses healthcare for those in need and emphasizes the prevention and control of infectious and epidemic diseases.

Fourthly: Living Conditions

The right to adequate living conditions is universally acknowledged as a fundamental human right. Each state bears the responsibility to preserve the dignity of its citizens by striving to meet their basic needs and ensuring that they live with dignity, including the provision of adequate housing to bolster their welfare.

It is equally crucial for the state to ensure favorable working conditions so that citizens can provide food, clothing, and shelter for themselves and their families, even under circumstances such as old age, illness, or disability that might otherwise impede their ability to work.⁷

The Algerian constitutions have explicitly recognized the right to decent living conditions. Article 165 of the 1963 Constitution affirmed every individual's right to a dignified life⁸.

The constitutions of 1989, 1996, 2002, 2008, and 2016 maintained the same wording regarding living conditions. However, it is noteworthy that there was a shift in terminology from the state "ensuring" to "guaranteeing" living conditions, which signifies a conceptual retreat in the term's application. The 2020 Constitution, in Article 63, last paragraph, specifically mentioned housing, especially for disadvantaged groups.

The constitutions of 1989, 1996, 2002, 2008, and 2016 preserved consistent phrasing regarding living conditions. However, it is significant to note a terminological shift from the state "ensuring" to "guaranteeing" living conditions, indicating a subtle conceptual retreat in how the term is applied. The 2020 Constitution, in its Article 63, last paragraph, specifically highlights housing, particularly for disadvantaged groups. This shift underscores an evolving emphasis on the state's role in providing for its citizens.

The authors of the Algerian Constitution have consistently maintained the protection of

Moreover, the Algerian constitutional revisions have included stipulations regarding the detention of minors for investigative purposes, underscoring the safeguarding of children's rights in such situations. Article 48 of the 2016 amendment stipulates that minors must receive a medical examination at the conclusion of their detention period.

This requirement contrasts with the treatment of adults, who may only request such an examination voluntarily. Similarly, Article 45 of the 2020 Constitution, in its last paragraph, stipulates, "Minors are mandatorily subjected to a medical examination," reinforcing the state's commitment to safeguard children even under judicial procedures.

Second Subsection: Legal Treatment of Algerian Children's Rights

Within the Algerian legal context, there is a provision that guarantees a child's right to be shielded from all forms of harm, including neglect, violence, mistreatment, exploitation, and both physical and moral abuse, encompassing sexual abuse. It pledges to implement all appropriate preventive actions and to provide necessary conditions for their development, care, and the safeguarding of their life and upbringing.

These protective measures are evident across various legal domains, such as civil status law, nationality law, health law, labor law, and within family environments, incorporating criminal safeguards for children.



First Subsection: Protection of Children's Rights in Civil Status Law

A child's right to a name is fundamental and is robustly protected by specific regulations under Algerian law, emphasizing the importance of preserving this right. The civil status law, instituted on February 19, 1970, by Order No. 70/20, which nullified any conflicting previous laws, sets forth crucial regulations governing the civil status of individuals.

According to Article 61 of the Civil Status Law, a child's right to a name is established at birth, with penalties outlined in the Penal Code for non-compliance if the birth is not declared within the legally prescribed period.⁹

Moreover, for foundlings and children born to unknown parents, the civil status officer assigns several names, with the last name considered their family name, as specified in Article 64/4 of Order 70/20¹⁰.

Second Sub-subsection: Protection of Children's Rights in Nationality Law

Acquiring nationality at birth is not merely a procedural formality but a critical determinant in a child's life, as it ensures their continuous entitlement to a spectrum of rights. Nationality serves as the foundation for most civil and political rights; without it, individuals are considered foreigners and often face barriers in accessing fundamental rights.

Recognizing the profound impact of nationality on a child's life, the Algerian legal system, under Order No. 70/86 dated December 15, 1970, and later amended by Order No. 05/01 dated February 27, 2005, delineates clear paths to nationality either by origin or through naturalization.

The revisions to the Nationality Law, reflecting current necessities, have broadened the rights of children concerning nationality, positioning the Algerian Nationality Law as a progressive statute that actively protects and upholds children's rights, aligning with the advanced stipulations found in the Family Law.

Third Sub-subsection: Protection of Children's Rights in Algerian Family Law

Family Law in Algeria, deeply rooted in Islamic legislation, regards marriage as a foundational institution of society, valuing the marital bond and prescribing detailed regulations for family life that emphasize the welfare of mothers and children. This includes comprehensive guidelines on pregnancy, breastfeeding, and custody, areas critical to the child's early development and the mother's well-being.

Drawing primarily from Islamic Sharia and the interpretations of Islamic jurists¹¹, Algerian Family Law intricately integrates child-related provisions within broader family-related legal discussions.

While the law does not segregate child rights into a standalone chapter, it intricately weaves these rights into various articles discussing guardianship, testamentary guardianship, filiation, breastfeeding, maintenance, inheritance, custody, gifts, and foster care. This integration underscores the interconnectedness of the child's rights with their familial relationships, including those with their parents and extended family members.¹²

In the familial hierarchy, children are recognized as central figures around whom marital and family dynamics often revolve. Their significant status necessitates robust legal and legitimate protection measures.

The Family Law not only acknowledges but actively guarantees these rights across various domains, laying a solid legal foundation for the protection of children's rights alongside other protective legislations such as labor and health laws.

Fourth Sub-subsection: Child Protection through Health and Labor Laws

The Algerian legislature has devoted considerable attention to the health and labor sectors, particularly concerning children's welfare.¹³

The Health Law is comprehensive, incorporating a wide array of provisions designed to safeguard child health and facilitate their holistic development. It mandates several medical, social, and administrative measures that support motherhood and childhood, focusing on preventing child neglect and ensuring comprehensive medical follow-up, vaccinations, health education, and appropriate treatments.



For children with disabilities, the Health Law goes further to assure their right to health and social protection. It facilitates access to suitable treatments, rehabilitation services, and specially designed equipment, ensuring that these children receive the support necessary to lead fulfilling lives.¹⁴

Regarding child labor, the Labor Law in Algeria underscores its importance by implementing stringent regulations that offer extensive protection to minors in the workplace, safeguarding them against economic and social exploitation.¹⁵

The Algerian Constitution of 2020 incorporates specific clauses addressing child labor. Notably, Article 66, paragraph 4, stipulates that "The law shall punish child employment," while Article 71 emphasizes the state's duty to safeguard children's rights.¹⁶

Moreover, the issue of juvenile delinquency, a challenge that permeates all societies, is addressed comprehensively within the Algerian legal framework. Children, often seen as victims of adverse family, social, or economic conditions leading to deviant behaviors, are vulnerable to numerous grave offenses that threaten their physical and psychological well-being, such as kidnapping¹⁷, rape¹⁸, sexual assault¹⁹, neglect²⁰, and abandonment²¹.

Algerian criminal law aims to offer substantial guarantees and establish mechanisms for the protection and rehabilitation of juvenile offenders, with specific attention given in Order No. 72/03 dated February 10, focusing on the protection and specialized care for at-risk juveniles and adolescents.²²

The judicial approach to juveniles is characterized by its flexibility, aiming primarily at prevention and rehabilitation rather than mere punishment and deterrence. This approach forms a critical part of the legal framework dedicated to protection of children's rights in Algeria.

These legal measures are reinforced through a robust criminal framework that is pivotal for enforcement and compliance. This includes the criminal protection of children's rights as detailed in the Penal Code, which provides criminal sanctions in instances of juvenile delinquency. The Code of Criminal Procedure further supports this by offering procedural safeguards during the prosecution and trial of juvenile offenders.

Second Section: Mechanisms for Monitoring the Protection of Children's Rights

The Convention on the Rights of the Child holds critical importance for numerous reasons. It not only enshrines children's rights, which have now been embraced and assimilated into international consciousness, but it also introduces additional rights stemming from recent progress in social, psychological, and medical studies related to childhood.

Furthermore, the Convention sets a minimum standard of behavior for individuals, peoples, governments, and international bodies dealing with children's issues or addressing childhood problems.

First Subsection: The 1989 International Convention as a Framework for Protecting Children's Rights

Algeria's dedication to protecting children's rights is highlighted by its adoption of critical international treaties related to children, particularly the 1989 Convention. Building on these foundations, in 2006, Algeria adopted the Optional Protocol to the Convention on the Rights of the Child regarding the sale of children, child prostitution, and child pornography, as well as the Optional Protocol on the Involvement of Children in Armed Conflict.

The 1989 Convention on the Rights of the Child, a universally acknowledged accord, ratified by the vast majority of United Nations member states, saw Algeria formalize its commitment in 1992.²³ This ratification included the integration of the Convention into Algerian national legislation, albeit with interpretative declarations for specific provisions to maintain alignment with the nation's legal frameworks and cultural values.

First Sub-subsection: Legality of Algeria's Ratification of the 1989 Convention on the Rights of the Child

The Convention on the Rights of the Child serves as a crucial international treaty within Algerian national legislation, establishing an essential legal framework for the protection of child rights at the national level. This role was underscored by the introduction of the Child Protection



Law in 2015, marking a notable enhancement in the legal infrastructure supporting child rights in Algeria.²⁴

Articles 13, 16, and 17 are interpreted in alignment with provisions from the Penal Code that address public morals and the Algerian public order, as well as Article 24 of the Media Law²⁵.

Second Sub-subsection: Position of Convention on Child Rights in Algerian Domestic Legislation

In line with the Convention, the Algerian government is committed to both substantive and procedural compliance²⁶. This is demonstrated by the enactment of the Child Protection Law in 2015, a significant advancement in strengthening the legal framework for child rights in Algeria.²⁷

Substantive compliance involves the incorporation and practical application of the Convention's stipulations within the domestic legal system,²⁸ while procedural compliance requires the government to fulfill obligations to report to the Committee on the Rights of the Child regarding all relevant initiatives and measures undertaken, in accordance with Article 44 of the Convention.²⁹

Algeria's interaction with the Committee is marked by its initial detailed report, submitted on November 16, 1995, followed by additional reports in December 2003³⁰, May 2009, and March 2012, with the latter two necessitating extra information as required by the Committee.³¹

However, Algeria's ratification of the Convention does not imply a complete acceptance of all articulated rights; the Convention permits states parties to declare reservations, provided these are within the limits of legal propriety and democracy, and align with the general stipulations of the Convention itself.

Third Sub-subsection: Algeria's Efforts Following Ratification of the Convention on the Rights of the Child

The practical implementation of Law 15/12 on Child Protection exhibits variability. This discrepancy highlights a significant gap between the established legislative frameworks and their practical enforcement, which is essential for realizing the rights of children as envisioned by the Convention. In recent years, Algerian society has been increasingly alarmed by the heinous crimes of child kidnapping and trafficking. These crimes are particularly disturbing due to their brutal nature and the broad spectrum of social strata they affect, instilling a widespread sense of fear and profound anxiety about the safety of vulnerable children.

The physical and psychological vulnerabilities of children make them easy targets for perpetrators who exploit these conditions through coercion³², violence, and deception, aiming to achieve their malicious objectives for monetary gain or sexual gratification through heinous acts such as rape, murder, and desecration.

In response, the Algerian legal system has implemented a rigorous punitive policy to deter such crimes and eradicate these grave offenses³³. This policy is articulated in the Algerian Penal Code, which imposes severe penalties for those convicted of offenses related to child kidnapping and trafficking.

Moreover, child kidnapping is designated as a felony under Article 293-bis-1, punishable by ten to twenty years of imprisonment, with penalties escalating under certain aggravating circumstances as delineated in Article 293-bis³⁴, potentially extending to capital punishment. These legal stipulations ensure that mitigating circumstances are not applicable to perpetrators of such severe crimes, as per Article 294 of the Penal Code.³⁵

Moreover, Algeria has implemented specific legislative, social, and educational initiatives to shield children from all forms of maltreatment, including exploitation through prostitution and pornography.

The rising prevalence of these heinous activities has compelled the Algerian legislature to introduce stringent statutes, such as Article 333-bis-1, which mandates a prison sentence of five to ten years for anyone involved in photographing a minor under eighteen in sexual acts or in capturing images of a minor's sexual organs for sexual purposes. This legislation covers the creation, distribution, publication, import, export, exhibition, or sale of pornographic materials involving minors.³⁶



Despite the robust efforts of the Algerian government to combat these crimes through punitive measures and the ratification of international protocols, the intended deterrent effect of these actions remains to be fully realized³⁷.

Recruitment of children into military services carries significant risks to their mental and physical health. In Algeria, enlisting individuals under the age of fifteen into military institutions or armed forces is especially dangerous.

In reaction to the traumatic "Black Decade" of the 1990s, which witnessed children being victimized by terrorism through acts like murder, assault, or recruitment by terrorist groups, the Algerian government.

During the bleak period, Algeria faced severe terror and violence, with over 200,000 lives lost, including more than 7,000 individuals reported missing³⁸. Among the casualties were 189 infants and 422 children who tragically fell victim to extremist armed groups.³⁹ In a further legislative measure to protect its youth, Article 3 of Law No. 14-06 on national service mandates that national service is obligatory for all citizens upon reaching the age of nineteen⁴⁰, reflecting the Algerian legislators' commitment to shielding younger individuals from mandatory military recruitment.⁴¹

Algeria has shown a profound dedication to advancing child protection, both in normal and extreme situations, through the efforts of its institutions and civil society aimed at upholding the rights of Algerian children and eliminating crimes against them, including trafficking, sexual exploitation, and involvement in prostitution and pornography⁴². These actions demonstrate Algeria's proactive approach to protecting children's rights comprehensively and effectively.

Second Subsection: Role of National Advisory Commission for Promotion and Protection of Human Rights in Child Protection

First Sub-subsection: Role of the National Consultative Commission for Promotion and Protection of Human Rights in Protecting Children's Rights

The Convention on the Rights of the Child requires that member states provide periodic reports outlining their efforts to uphold the rights established by the Convention and the progress made in protecting these rights. In Algeria, the pivotal support in compiling these reports on child welfare conditions comes from the National Consultative Commission for the Promotion and Protection of Human Rights.

This task involves cooperation with various relevant ministries, notably the Ministry of Foreign Affairs, which completes these reports through a drafting committee comprising officials and representatives from several essential ministries.

Under the Convention, member states must file their reports within two years of the Convention becoming effective for them. In alignment with this, Algeria submitted its initial report in 1995, two years after the ratification of the Convention through Legislative Decree No. 92-461 dated December 19, 1992, demonstrating the state's dedication to addressing childhood problems.

National Consultative Commission for the Promotion and Protection of Human Rights was not established in isolation but was preceded by the Ministry for Human Rights established on June 18, 1991, followed by the Mediation Body at the Presidency instituted by a Presidential Decree on March 23, 1996, and then the National Observatory for Human Rights established on February 22, 1992.

Second Sub-subsection: Role of Non-Governmental Organizations and Civil Society in Monitoring Implementation of Child Protection Rights

This mandate specifically tasks these bodies with providing the Committee on the Rights of the Child with essential insights into areas that may be insufficiently addressed, overlooked, or possibly misrepresented in the official government submissions. These bodies often participate in preparatory gatherings for the state reports.

Non-governmental organizations (NGOs) are instrumental in advancing and safeguarding children's rights. Their work spans various initiatives, including launching awareness programs, performing research in the field, and boosting community knowledge. They play a crucial role in informing the community about the fundamental aspects of the Convention on the Rights of the



Child and its optional protocols through diverse methods such as hosting conferences, distributing information, and leading community-based campaigns aimed at promoting compliance with the Convention and its protocols.

They also engage political leaders to prioritize children's rights, thus enhancing the effectiveness of NGOs in fostering a world that is just and safe for children by monitoring governmental actions and initiatives, collecting data on legislative and policy gaps, and initiating campaigns to amend laws and policy frameworks.

NGOs are deemed one of the most dynamic components of civil society because they not only foster an understanding of a crucial aspect of civil society but also provide an organizational framework for educating and integrating citizens to actively participate in civil society endeavors.

The foundational activities of NGOs in Algeria are rooted in the nation's constitution and the national laws that codify these constitutional rights, ensuring these rights are in harmony with the responsibilities of its citizens. From this basis, institutions draw upon international charters as a benchmark to evaluate each country's respect for its citizens' rights and how the authorities apply international standards to children's rights in the constitution, local laws, and actual practices.⁴³

To bolster the representation of associations, Algeria has embraced a constitutional principle that advocates for the right to form associations and fosters the development of associative movements⁴⁴. Thus, every citizen has the right to establish an association within the legal framework governing such establishments, as detailed in Law No. 90-31 issued on December 4, 1990.⁴⁵

In collaboration with the government, NGOs and civil society organizations are tasked with meticulously monitoring governmental actions that affect children. Their duties include:

- Conducting comparative analyses of local laws to evaluate their consistency with the international norms and principles outlined in the Convention.
- Overseeing the application of existing laws.
- Collaborating with academic entities to promote research that focuses on child-related issues.
- Sharing insights and strategies internationally with other NGOs.
- Assisting the National Consultative Commission for the Promotion and Protection of Human Rights with the preparation of periodic reports for the UN Committee on the Rights of the Child.
- Monitoring compliance with legal and human rights standards concerning children, as established by both the constitution and international agreements.
- Engaging with government bodies to address overlooked violations of children's rights.⁴⁶
- Intervening with state agencies to investigate unaddressed violations of children's rights.⁴⁷
- Utilizing media channels to highlight issues and drive both local and global public opinion to emphasize violations and advocate for the advancement of children's rights.

CONCLUSION

Integrating children's rights within the framework of constitutional law provides significant guarantees for the protection of these young individuals. The legal robustness of such protections is notable; rights that are enshrined within the constitution are elevated to the level of constitutional rights and, thus, are not subject to contravention or negation.

Despite these strong legal underpinnings, the Algerian constitutional legislator has displayed certain shortcomings in the realm of child protection. This can largely be attributed to the limited number of constitutional texts specifically dedicated to children's rights.

Additionally, the 1989 International Convention on the Rights of the Child has greatly enhanced the rights of Algerian children, enriching the existing legal framework with additional mechanisms that improve the enforcement of child protection rights. To further reinforce legal protections for children's rights, several strategies can be recommended:

- Employ clear and forceful language in the creation of constitutional provisions to underscore the importance of safeguarding children's rights.



- Incorporate comprehensive rights and protective measures for children directly into the constitution, treating it as the supreme law of the nation, mirroring the model used in the 2014 Egyptian constitution.
- Create specialized institutions as mandated by the constitution, which should possess administrative and financial independence as well as decision-making authority, specifically tailored to address the needs of children.
- Prevent any constitutional backtracking on child protection during subsequent amendments to the constitutional framework.
- Include specific constitutional provisions aimed at protecting vulnerable children, such as those with special needs or those who are physically, mentally, or sensory impaired.

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41. Official Gazette No. 53, dated December 5, 1990, p. 1686.