

Child-Friendly Justice – French Perspective

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ABSTRACT

Children's participation rights in France are not explicitly in the Constitution but are secured through international conventions (CRC, European texts), national laws, and the juvenile justice system. The key concept is *discernement*, combined with age thresholds, which determine when minors can be heard, take part in proceedings, or be held responsible.

Civil, administrative, and criminal procedures provide representation (parents, guardians, ad hoc administrators) and specific guarantees: specialised courts, compulsory legal counsel, audiovisual-recorded hearings, and priority for educational over punitive measures. France also develops child-friendly justice with simplified guides, adapted spaces (Mélanie rooms, UAPED), and specialised training.

The *Conseil Constitutionnel* and the *Défenseur des droits* ensure that the best interests of the child and proportional treatment remain central.

KEYWORDS

Children's rights, Juvenile justice, *Discernement*, Age thresholds, Child-friendly justice, Constitutional guarantees

1. The Participation Rights of Children on the Level of the Constitution

The French Constitution does not explicitly address the participation of children in administrative or judicial proceedings. However, the constitutional principles that underpin the French legal system, such as the presumption of innocence and the adversarial principle, apply universally to all individuals, whatever their age. Children are, therefore, entitled to the same fundamental legal protections as adults.

In its decision of 29 August 2002,¹ the French Constitutional Council recognised the fundamental principle of the specific nature of juvenile criminal justice. This recognition underlines the need to take into account the age of minors when assessing

1 Conseil Constitutionnel (2002) 'Décision No. 2002-461 DC du 29 août 2002' [Online]. Available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000227586> (Accessed: 13 January 2024).

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their penal responsibility. The decision underlines the importance of seeking the educational and moral recovery of delinquent children through measures appropriate to their age and personality. These measures are generally ordered by specialised courts or according to appropriate procedures.

It is important to note that while the emphasis is on rehabilitation and educational measures, this does not exclude the possibility of imposing penal sanctions on juveniles where necessary. This reflects a balanced approach that considers both the need for accountability and the recognition of developmental differences between adults and juveniles in the legal system.

2. Legal Instruments Guaranteeing the Right of Children to Participate in Judicial Proceedings

Several instruments guarantee children's right to participate in judicial proceedings.

France has signed and ratified the International Convention on the Rights of the Child (hereinafter CRC) of 20 November 1989. Several articles of this international text are directly applicable to French law. In its decision of 22 September 1997, the Conseil d'Etat recognised the direct applicability of Article 3, which states that 'the best interests of the child shall be a primary consideration'.² The Constitutional Council confirmed this interpretation for the first time in a decision of 21 March 2019.³ In 1995, the Conseil d'Etat also affirmed the direct applicability of Article 16 of the CRC, which states that 'no child shall be subjected to arbitrary or unlawful interference with his/her privacy, family, home, or correspondence'.⁴

As a member of the Council of Europe, France is also party to a number of conventions directly or indirectly affecting children's participation in judicial proceedings. For instance, France has ratified the European Convention on the Exercise of Children's Rights (ETS No. 160), which came into force on 1 July 2000. France is also bound by the various European Union texts on the subject.⁵

Numerous French laws also deal with children's participation in legal proceedings. Most of these are codified in the *Code civil* (Civil Code), the *Code de procédure civile* (Code of Civil Procedure), the *Code de procédure pénale* (Code of Criminal Procedure), and the *Code de la justice pénale des mineurs* (Code of Juvenile Criminal Justice).

2 Conseil d'État (1997) 22 septembre 1997. [Online]. Available at: <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000007930359> (Accessed: 13 January 2024).

3 Conseil Constitutionnel (2019) 'Décision No. 2018-762 QPC du 8 février 2019' [Online]. Available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000038109243> (Accessed: 13 January 2024).

4 Conseil d'État (1995) 10 mars 1995. [Online]. Available at: <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000007864916> (Accessed: 5 January 2024).

5 For instance: Art. 24 of the Charter of Fundamental Rights of the European Union; Directive (UE) 2016/800 du Parlement européen et du Conseil du 11 mai 2016 relative à la mise en place de garanties procédurales en faveur des enfants qui sont des suspects ou des personnes poursuivies dans le cadre des procédures pénales [Online]. Available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000035603585> (Accessed: 13 January 2024).

France has its own specific juvenile criminal law, with its own rules of responsibility, its own procedure, and its own courts. The *Code de la justice pénale des mineurs*, which has been in force since 30 September 2021 (successor to Ordinance no. 45-174 of 2 February 1945 on juvenile delinquency), regulates the situation of juvenile delinquents.

3. The availability of Child-Friendly Information and Translation of Legal Instruments Available for Children on the Possibility to Participate in General

Various elements can be used to make legal instruments easier for children to understand:

Writing documents in accessible language: For example, the guide “Et si on s’ parlait de la justice?” is an initiative of the Ministry of Justice in partnership with the association *Les petits citoyens*. It aims at explaining to children aged 7 to 11 how justice works in France, using simple words and humorous drawings. There is also a guide to juvenile justice on the French Ministry of Justice website, which explains the various rights of minors, the procedures, etc., in a simple and attractive way.⁶

Proliferation of educational resources: Educational resources provided by websites such as *educadroit.fr* play a vital role in helping children understand the legal process. These resources are valuable tools for children and educators, facilitating a better understanding of legal concepts. The inclusion of justice education in school curricula also ensures that children receive structured, age-appropriate knowledge about their rights and the legal system.

Youth protection associations: The existence of numerous youth protection associations in France helps to provide support for child victims and their families. These associations not only offer assistance but also inform and assist children and their families in their dealings with the courts. The direct support provided by these associations helps ensure that children and their families are well informed about judicial proceedings, which in turn makes the legal system more effective.

4. Children’s Access to Civil Court Proceedings, Administrative Court Proceedings, and Criminal Proceedings Guaranteed under 18 Years of Age?

Due to their inability to exercise legal rights, minors are generally unable to initiate legal proceedings themselves. That is why, in principle, minors under the age of 18 can access the various judicial procedures via their legal representatives (parents, tutor) or an *ad hoc* administrator (if their interests are in conflict with those of their

6 Ministère de la Justice, 2021.

parents or tutor). In certain cases, however, age limits or consideration of the minor's discernment may allow direct access to justice.

5. The concept of the children's "Capability of Forming His/Her Opinion" (used in the UN Convention and the Brussels II Regulation) or "Sufficient Level of Understanding" (used by the Council of Europe) in Domestic Legal Instruments

In French law, the concept of *discernement* (discernment) is used to determine 'the possibility of taking into account the will of the minor, whether in making choices, giving his/her opinion on matters that concern him/her, or assuming responsibilities'.⁷ It is a subjective notion that depends on the personality and development of each child. It is not defined by law but is determined by the judge on the basis of the minor's age, physical ability, intelligence, etc. The *discernement* will confer a number of rights on the child, including the ability to be heard.

6. The Age Threshold Representing the Limit to "Sufficient Level of Understanding", the child's "Capability to Form His/Her Opinion"

In certain areas, particularly criminal law, France has, for a long time, relied solely on the concept of a minor's discernment to determine responsibility. It is only since the *Code de la justice pénale des mineurs* of 1st October 2021 that French law has set a real age threshold in this area.

In civil law, too, sometimes only the minor's discernment can be taken into account. This is the case, for example, with Article 388-1 of the *Code civil* concerning the hearing of minors in civil proceedings. Once they have sufficient discernment, minors may ask to be heard by a judge in any civil case concerning them.

In the majority of cases, French law has several age thresholds which can be combined with the fact that the minor has the necessary discernment. Authors generally distinguish 3 main levels.⁸

13 years: this age threshold signifies the juncture at which minors are deemed to possess sufficient discernment, rendering them criminally accountable, as articulated in Article L. 11-1, paragraph 2, of the *Code de la justice pénale des mineurs*. It is essential to note that this is a rebuttable presumption, and if a minor can demonstrate a lack of discernment, they may be deemed not

⁷ Dekewer-Defossez, 2012, p. 163.

⁸ This distinction is made by the following authors: Bonfils and Gouttenoire, 2021.

criminally responsible. Furthermore, from the age of 13, minors become susceptible to penal sanctions, including imprisonment and fines.

In civil law, this age demarcation serves as the point at which juvenile offenders may face legal proceedings. Moreover, this minimum age requirement extends its application to civil law contexts, such as changes in surname or forename or granting consent for adoption.

15 years: this marks the age at which a minor is deemed to possess adequate discernment to provide legal consent for a sexual relationship with an adult. According to the *Code pénal*, engaging in sexual relations with a minor under the age of 15 is classified as a criminal offence for adults. Furthermore, the age of 15 is commonly utilised as an aggravating circumstance in criminal cases involving such situations.

16 years: under criminal law, from the age of 16, minors may incur the same penalty as adults if the judge does not apply the *excuse de minorité*. Before the age of 18, minors benefit from a reduction of the penalty incurred due to their age. In principle, they only incur a sentence equal to half that incurred by an adult for the offence in question. From the age of 16, magistrates may, by exceptional and reasoned decision, remove this *excuse de minorité*.

In civil law, this age allows minors to become emancipated. It also corresponds to the end of compulsory schooling and, therefore, the possibility for minors to work. Article 1234 of the *Code de procédure civile* considers that a minor over the age of 16 may automatically request that the family council be called to meet, whereas, below this age, this request is subject to the minor's discernment. This case is an example of the combination of the two systems presented.⁹

7. The Form of the Access to Civil Court Proceedings, Administrative Court Proceedings and Criminal Proceedings

7.1. Civil Court Proceedings

7.1.1. Right to Be Heard

Under the terms of Article 388-1 of the *Code civil*, 'In any proceedings concerning him, a minor who is able to discern may, without prejudice to the provisions providing for his/her intervention or consent, be heard by the judge'. The minor is entitled to be heard if he/she so requests. The hearing may take place individually, in the presence of a lawyer, or alongside a person chosen by the minor unless the judge determines that the chosen person is not in the minor's best interests. It is important to note that

⁹ Ibid.

the minor's participation in the hearing does not confer upon them the status of a party to the proceedings. The judge must ensure that the minor is informed of this possibility.

7.1.2. *Legal Action by a Minor*

The principle of representation of minors: as minors are unable to exercise their rights, they cannot, in principle, initiate legal proceedings. They will, therefore, be represented by their parents or, failing that, by a tutor, in accordance with the law.

In general, children are represented in legal proceedings by their legal representatives. Legal representatives are persons exercising parental authority. Article 382-1 of the *Code civil* states that 'when legal administration is exercised by both parents, each of them is presumed, *vis-à-vis* to third parties, to have received from the other the power to act alone in administering the minor's property'. Consequently,

'Legal proceedings relating to an extrapatrimonial right or actions for nullity, rescission, or reduction of acts performed by the protected person, as well as any procedural act that entails loss of the right of action, which are acts of disposal that therefore require the consent of both parents as legal administrators.'¹⁰

If a parent exercises parental authority alone, he/she may take the steps that parents exercising parental authority jointly must take together. However, certain decisions cannot be taken by the parents alone and require the authorisation of a judge. This is the case for acts that involve 'renouncing a right in the minor's name, whether it concerns his/her property or extrapatrimonial rights'.¹¹

Article 388-2 of the *Code civil*:

'Where, in proceedings, the interests of a minor appear to be in conflict with those of his/her legal representatives, the *juge des tutelles* under the conditions set out in Article 383 or, failing that, the judge hearing the proceedings shall appoint an *ad hoc* administrator to represent him/her.'

Indeed, in some cases, the parents will not be in the best position to defend the child's interests. That is why an *ad hoc* administrator can be appointed to represent the minor. The minor himself may request the appointment of an *ad hoc* administrator. This *ad hoc* administrator may be a relative of the minor; however, the judge can appoint a natural or legal person from a list drawn up within the jurisdiction of each Court of Appeal. Their role is to represent the minor. In the context of educational assistance proceedings, where the intervention of the children's judge is linked to a

¹⁰ Gouttenoire, 2023.

¹¹ Ibid.

family danger to the minor, the appointment of an *ad hoc* administrator to represent the non-discerning minor, for instance, is necessary.

7.1.3. Acting in Absentia

In some cases, however, the minor may act personally, without being represented. For example, in the case of educational assistance, i.e. if the health, safety, or morals of a minor are in danger or if the conditions for his/her education or physical, emotional, intellectual, and social development are seriously compromised,¹² a minor, who is in such danger, may refer the matter directly to the *juge des enfants*. Even if the minor lacks the necessary discernment, he/she may still be a party to the educational assistance proceedings, represented by an *ad hoc* administrator.¹³

A minor may bring a case to the European Court of Human Rights (hereinafter ECHR) in person if one of his/her rights under the European Convention on Human Rights has been violated, without needing to be represented.¹⁴ A child who brings a case before the ECHR enjoys the same rights as adults, particularly as regards the right to legal assistance from a lawyer and respect for the adversarial principle, as well as the opportunity to submit observations during the proceedings.

Finally, in certain cases, the minor's representatives cannot make a decision on his/her behalf because of the personal commitment involved.¹⁵ These may include when the minor signs an employment contract, becomes a parent, etc. In such cases, the law recognises that the minor has the capacity to commit himself/herself because the consent of the person concerned is considered essential.¹⁶ However, it is only possible if the minor concerned has sufficient *discernement*.

7.2. Administrative Court Proceedings

The administrative courts are less often in contact with minors than the civil and criminal courts. They apply the basic rules of the Civil Code.¹⁷ Minors may, therefore, take legal action in their own right but must always be represented by their parents, a guardian, or an *ad hoc* administrator.¹⁸

In the case of unaccompanied minors, they will generally be represented by an *ad hoc* administrator. However, in certain cases, they may act alone, for example, to file a *référé-liberté* requesting emergency accommodation or care by the child welfare authority.¹⁹

12 Art. 375 of the Code Civil.

13 Gouttenoire, 2023.

14 European Court of Human Rights, 2025.

15 Gouttenoire, 2023.

16 Ibid.

17 Ciaudo, 2023, p. 209.

18 Conseil d'État (1997) 9 juillet 1997, *Mlle Kang* [Online]. Available at: <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000007970718> (Accessed: 13 January 2024).

19 Conseil d'État (2011) 30 décembre 2011, *Boiguile* [Online]. Available at: <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000025115886> (Accessed: 13 January 2024); Ciaudo, 2023.

8. Criminal Proceedings (Right to Be Heard, Representation)

8.1. Hearing a Minor

A minor may be heard as a witness (and must, therefore, swear to tell the truth) from the age of 16.²⁰ Below this age, he/she can be heard but will not be subject to the obligations of a witness (swearing, obligation to say what they have seen and heard, for example).

8.2. The Representation of the Minor Victim

Whatever the offence when the minor is a victim, some specific rules may apply.

‘The *procureur de la République*²¹ or the *juge d’instruction*,²² when seized of acts committed voluntarily against a minor, shall appoint an *ad hoc* administrator when the minor’s interests are not fully protected by his/her legal representatives or by one of them. The *ad hoc* administrator ensures that the minor’s interests are protected and, where appropriate, exercises the rights of a civil party on the minor’s behalf. In the event of a civil claim, the judge will appoint a lawyer for the minor if one has not already been chosen.’²³

Apart from this special case, minors may be accompanied, at all stages of the proceedings, by their legal representative and, where appropriate, by any adult of their choice.²⁴

They may also be accompanied by an approved victim support association.²⁵ It should be noted that there is a large number of youth protection associations in France that provide support to child victims and their families and inform and assist them in their dealings with the courts.

8.3. The Special Case of Juvenile Offenders

It should be noted that when a minor is suspected of having committed an offence, a specific procedure is initiated, with different rules from those that apply to adults. In addition to penal sanctions, magistrates also have educational measures at their disposal, which they will often prefer for less serious offences.

Moreover, the *Code de la justice pénale des mineurs* has established the system of *césure pénale* for minors. In the first instance, a hearing is held, in principle, within three months of the incident, to rule on the minor’s guilt. Then, six to nine months later, there is a hearing to decide the penalty. In the meantime, the minor is subject to

20 Art. 108 of the Code de procédure pénale.

21 Public prosecutor.

22 The *juge d’instruction* is a magistrate who investigates the most serious offences on both sides.

23 Art. 706-50 of the Code of Criminal Procedure.

24 Art. 706-53 of the Code de procédure pénale.

25 Ibid.

a period of “educational probation”. It is a period of observation that may include educational and security measures. The idea is to give new meaning to the educational measure pronounced for the young person and provide a rapid response to the facts.

Judicial staff and the relevant courts are also specialised. Criminal proceedings are conducted by specialised public prosecutors.²⁶ As far as the trial courts are concerned, only specialised judges and courts are able to judge minors:

The *juges des enfants* are magistrates chosen for his/her interest in children's issues. They are responsible for protecting children at risk but also have jurisdiction over juvenile delinquency. Since the introduction of the *Code de la justice pénale des mineurs*, the *juge des enfants* have jurisdiction to judge minors who are able of discernment and who are being prosecuted for 5th class contravention,²⁷ as well as related offences of the first four classes. They may take educational measures against these minors and, if the minor was aged 13 or over at the time of the offence, impose certain minor penalties (confiscation, community service, etc.).²⁸

The *juge des enfants* also performs the functions assigned to the judge responsible for the enforcement of sentences for minors. He/she also presides the *tribunal pour enfants*, which has jurisdiction over minors aged 13 and over, for *crimes* (aged between 13 and 16 at the time of the offence) and *délits* and 5th class *contraventions* (aged between 13 and 18 at the time of the offence).

Lastly, for crimes committed by minors aged between 16 and 18 at the time of the offence, there is a *Cour d'assises des mineurs*. The magistrates are assisted in their work by the *Protection judiciaire de la jeunesse* (PJJ), whose role is to carry out the measures they order.

Minors are generally inexperienced when it comes to the legal process.²⁹ This is why, unlike for adults, the assistance of a lawyer is compulsory before all courts.³⁰ The assistance of a lawyer is also compulsory during police custody. Minors are not automatically entitled to legal aid. The income of the minor's parents must, therefore, be taken into account. However, minors whose parents have lost interest may be assisted under legal aid in criminal proceedings (regardless of their parents' income).³¹

26 This is known as “parquet des mineurs”.

27 There are 5 categories of contraventions in France. The amount of the fine is as follows (131-3 Code pénal):

- up to 38 euros for 1st class offences;
- up to 150 euros for 2nd-class offences;
- 450 euros maximum for 3rd class offences;
- 750 euros maximum for 4th class offences;
- a maximum of 1,500 euros for 5th class offences.

28 Bonfils and Gouttenoire, 2021.

29 Ibid.

30 Art. L 12-4 of the Code de la justice pénale des mineurs.

31 Bonfils and Gouttenoire, 2021.

9. Special Regulations for Hearing a Minor Child in the National Procedural Law

9.1. Civil Court Proceedings

Under Articles 388-1 et seq. of the *Code civil*, a minor may ask to be heard by the judge in all proceedings concerning him. If the minor has sufficient discernment, the judge is compelled to hear the minor if asked. If the minor has not been heard in such proceedings, the judge must check if he/she has been informed of the possibility of access to justice.

The initiative for a hearing may also come from the child's parents. In this case, Article 338-4, paragraph 2, of the *Code de Procédure civile* gives the judge the possibility to refuse the hearing if he/she 'does not consider it necessary for the resolution of the dispute or if it appears to be contrary to the interests of the minor'. The judge may also invite the minor to appear on his/her own initiative. In this case, the minor is not obliged to respond.

According to Article 388-1 of the *Code civil*, the child is heard by the judge or 'when his/her interests so require, by a person delegated by him/her'. The principle is that the judge himself should hear the child. If the court before which the child is to be heard is a collegiate court, Article 338-8 of the *Code de procédure civile* provides that the court may either hear the minor itself or appoint one of its members to conduct the hearing and report back to the court.

The judge may also designate another person to hear the minor in his/her place. The judge must give reasons for his/her decision in terms of the child's best interests, in particular, because of the psychological pressure the child is under or the need to involve a professional listener.³² For instance, it may be appropriate to have recourse to certain judges who are particularly trained in hearing children. The person appointed by the judge to hear the child must have no links either with the minor or with a litigant and must work or have worked in the social, psychological, or medical-psychological field.³³ The hearing of the minor must take place as quickly as possible so as not to delay the proceedings.

9.2. Criminal Proceedings

9.2.1. For Minors Who Are Victims

Specific procedural arrangements for prosecutions under Article 706-47 of the *Code de procédure pénale* (for instance, murders or assassinations committed on minors, rape, prostitution of a minor, child pornography, etc.). Minors who are victims of these offences may undergo a medical-psychological examination to determine the

³² Gouttenoire, 2023.

³³ Ibid.

nature and extent of the damage and whether special treatment or care is required (art 706-48 *Code de procédure pénale*).

During the investigation or enquiry and by decision of the *Procureur de la République* or of the *juge d'instruction*, the hearings or confrontations of the minor may be carried out in the presence of a psychologist or a doctor specialising in children, a member of the minor's family, the *ad hoc* administrator, or any other person mandated by the children's judge during the investigation or enquiry.³⁴

The hearing of the minor must always be audiovisually recorded. An audio recording is possible only if this is in the interest of the minor.³⁵ This recording aims to prevent the minor from repeating testimony at various stages of the proceedings.

9.2.2. *Minors Suspected of Having Committed an Offence*

Minors suspected of having committed an offence may be questioned under different procedures.

*Audition libre*³⁶: A minor suspected in a penal investigation may be heard freely. In this case, he/she has the right to leave the place where he/she is questioned at any time. The investigators must immediately notify his/her legal representative. They must inform the minor and his/her representative of their rights: the facts of which he/she is accused, his/her right to remain silent, to leave the room if he/she so wishes, the appointment of a suitable adult to replace the person responsible for the minor to assist him/her throughout the proceedings, the right to be assisted by a lawyer chosen by the minor or appointed by the President of the Bar if the offence for which he/she is being questioned is a *délit* or a *crime* punishable by imprisonment, etc. Minors must be assisted by a lawyer if they are suspected of having committed a *crime* or a *délit*. They may choose their own lawyer, or their legal representatives may do so.

*Retenue ou Garde à vue*³⁷: This measure allows a minor suspected of involvement in an offence to be held under constraint at the disposal of investigators.

Under the age of 10, neither police custody is permitted. If a child is apprehended by the investigators, he/she must be returned to his legal guardians as soon as possible.

Between the ages of 10 and 13, the minor may be required to remain on police premises under certain conditions. This is known as *retenue*. This procedure is possible if there are one or more plausible grounds for suspecting that the minor has committed or attempted to commit a *crime* or a *délit* punishable by at least 5 years in prison and if this detention fulfils one of the objectives set by criminal law.³⁸ The *retenue* must be authorised by the *Procureur de la République* or *juge d'instruction* and may not last longer than 12 years (with the possibility of an extension of 12 hours).³⁹

34 Bonfils and Gouttenoire, 2021.

35 Art. 706-52 *Code de procédure pénale*.

36 Art. L 412-1 s. *Code de la justice pénale des mineurs*.

37 Ibid., Art. L 413-1 s.

38 Ibid., Art. L 413-1.

39 Ibid., Art L 413-2.

Minors over 13 may be held in *garde à vue* (custody) if they are suspected of having committed or attempted to commit a *crime* or a *délit* punishable by prison and if the objectives set by law for *garde à vue* have been met.⁴⁰ Police custody lasts 24 hours, with a maximum extension of 24 hours (with some possible new extensions if the minor is over 16).

As soon as the *garde à vue* begins, the police inform the person's parents or guardians by any means. However, the Procureur de la République or the juge d'instruction may decide to postpone this information for a maximum of 12 hours in order to gather evidence or prevent a serious attack on the minor's physical integrity or freedom.⁴¹

The minor must be assisted by a lawyer during the detention. In a very recent ruling, the French Supreme Court annulled the hearing of a minor in police custody. The hearing had taken place without the minor's lawyer but with the consent of the minor's father. The Cour de Cassation recalled that 'the plaintiff, a minor, even with the agreement of his legal representative, could not be heard without the assistance of a lawyer'.⁴²

From the start of the *retenue* or the *garde à vue*, a doctor must be appointed to examine a minor under the age of 16, at the request of the minor, his/her family, or his/her lawyer.⁴³ Finally, the questioning of a minor placed in *retenue* or *garde à vue* is subject to an audiovisual recording.⁴⁴

10. Legal Counsel and Representation (Child Attorney) for Children?

10.1. Civil Court Proceedings

As we have seen, Article 388-1 of the *Code de procédure civile* provides that 'in any proceedings concerning him/her, a minor who is capable of forming his/her own views may (...) be heard by the judge or, where his/her interests so require, by the person appointed by the judge for that purpose'. The same article states that the minor may be 'heard alone, with a lawyer or a person of his/her choice. If this choice does not appear to be in the minor's *best interests*, the judge may appoint another person'.

In the context of educational assistance proceedings, Article 1186 of the *Code de procédure civile* also provides that the minor may be assisted by a lawyer.

There has been a degree of professionalisation among lawyers working with minors. On 25 January 2008, the Conférence des Bâtonniers adopted a Charte nationale de l'avocat de l'enfant (National Charter for Children's Lawyers),⁴⁵ which sets out best practices and the specificities of assistance to minors. In particular, it stipulates

40 Ibid., Art. L 413-6.

41 Ibid., Art. L 413-7.

42 Cour de Cassation (2023) 'Chambre criminelle, 15 mars 2023' [Online]. Available at: <https://www.courdecassation.fr/decision/6411793a25b075fb02f1b078> (Accessed: 15 January 2024).

43 Arts. L 413-4 et L 413-8 of the Code de la justice pénale des mineurs.

44 Ibid., Art. L 413-12.

45 Journal du droit des jeunes, 2008, p. 42; Conseil national des barreaux, 2017.

that the child must be assisted as far as possible by a lawyer who specialises in dealing with minors.

10.2. Criminal Proceedings

The *Code de la Justice pénale des mineurs* states that a lawyer must be present in the event of a *retenue* (for minors under 13 years of age) or when a minor is in *garde à vue* (between 13 and 18 years of age). If the minor or his legal representatives do not choose a lawyer, one will be appointed for him. Minors must also be accompanied by a lawyer before the trial courts.

According to Article L 12-4 of the same Code,

‘...a minor who is prosecuted or convicted shall be assisted by a lawyer.

The minor participates in the choice of his/her lawyer or makes this choice in accordance with the conditions set out in this Code.

Where a lawyer has been appointed *ex officio*, as far as possible, the minor shall be assisted by the same lawyer at each stage of the proceedings’.

11. The Enforcement of Child-Friendly Justice in Civil Court Proceedings, Administrative Court Proceedings, and Criminal Court Proceedings

11.1. In Criminal Procedure

The Outreau case in France in the early 2000s brought into sharp question the way in which children’s views were taken into account. The indictment of a large number of people in this case for rape and sexual assault of minors was based on the testimony of child victims. However, the appeal trial will bring down all these elements, which is being experienced as a “judicial Chernobyl”.⁴⁶ The result was a profound trauma in the judicial world and many changes in the way children’s views were taken into account.⁴⁷ This is one of the reasons why, as we have already seen, the minor’s hearings are recorded on audio-visual equipment so that he/she does not have to repeat the information several times. The conditions of these hearings have also been adapted.

As far as possible, investigations about offences committed against minors are entrusted to specialised investigation departments or investigators. For instance, as far as the national police force is concerned, there are *brigades de protection des familles* (*brigade de protection des mineurs* in Paris) that are specialised in dealing with cases involving minors. They receive specialised training, particularly in the hearing of minor victims.

⁴⁶ Albouy, 2004.

⁴⁷ Guery, 2023, p. 55; Sontag-Koenig, 2015, p. 619.

Specific procedures have been implemented for investigators to hear child victims. This is the case, for example, with the *Mélanie procedure*. Many police stations have a *Mélanie*⁴⁸ room dedicated to interviewing minors. This room is like a child's bedroom or a playroom with lots of toys, which not only makes the child feel safer but also gives him/her the opportunity to show what happened to him/her by using dolls as examples.

In some places, *Unités d'Accueil Pédiatrique "Enfants en Danger"* (UAPED) have been set up. These units are located in hospitals. Their purpose is to offer a hearing by the police and to provide comprehensive care (legal, medical, and forensic) for the child victim in a single adapted location with trained staff.⁴⁹

Recurrent training courses on taking children's statements have also been set up for investigators. As far as magistrates are concerned, Article R.213-13 of the *Code de l'organisation judiciaire* states, 'within each judicial court in whose jurisdiction a juvenile court has its seat, one or more examining magistrates appointed by the first president are specifically responsible for cases involving minors'. During their initial training at the *Ecole de la Magistrature*, magistrates take specific modules in this area. Continuing education is also provided.

Various hearing protocols have been developed, based, in particular, on the NICHD (National Institute of Child Health and Human Development) protocol. What they all have in common is a hearing in successive phases. The NICHD protocol, which is used by police officers and social workers in particular, is based on the following principles: making contact, free recall of the facts, specific questioning and closing the specific questioning, and closing the interview.⁵⁰

12. The Approach of National Courts to Access to Justice for Minors

The *Conseil Constitutionnel* has made several important decisions about access to justice for minors:

In its decision of 29 August 2002, the *Conseil Constitutionnel* recognises the specific nature of juvenile criminal justice as a fundamental principle recognised by the laws of the Republic.⁵¹

The *Conseil Constitutionnel* decision of 8 February 2019 stresses the importance of specific procedural guarantees for minors heard as part of a criminal investigation.⁵²

48 This is the name of the first little girl to benefit from this programme.

49 For an example, see: Ministère de la Justice, 2023.

50 Ibid.

51 Conseil Constitutionnel (2002) 'Décision No. 2002-461 DC du 29 août 2002' [Online]. Available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000227586> (Accessed: 13 January 2024).

52 Conseil Constitutionnel (2019) 'Décision No. 2018-762 QPC du 8 février 2019' [Online]. Available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000038109243> (Accessed: 13 January 2024).

The decision of the same court of 26 March 2021 concerned the impartiality of the courts in matters of juvenile justice, declaring contrary to the Constitution the provisions allowing the *juge des enfants* who have investigated a case to preside over the juvenile court hearing the same case.⁵³

In its decision of 10 February 2023, the *Conseil Constitutionnel* reiterated the importance of appropriate educational measures for juvenile offenders. It also ruled that the pre-trial detention of minors must be specially justified and limited to the necessary severity, taking into account the personal situation of the minor and the seriousness of the offences of which he/she is accused.⁵⁴

The *Conseil Constitutionnel* in its decision of 19 June 2025 reaffirmed the constitutional requirement that juvenile justice measures must be primarily oriented toward the educational rehabilitation of minors, be adapted to their age and personality, and uphold the principle of diminished criminal liability by reason of age.⁵⁵

13. The Enforcement of the Child's Right to Express His/Her Views

It is crucial to underline the significant role played by the *Défenseur des droits* (Defender of Rights), particularly in safeguarding and promoting children's rights.⁵⁶ The *Défenseur des droits* is an independent constitutional authority with a dual mission focused on protecting minors and defending their rights. One of the main responsibilities of this institution is to ensure that the principle of the “best interests of the child” is properly applied.

The *Défenseur des droits* adopts a proactive approach to ensure that children are not discriminated against and that they play an active part in decisions and actions that have an impact on their lives. The institution receives direct referrals from minors, their parents, or any concerned person who notices that a child is facing difficulties or suffering. For example, a child facing difficulties such as bullying at school can turn directly to the Defender of Rights or help.

Unaccompanied minors, in particular, frequently seek the intervention of the *Défenseur des droits* when they encounter problems with administrative procedures. The institution is equipped to respond to the various problems encountered by minors and endeavours to find amicable solutions. If the *Défenseur des droits* identifies wrongdoing, it has the power to ask the competent authorities to initiate disciplinary

53 Conseil Constitutionnel (2021) ‘Décision No. 2021-893 QPC du 26 mars 2021’ [Online]. Available at: <https://www.conseil-constitutionnel.fr/decision/2021/2021893QPC.htm> (Accessed: 13 January 2024).

54 Conseil Constitutionnel (2023) ‘Décision No. 2022-1034 QPC du 10 février 2023’ [Online]. Available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000047121006> (Accessed: 30 September 2025).

55 Conseil Constitutionnel (2025) ‘Décision No. 2025-886 DC [Online]. Available at: <https://www.conseil-constitutionnel.fr/decision/2025/2025886DC.html> (Accessed: 30 September 2025).

56 Défenseur des droits, 2021; On this question you can see: Chopin, 2021.

proceedings against the parties responsible. In addition, the *Défenseur des droits* has the power to propose legal or regulatory reforms to improve the protection of minors.

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