

Social Fieldwork Research
Child Participation in Justice Report
France, 2012

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TABLE OF CONTENTS

Executive summary	2
1. Background	4
1.1 Research methodology	4
1.2. Sample	5
1.3 Legal context	7
2. Findings	9
2.1 Right to be heard	9
2.1.1 Right to be heard in the criminal justice field	9
2.1.2. Right to be heard in the civil justice field	18
2.1.3 Concluding assessment on the right to be heard	28
2.2 Right to information	30
2.2.1 Right to information in criminal justice	30
2.2.2 Right to information in civil justice	37
2.2.3 Concluding assessment on the right to information	41
2.3 Training and co-operation of professionals	42
2.3.1 Training and co-operation of professionals in criminal justice	42
2.3.2 Training and co-operation of professionals in civil justice	44
2.3.3 Concluding assessment on training and co-operation of professionals	46
2.4 Horizontal issues	48
2.4.1 Discrimination	48
2.4.2 Best interest of the child	49
2.4.3 Differences and similarities in regional, national, international context	51
2.5 CoE Guidelines	51
3. Conclusions	52
3.1 Overarching issues	52
3.2 Research	54
3.3 Any other issues	55
4. Annexes	56
4.1 Documentation	56
4.2 Resources	62
4.3 Tables	64
4.4 Bibliography	66

EXECUTIVE SUMMARY

Research

- 65 professionals interviewed between June and October 2012 in face-to-face and/or focus group formats Panel including legal professionals (judges, prosecutors, lawyers, ad hoc administrators, law enforcement officials) and social care professionals (specialized educators, social investigators, mediators, psychologists, staff of local social services and child and victim support NGOs, interpreters), covering practices in over 20 regional districts (*départements*).

Right to be heard in civil justice

- Growing participation of children since the 2007 reform, with variable configurations depending on the type of procedures: systematic and viewed as essential before the judge for children, with flexibility in hearing modalities; conditioned and still somewhat controversial before the judge for family affairs, as practices remain highly judge-dependent in many respects (evaluation of discernment, delegation or support of a social care professional for the hearing, timing and reporting etc.); seemingly uncommon, if not non-existent in other civil procedures concerning, for instance, filiation. Good practices reported include a co-hearing experience and the overall procedure before the judge for children, engaging families and social services.
- Areas/suggestions for improvement include: providing guidance (e.g. manual of good practices) to harmonise practices; systematizing, to some extent, the support of children by specialized lawyers, with an independent designation procedure; developing child-friendly environments and protocols; enhancing training of judges and promoting multidisciplinary approaches.

Right to be heard in criminal justice

- Children heard in conditions deemed generally adequate at the investigation and judicial information stages, with advanced though perfectible standards. Participation in the trial phase remaining case and child-dependent. Clear gaps in terms of attention to the participation and support of child witnesses. Good practices include training of law enforcement officials and setting-up and coordination of dedicated units in hospitals, for a holistic approach (*Unités d'Accueil Médico-Judiciaires*), and development of "protected rooms" for hearings before the investigating judges, though further development is called for these areas.
- Areas/suggestions for improvement include: explicit prohibition of confrontations at the investigation stage and a more consensual requirement for hearings to be conducted by trained law enforcement officials; possible extension of the audio-visual recording requirement to cases involving child witnesses/cases of mistreatment; encouragement for systematic viewing of the recording by judges and experts (also as an alternative to a confrontation or if trial participation not foreseeable); training obligation for (designated) investigating judges; clarification of the status and mandate of the ad hoc administrator; adoption of additional standards/guidance concerning modalities of children's participation in trial phases; measures to protect children's privacy, e.g. extending the right to closed sessions before the *Tribunal correctionnel* (court competent for offenses punishable up to 10 years); development of legal and psycho-social support for children and parents, notably in intra-familial cases.

Right to information

- Recognised as a condition to meaningful participation, yet not necessarily as a right calling for systematic provisions and practices, though social and legal professionals stress shared responsibilities. Consequently, practices largely dependent on the competence, attention and ethics of professionals, at all stages of procedures. Challenges relating to adequacy of information channels (e.g. parents in family affairs) or specific aspects (e.g. implications of *correctionnalisation*

(see p.16), content of judicial decisions. Good practices include lawyers' services available locally for free and confidential advice, as well as support services provided by recognized victim support NGOs, often complementary to involvement of lawyers (and ad hoc administrators).

- Areas/suggestions for improvement include: standard-setting, training (e.g. social workers on legal aspects), development and dissemination of child-friendly information materials, educational outreach at the school level on children's rights and the justice system; more timely and systematic designation of independent lawyers and ad hoc administrators when required for support in procedures.

Training and co-operation

- Heterogeneity in training of professionals, with expanding availability but also gaps persisting, concerning for instance ad hoc administration (self-training, gaps in accreditation methods). Demands of professionals in terms of access to inter-vision, inter-professional exchanges and tailored training and updates on judicial procedures for social workers and judicial experts. Good practices include continuous training for judges (National School for the Judiciary - ENM) and within groupings of specialized lawyers, local training plans engaging all actors concerned by the (judicial) protection of children, also as a springboard for cooperation.
- Inter-professional co-operation initiated locally, sometimes limited by institutional or individualist practices, nourished by common objectives, and formal as well as informal contacts (in particular in smaller jurisdictions). Good practices include numerous professional groupings or federations, valued as platforms for advice and exchanges.

Horizontal issues

- Discrimination: reported guarantees and flexibility in the design of procedures (including with the legal aid scheme) and efforts of professionals to secure equal treatment for all children concerned. Beyond this, gaps affecting the right to be heard, but also solutions available for judges in the field of protection/educational assistance (e.g. notably for children with mental or intellectual disabilities) and possible cultural bias in procedures. Sense of ad hoc solutions prevailing. Many professionals reporting limited experience for any overall assessment; some calling for further assessment and reflection on the issue.
- Best interest of the child: core consideration to the procedure before the judge for children, factored in in family affairs, largely equated with the rights of victims/civil party in the field of criminal justice, where it may still come second to the procedural/public action interest. Overall, fairly reactive procedures likely to serve the protection of children, support a resilience/personal development process. But impact conditioned/limited by the timing of procedures, competence of many professionals involved, and legal and psycho-social support provided at all stages, including in the post-trial phase.
- Differences in regional, national, international contexts: clear variations across jurisdictions, in professional resources and hearing practices (implicit conventions), limited references to other European or international experiences, beyond an interest in further professional exchanges.

CoE Guidelines

- Instrument unfamiliar to a large majority of professionals, both legal and social.
- Aspects in guidelines that may be overlooked in current practices reported include, for instance: protection against discrimination (D.1), information and advice (2, 4 in particular), protection of private and family life (9) safety (special prevention measures) (12), training of professionals (14, 15), right to be heard and to express views (49), avoiding unnecessary delays (50 and 51), evidence/statement by children (68), child-friendly justice after proceedings (79, 80)

Overarching issues

- Excessive length of criminal procedures, sometimes still with a multiplication of hearings and interlocutors for children and families: issues of insufficient diligence and coordination among judges in the civil field when concurrent procedures are activated (educational assistance and protection, modalities of exercise of parental authority, criminal procedure).
- Persisting gaps in terms of legal support by lawyers (notably in civil procedures) and ad hoc administrators.
- Gaps in terms of resources, both human and financial for the judicial system and in terms of recognition for professionals supporting children such as lawyers, ad hoc administrators, judicial experts, or auditors (family mediators, social investigators etc.).
- Gaps in public and in-depth monitoring and evaluation of follow-up on legal standards set (e.g. derived from the 1998 and 2007 laws) as well as in terms of research of children's experience of hearings and judicial procedures. Gaps also in terms of assessment of rights of children in administrative procedures (judicial and non-judicial), which would call for further research.

1. BACKGROUND

1.1 RESEARCH METHODOLOGY

Respondents for interviews were identified starting in May 2012, looking to match the requirements set, notably in terms of diversity of professional background and geographical distribution. The panel was initially established using contacts available with the [National Consultative Human Rights Commission](#) (CNCDH/ National Human Rights Institution) and those established with prominent professionals in the field of child justice, also involved in relevant professional networks (e.g. National Council of Bar Associations, Working Groups on the Defence of Minors). We also turned to the most important children's rights NGOs, active also as civil parties in criminal cases concerning child victims or witnesses. In addition, a snowball sampling technique was applied locally, making use of some suggestions shared by initial contacts (e.g. in Lyon and Aix en Provence) or additional on-site research (e.g. in Lille and Rennes). The final series of interviews were programmed to ensure complementary views and strike the best possible balance in terms of panel composition, following also guidance from the FRA. Particular efforts were deployed to gather viewpoints covering, with respect to a given procedure, different arrangements in which children are heard (e.g. civil hearings with a judge, with a social care professional or both, e.g. in the Tribunal or in the premises of an NGO) but also to record multiple assessments of a given practice (e.g. among social care professionals solicited to conduct hearings). Interviews of several professionals interacting in a given geographical area were also valuable. These enabled us to put personal assessments into perspective, e.g. on issues of cooperation among social and legal professionals and to explore mutual perceptions. A balance was also sought and struck between experienced professionals - with sometimes over 10 or 15 years of experience in a given position, and those with more recent experience (whether recently "licensed" or having previously worked in other capacities or fields). Some had multiple professional experiences including sometimes as both legal and social practitioners (see also 1.2 panel).

Most interviews were conducted in the professional environment of interviewees: courts, lawyers or mediators' offices, and offices of non-governmental organisations. A few interviews (4) and both focus groups (2) were carried out in offices of the national focal point in France ([Institut Français des Droits et Libertés \(IFDL\)](#)), others by telephone when not otherwise possible (4). To ensure consistency and depth in findings, most of the interviews were carried out by the social expert in fieldwork research who also moderated both focus groups and guided the present analysis of results - with the support from 2 trained national focal point team members (who also conducted and/or attended a

few of the interviews). Analysis was carried out on the basis of audio recordings, transcripts and personal notes of interviewers. No specific difficulties were encountered in the fieldwork, besides involving court staff – registrars in particular – as well as some unfortunate cancellations in focus groups.

1.2. SAMPLE

The overall sample included 65 professionals. Including additional participants in focus groups (3), it achieved a balance between legal (25) and social care professionals (26), with almost a fifth of the remaining panel with “mixed” qualifications or responsibilities (14). A large number of respondents had, to a variable extent, direct views on both civil and criminal procedures (13 legal professionals out of 25, 12 social care professionals out of 26, and 12 “mixed” out of 14). Legal professionals heard included the following: 10 judges (judges for family affairs (3), judges for children (5), investigating judge (1), and a former judge in criminal Court of Appeal (1)); 4 Deputy Prosecutors in charge of child cases; 11 lawyers supporting children but also sometimes parents, and, for a majority of them, in both civil and criminal procedures; 3 law enforcement officers from the Gendarmerie, operating in different units and locations and serving as trainer for child hearings; one interpreter, and a NGO legal adviser. Among social care professionals, the panel included social workers: specialised educators (*éducateurs spécialisés*) – sometimes with management responsibilities (10), 3 social investigators (*enquêteurs sociaux*); 6 family mediators (*médiateurs familiaux*); 3 psychologists, among which two serve also as judicial experts (3); 5 staff members of victim support organisations, a director of the child protection services and a delegate for the rights of the child; 5 staff members of some of the largest children’s rights NGOs. The function of ad hoc administrator (6 professionals in total), which, in practice and ideally, demands both legal and some social support competencies, was assumed by interviewees who were either members of child or victim support NGOs (4), of local government (*Conseil General*) (1), or a non-governmental institution also implementing educational support measures (1).

The panel was made up of 46 women and 19 men. To some extent, this gender imbalance mirrors an under-representation of men/over-representation of women in occupations relevant to this study or is somewhat consistent with a feminisation trend at play in certain professions such as for judges¹. In terms of *age*, balance was struck between the 26-45 (31) and 46-65 (32) age groups, with only two respondents over 65. Most interviewees were located in/working in an urban context (51), although it should be noted that such professionals do not exclusively work with families and children residing in large cities, as their jurisdiction/area of competence are likely to include rural areas as well. With a wide geographical distribution (the Paris area, North, South-East, North-West and East), the fieldwork covered 22 *Départements* (local districts of reference also for policies concerning the protection of children, guided by the *Conseils Généraux*). Most interviewees had an active role in proceedings, some combining a role of information, support of the child, and participation and/or observation as a professional in the hearing (e.g. the case of specialised educators for children concerned by protection procedures before the judge for children). The panel also included persons with indirect views on child hearings, which was relevant for considering aspects such as scheduling, reporting to parties and assessment of the weight of children’s views in cases, concerning for instance divorce and custody related issues. These included some family mediators and a couple of lawyers defending and counselling parents, sometimes on the opportunity of asking for the child to be heard.

Institutions of reference for interviewees included courts (Ministry of Justice); Bar associations/lawyers’ firms; non-governmental organisations active in the field of victim support, children's rights and institutions active in the fields of ad hoc administration, educational

¹ In 2011, 74.64 % of auditors admitted at the National School for the Judiciary were women. See : France, National School for the Judiciary (2011), p.6

support/placement and mediation (non-governmental but benefiting from public funding, in full or in part); local government with the lead mandate in terms of the protection of children (*Conseil Général*). A few lawyers or social investigators heard were self-employed. Many were also actively involved in relevant national professional networks, unions or federations.

62 people were interviewed and 3 additional professionals took part in focus group discussions. Face-to-face interviews included 5 interviews with 2 respondents: these were social mediators; staff members of victim support and children's rights NGOs. These were some of the richest interviews, with the - sometimes unexpected - presence of a second interviewee allowing for complementary insights and dialogue based on the sharing of respective experiences.

In terms of substantial coverage: experiences of *civil procedures* among interviewees included, before the judge for family affairs, hearings in the context of divorce and custody cases (or issues of visiting rights for relatives) and more rarely concerning filiation, recognition/disputing of paternity, changing of a name. Before the judge for children, competent for the protection of children at risk, cases related to children facing gaps in parental support (due sometimes to psychological or addiction-related issues), or with a parent or relative concerned by allegations/acts of mistreatment/sexual abuse (usually with a concurrent or preceding criminal procedure) and thus concerned by decisions of judges on educational support measures or placement decisions. Specific situations in this area concerned isolated (foreign minors) but also young mothers under 18 and pregnant, or with a child born out of rape or incest. Criminal procedures included cases of physical mistreatment and violence (also 'shaken baby syndrome' – *bébés secoués syndrom*), sexual abuse and rape, and more uncommonly of incest or acts of torture. Overall, respondents had often limited experience with child witnesses participating as such in judicial proceedings. Limited experience related here to intra-familial cases, with issues of domestic violence or sexual abuse against siblings.

Most respondents logically based responses on their professional experiences. Judges, prosecutors, and law enforcement officials focused on their methods for hearings (e.g. contexts, scheduling, questioning, reporting, use of the hearing and impact on the child and judicial procedure). Among social care professionals, specialised educators – admittedly not always knowledgeable about specific procedural aspects, unless experienced and exercising management functions - focused on their experiences of hearings: attitudes of judges, feelings of children, role played by lawyers when present, impact of the hearings, including for their own educational mandate and efforts they made personally in terms of preparation and support of children for hearings etc. Social investigators and mediators mandated to conduct hearings as well as social investigation measures shared their practices and terms of the cooperation with judges. They often elaborated on children's perceptions or more generally their position in procedures. Ad hoc administrators largely addressed their relations with other professionals and challenges associated with the support of children in the various steps of the criminal procedure and their own functions. The family context and the role of parents and other actors was raised by actors in both civil and criminal procedures, and notably by specialised educators, in the context of protection hearings before the judge for children. Those active in civil cases relating to custody and divorce (judges for family affairs, lawyers and mediators) brought more emphasis on issues of discernment, and information for children on their right to be heard and to be supported by a counsel.

Interviews lasted from 50 minutes to 3 hours (in one instance), with an average of perhaps 1 hour and 30 minutes. The climate was generally one of adequate confidence and confidentiality, with usually great engagement of professionals keen to contribute, and only minor interruptions. Focus groups involved 4 (on civil procedures) and 5 participants (on criminal procedures), 3 participants having faced last-minute court-related obligations (2) or transport-related issues (1). This nevertheless allowed for lively and in-depth discussions - over 2 hours for each of them - with balanced participation, and emerging points of consensus.

1.3 LEGAL CONTEXT

Regarding **criminal procedures**, many respondents referred to the *mandatory audio-visual recording* for hearings of child victims at the stages of the investigation (*enquête*, under the responsibility of the Prosecutor) and judicial information (*information judiciaire*, under the responsibility of the investigating judge (article 706-52 of code of criminal procedure)). The obligation, introduced in 1998 (cf. legal overview), remains limited to cases with criminal offences of a sexual nature or involving acts of torture or barbarity as listed under article 706-47 of the code of criminal procedure. It was mentioned that the consent of the child is no longer required for such recording (revision of article 706-52 of the code of criminal procedure in 2007), but also that a simple audio-recording may be used, if in the interest of the child (article 706-52 of the code of criminal procedure), and that the Prosecutor or investigating judge has the option to ask for the presence of a social care professional (e.g. psychologist, child psychiatrist) or a family member or ad hoc administrator for the child in the hearing (article 706-53 of the code of criminal procedure). The removal of the requirement for the child's or the legal representative's consent for the recording was deemed a positive step, as it put an end to risks of manipulation or use by certain officers of a false refusal to in fact bypass the requirement. Some interviewees noted the absence of a similar obligation in cases of allegations of physical abuse but also for child witnesses in general. In both cases, the recording, if not mandatory, however remains a possibility, as already indicated in the 1998 circular². In practice, the anticipated involvement of specialised services /or trained officers to conduct hearings during the investigation, and in dedicated child-friendly spaces ("Mélanie" rooms in police stations/gendarmerie brigades or specialised units in hospitals (Unité d'Accueil Médico judiciaires) were also mentioned by many interviewees³. Some interviewees pointed out limited legal guidance in terms of child hearings but also of confrontations before the investigating judge. Concerning the *trial phase*, several interviewees mentioned that the presence of children, the conditions and timing of their potential participation/hearing is not addressed by specific legal norms, leaving a margin of appreciation for the Presidents of competent jurisdictions (*Tribunal Correctionnel* or *Cour d'Assises*). A number of favourable provisions were however mentioned: extended rules of prescription for criminal offences (*crimes et délits*) on minors (article 7 and 8.2 of the code of criminal procedure), protection against the public disclosure of the names of child victims⁴, and the possibility of closed sessions (*huit-clos*), automatic if one of the victims demands it in the *Cour d'Assises* (or before the *Cour d'Assises des Mineurs*, if the accused is a minor), and to be granted or refused by the jurisdiction before the *Tribunal correctionnel*. General provisions of relevance for witnesses will apply equally to children.

In terms of *support* of children in proceedings, references were made to the systematic presence of a lawyer for a hearing before the investigating judge (Article 706-51-1 of the code of criminal procedure) and the possible designation of an ad hoc administrator by the Prosecutor or investigating judge (706-50 of the code of criminal procedure). Also mentioned was the ability – with respect to any victims, minors or adults - for the Prosecutor to designate a recognised victim support NGO if their intervention to support them in the procedure is deemed desirable (article 41 of the code of criminal Procedure).

In terms of *information* for children in criminal procedures, several interviewees pointed out that there are limited requirements or guidelines available in the legal texts (codes, circulars). For initial police investigation hearings, the parents, as legal representatives should be informed, unless they are implicated in the investigation. In the absence of lawyers (and ad hoc administrators), it is the responsibility of services conducting the hearing to inform the child about the hearing (e.g. on its purpose, process, follow-up) although again this is not clearly established by legal texts. Several

²France, Ministry of Justice (1999), §1.1.

³France, Ministry of Justice (2005), §§ 1.1 and 1.5.

⁴ France, Law on the press liberty (1881), Article 39 bis.

respondents mentioned the responsibility of the Prosecutor, under article 40-2 of the code of criminal procedure, to inform plaintiffs and identified victims of their actions, including in cases where no further action will be taken (*classement sans suite*) due to an unknown perpetrator, the prescription for the offence, the absence of criminal offence, or an insufficiently characterised offence (as reported, this is done in practice with a written document (*avis à victime*)). No specific legal developments were anticipated or cited by interviewees but they contributed suggestions on possible amendments to rules and procedures (see 2.1.1).

Concerning **civil procedures**, most interviewees were familiar with the 2007 reform aligning domestic provisions – at least in part with article 388.1 of the code of civil procedure – with the principle of a right to be heard for the child capable of forming his/her own views in all matters affecting him or her set forth in article 12.2 of the International Convention on the Rights of the Child. The need to conduct a hearing of the child if the judgement (e.g. on custody) is to be applicable in another EU country was also mentioned. In the absence of a set age to hear children, judges keep a margin of appreciation in terms of the *discernment* condition and consequently on the occurrence of the hearing, including at the appeal stage. It should be noted that children can be “heard” more informally (but still quoted), in the context of investigative measures decided by judges for children (*mesure judiciaire d’investigation éducative - MJIE*⁵) and judges for family affairs (*enquête sociale*⁶) to complement their assessment of the situation and inform their decision. In that respect, and while the judges will inform the families of the purpose and content of such measures, two social investigators indicated there were no precise guidelines applicable in that context in terms of hearing and reporting. In fact, and as a minimum, barring exceptional circumstances, a social investigation notably requires a meeting of the investigator with the child alone, then two additional ones with each of the parents present⁷. Concerning protection and educational assistance cases, rules and procedures mentioned by interviewees included: the right for the child to call upon (*saisir*) the judge for children him/herself (article 375 of the civil code); the responsibility of the judge for children to decide on the strict basis of the interest of the child, and to seek the adhesion of the family to the measures decided (article 375-1 of the civil code). Several social care professionals, e.g. social educators, admitted not being aware of procedural aspects concerning hearings with the judge for children (including appeal), while legal professionals stressed the flexibility of the procedure and the latitude for the judge in deciding how the hearing unfolds: presence and participation of relatives other than parents and the child, sequencing of appearances of participants (parents, children, lawyers etc.), use of face-to-face meetings or not etc. Concerning divorce cases, or cases of custody/visiting rights, interviewees also referred to the possibility for the judge for family affairs to delegate the hearing of the child to a professional or former professional qualified in the social or psychosocial field, if in the interest of the child, with the possible presence of a support person for the child in the hearing. Presence of the registrar was cited, though not as a systematic requirement⁸. According to several participants, including judges themselves, only limited guidance was offered in legal texts concerning the adequate timing and conducting of such hearings.

In terms of *support* in civil procedures, it was noted that children have the right to an interpreter if needed, and that the presence of the lawyer is not mandatory in educational protection while it is in procedures for child offenders facing the judge for children. In terms of information, mention was made of the indication in summons to parents, or services/institutions if the child has been placed in these, of the right of the child to be heard and supported by a lawyer (recalling of article 338-1 of the code of civil procedure) and the duty of the legal representatives to inform him/her of these rights. Also mentioned by interviewees, it is the judge’s responsibility to verify the effective notification. In practice, the means may differ, from verbal questioning at a hearing to the request of signed

⁵ France, Ministry of Justice (2010).

⁶ France, Civil Code (1804), article 373-2-12.

⁷ France, Code of the civil procedure (1973), article 1183 ; France, Ministry of Justice (2011), Annex 1 ; France, Ministry of Justice (2011a); France, Ministry of Justice (2010).

⁸ France, Ministry of Justice (2009), §1d.

attestations of parents. A few respondents found both the notification by parents, and the control by the judge not to be operational guarantees (see 2.2.2). More than 10 interviewees stressed the reform of 2002⁹, strengthening the right of parents in the procedure, in particular with the right for them - and the child with discernment accompanied by a legal representative or lawyer - to access and consult the files with the Tribunal in educational assistance cases (article 1187 of the code of civil procedure). The judge remains in a position to restrict (with a decision subject to appeal) access to certain documents in the file, if they expose the child¹⁰. It is also anticipated that the judge will inform the legal representatives and the child of the reasons for the procedure, if not brought by a parent (article 1182), but also of the right of appeal, also notified in writing with the decision.

Answers of both legal and most particularly social care professionals confirm that provisions in terms of *information* (e.g. on the right to appeal) are not very developed nor always known by practitioners (see also 2.2.2). One experienced educator, indicating texts should provide further incentives to inform families and children, summed up: “*there is nothing in the legal texts*”. Following hearings before the judge for children, children will not be notified of the decision in writing personally, unless aged 16 or above, in which case he/she will be notified of the operational part of the decision (*dispositif de la décision*). In educational protection cases, the decision is – at least in theory – not directly accessible to the child nor his/her lawyer, since he/she is not party to the procedure. Also mentioned by interviewees were the obligation for judges to report to the Prosecutor’s office criminal offences revealed by children and, in turn, the more specific provision requesting the Prosecutor or the investigating judge to inform without delay the judge for children when a procedure has been opened for a sexual offence and subsequently to make available all necessary files if and once a civil procedure is open (706-49 code of criminal procedure).

2. FINDINGS

2.1 RIGHT TO BE HEARD

2.1.1 RIGHT TO BE HEARD IN THE CRIMINAL JUSTICE FIELD

This section addresses successively the current practices and assessments of hearings at the initial investigation stage, before the investigating judge, and in Court, at the trial stage. However, it should be noted that the complaint stage was discussed by some interviewees as an additional aspect to consider, and sometimes a cause for concern. Focus group participants thus discussed the inability of the child to lodge a complaint independently, without his/her legal representative. One social care professional also reported negative experiences when assisting children at a police station, with inadequate support by frontline officers (*prise en charge*). Practical solutions observed included the nomination of an ad hoc administrator early on or solicitation of a victim support NGO and the provision of specific training to police/gendarmerie frontline officers or establishment of a specific contact at police or gendarmerie stations for children. Such aspects deserve further investigation, as they did not fall within the scope of the present research.

While focus was placed on hearings before law enforcement officials and magistrates (or delegates), it should also be mentioned that children are also “heard” on the occasion of psychological or medical assessments ordered by the magistrates, and more informally by their lawyers/ad hoc administrator or educational practitioners, e.g. following a claim of abuse. While observations of interviewees on practices in such contexts are only marginally addressed, it should be stressed that many interviewees mentioned that these do also impact on how children participate in and live through the procedure.

INVESTIGATION STAGE

⁹ France, Decree (2002).

¹⁰ France, Circular (2002).

Interviewees took an active part or had knowledge of child hearings at the investigation stage engaging children from the age of two and a half to 18. While usually unique at that stage, some interviewees reported cases with multiple hearings, due to an inability of the child to speak up initially (rescheduling), or given the fact that some of his/her statements were not anticipated and made an audio-visual recording necessary. Such hearings included cases of confrontations (“*mise en présence*”). The audio-visual recording is systematic when cases concern child victims, although some exceptions were reported, and the requirement only covers specific crimes (see also ad hoc information report). Such recording is not foreseen for child witnesses, and is only occasionally made in practice. On a similar note, child witnesses are not necessarily heard by trained professionals. In practice, they may be when perpetrators are also children, e.g. in intra-familial cases of sexual abuse involving brothers and sisters: a single trained officer may indeed be asked to hear both the perpetrator and the victim.

Feedback on *timing* was that under the guidance of the Prosecutor’s office, hearings are generally scheduled as priorities, in particular if the child is exposed in an intra-familial context. However, a few social care professionals reported some delays – up to a month – caused by the limited availability of trained officers to conduct such hearings, or by the requirements of the investigation. Officers conducting hearings reported variable *duration* for hearings, depending on the evidence of the case, the age of the child and his/her ability to speak up, insisting on the fact that each hearing will be specific. These could go from about 10-15 minutes – with a more targeted hearing for young children whose attention span is limited – to several hours, in cases with multiple allegations or contentious elements, with an average of perhaps 30 to 45 minutes. Two social care professionals reported exceptionally long hearings of 4 and 5 hours stressing this should be avoided. Breaks can be organised when hearings are prolonged.

In terms of *participation*, the hearing is conducted by trained professionals, although interviewees witnessed some exceptions, notably in rural areas but also due to differences among investigators in delegating hearings to specialised colleagues. From the interviewees’ experiences, hearings are usually face-to-face between the investigator and the child, with the presence of a second investigator in an adjacent room. The presence of a social care professional (e.g. child psychiatrist) is seemingly rarely requested by the Prosecutor’s office, although an experienced law enforcement official observed a quasi-systematic in one location, raising issues such as the professional may tend to play an active role, while the investigator normally has a monopoly on the questioning the child¹¹. While they may accompany the child to the hearing – e.g. parents, obviously if not involved - support persons for the child in the hearing itself are rarely present. In practice, such presence may be allowed in cases in which this may be critical to unlock the words of the child, because that person (e.g. an ad hoc administrator or educator) will help ensure a climate of confidence. Occasionally, such a person can also be present for the initial minutes of the interview, again as a reassuring presence. Law enforcement officers reported that the presence of a third person could disrupt the hearing, but that the issue is also one of privacy. A few lawyers and ad hoc administrators argued in favour of early designation (e.g. at the stage of a warning (*signalement*)) to be able to prepare and/or support and assist children, including for this investigation hearing.

In terms of the *background* of children, and though with limited experience, some legal professionals – law enforcement officers and prosecutors in particular - reported difficult cases concerning children with disabilities (e.g. mental disability or trisomy) affecting their ability to express themselves, or with very young children. Some reported prior consultation with a psychologist to consider adequacy and feasibility of a hearing in light of the child’s condition, but also involvement of social experts in the hearing to support the investigators, including in questioning. Some responses concerned

¹¹ France, Minister of Justice (*Ministère de la Justice*), Circular on Decree n°2002-361 du 15 mars 2002, 26 April 2002, available at : www.justice.gouv.fr/bulletin-officiel/dpji86a.htm#1 (see 2.1, p.5)

qualified professionals not always being available locally, notably in rural areas. No specific issue was evidenced by interviewees concerning access to interpretation.

In terms of *physical setting*, interviewees reported different contexts: general police stations, dedicated units in police/gendarmerie brigades (*salles "Mélanie"*) and specialised units located in hospitals (*Unités d'Accueil Médico-Judiciaires (UAMJs)*). Interviewees reported generally adequate practices in specialised brigades (*Brigade des Mineurs* or *Brigade de Protection des Familles (BPF)* for police, and *Brigades de Prévention de la Délinquance Juvénile (BPDJ)* for Gendarmerie). Premises for hearings were seen as an area where improvement is still needed. Some interviewees indicated that some brigades/police stations, even if equipped with a child-friendly hearing room, may expose children to an intimidating environment (waiting rooms/corridors with suspects/offenders, security checks at the entrance). A large consensus emerged among interviewees, on both legal and social aspects, about the added value and child-friendliness of UAMJs. With now some 50 such units across the country, this was seen as a positive development, allowing for several acts of procedure to be accomplished at once, in a single and dedicated location - the hearing, the medical, and, when required, psychological examinations – avoiding multiple summons over sometimes several weeks and to possibly distant locations affecting daily schedules of children. Added value was also clearly identified in the possibility to connect families and children with victim support NGOs present on site, right after the examinations. Some limited reservations were shared. They pertained to a risk of confusion of roles in perceptions of children heard in a then primarily medical environment; logistical challenges for professionals whose schedules need to be compatible and coordinated; but also the question of the financing and monitoring of these units. Protocols engaging all relevant professionals are driven and guided by the Prosecutors locally, the development of UAMJs is de facto largely financed by an NGO sector which draws support from the private one. While interviewees reported varying configurations (e.g. presence or not of a social or NGO professional coordinating schedules and intake), no public evaluation has so far been carried out on how these units function. Both in UAMJs and police/gendarmerie units, adapted hearing rooms usually feature discrete though visible audio-visual recording equipment (microphone, small camera, possibly a tinted window), warm colours, child-friendly furniture, toys and puppets used also to facilitate the expression of children.

Other *child-friendly practices or procedures* reported by interviewees included the following: precise summons to avoid unnecessary waiting time for children, particularly in police/gendarmerie premises, and timely scheduling of hearings requested by the Prosecutor's office (available 24/7), including without prior information of the legal representatives if targeted (e.g. picking up the child directly at school); arrangements to offer the child a possibility to choose between two investigators (male or female); use of interview methods (e.g. the PROGREAL method for the Gendarmerie) with open questions, a trust-building phase allowing the child to express him/herself spontaneously, in his/her own terms, in an initially "free version" of the facts (*version libre*); expression of recognition for the child's participation and effort with sometimes a gift for smaller ones; and practices in terms of information and transparency on the conduct of the hearing and its purpose and possible follow-up (see also 2.2.1). On a structural level, and beyond the strict experience of the hearing as such, protective procedures reported include: the option for the Prosecutor's office to anticipate and order, in liaison with social services, a placement of the child, notably in intra-familial cases (*ordonnance provisoire de placement*), while a medical examination is on-going and to designate an ad hoc administrator (an obligation in cases of incest or related crimes) and the responsibility for that office, in all instances, to inform the judge for children in cases of sexual violence against children so that protective measures may be considered. Support measures reported also include law enforcement officials suggesting contacts, upon termination of the hearing, for children (teenagers) or their parents to access psychological support, if a direct linking on site with NGOs support services present in UAMJs or specialised units (BPDJ/BPF) is not possible.

In terms of *general assessment*, no significant divergence of views was observed according to professional group nor any other variables. It can be stated that both legal and social care professionals share a relatively positive assessment of the initial hearing of children in the context of criminal investigations. The introduction of the audio-visual recording and training of officers are seen as sources of significant progress over the past decades. With the recording, words and behaviour/attitudes of the child become directly accessible to the prosecutor/judge, and the recording offers, for the latter stage of the procedure, an alternative to a direct re-hearing of the child. Delegating the hearing to a professional detached from the rest of the investigation is valued as a further guarantee for a hearing that will take the interest of the child into account, but also with fewer pre-conceived opinions on the veracity of the child's declarations on the part of the investigator conducting it. Training efforts should also be scaled up as gaps continue to be noticed. Still, exceptions were reported: children heard by the lead investigator in charge of a case but not trained for such hearings; confrontations (*mise en présence*) or inadequate questioning by investigators evidenced in minutes read by judges or lawyers. All professionals stressed the critical importance of this initial hearing in terms of impact on the child and the case, in particular when elements of proof may be limited. Yet judges and prosecutors for instance insist on the need for complementary steps (testimonies, observations, reconstructions etc.) and the fact that one "*should not expect everything from the hearing*". Several social care professionals stress the need for adequate preparation and support of children – and parents – in such initial steps of the procedure: the hearing often remains a difficult moment, possibly traumatising, even if for some it represents a first step in recognition as a victim.

Good practices identified include the audio-visual recording of hearings, the mobilisation of trained professionals (without leadership of the overall investigation), the existence of specialised police units dealing with children (*Brigade des Mineurs*) and the development of specialised units in hospitals to hear children, carry out medical expertise and link them with support services at once (UAMJs).

In terms of *improvements*, a number of suggestions were identified by interviewees, with some finding consensus, including among focus group participants. They include the following:

- Explicitly prohibiting confrontations at the stage of the investigation. These still exist and, according to respondents, amount to pure violence against children, with children likely to backtrack on their allegations even when well-founded, given the pressure and missing support at that early stage of the procedure with no ad hoc administrator or lawyer present.
- Making the delegation of the hearing of children to trained professionals an explicit requirement in the code of criminal procedure. As one law enforcement official indicated, there may still not be a systematic reflex to do so. As stated by a law enforcement officer: "*until it is not written in bold, underlined in the code of criminal procedure...there is always that uncertainty, there are always investigators who make it vague and say "I'll nevertheless take care of the case"*".
- Extending the requirement of audio-visual recording and involvement of a trained investigator for the hearing of child witnesses and cases of mistreatment, possibly via a circular. Some professionals would see such efforts to systematise what is already possible as a logical step in favour of a child-sensitive approach.
- Investing in the design of child-friendly premises, including the further development of UAMJs, the present coverage of the country being incomplete, but also introducing clear monitoring and evaluation on a national level. Some respondents also stressed the process of setting up such structures, engaging the Prosecutor's office, law enforcement officials, medical and psycho-social practitioners, NGOs and local government could be in itself conducive for inter-professional cooperation valuable in the field of protection of children.

Other proposals were less consensual, such as making the assistance of a (specialized) lawyer systematic for children at all stages, including as early as during hearings for the investigation. Such assistance, also seen as a support person for the child, was seen by other respondents (law enforcement official, lawyer) as not necessary and likely to impact negatively on the hearing process.

HEARING BEFORE THE INVESTIGATING JUDGE

At the stage of the judicial information, children are, from the experience of interviewees, frequently heard again by the investigating judge in cases concerning serious criminal offences (*crimes*). A number of interviewees identified a tendency to re-hear the child without previously watching the recording from the investigation hearing. Some professionals considered judges generally wanted to have "*their own version*". Others witnessed hearings organised only to complement and gather precisions on certain aspects in the file, with an effort not to return to the entire evidence. Hearings are recorded, although, as evidenced, children may not be explicitly informed about it. An important number of social care professionals and lawyers indicated that the audio-visual recording was rarely used as an alternative to a hearing or confrontation. Yet they also conceded that, although potentially traumatising for children, re-hearing is sometimes still anyhow required by the case. Confrontations may be organised in cases in which statements of the victim and defendant diverge, with few factual elements otherwise available. More generally, for the initial investigation, no age limit is set for hearings before the investigating judge. One judge pointed out he was only hearing children from the age of 7 and above, provided there is no adverse opinion from the medical/psychological assessment (stressing the importance of having the assessment precede the decision to re-hear or confront). Hearings of child witnesses are rare, and recording is not systematic.

Concerning *timing and frequency*: hearings may be unique, or may be repeated, depending also on the complexity of the case, and length of the instruction phase: one will initially be set up for the investigating judge to check or gather information from the child, another may be programmed towards the end of the instruction phase, in which the judge also informs the child of the intended next steps for the judicial process. Reconstructions may also be organised and require the active participation of the child, in addition to judicial assessments. The reported *length* of hearings is variable, from 30 minutes to 3 or 4 hours according to the investigating judge interviewed. An ad hoc administrator reported an average of 1.5 to 2 hours.

In terms of *participation*, interviewees reported practices as fairly judge-dependent, given also the lack of precision in the legal texts on this matter. Besides the child and the investigating judge, the lawyer of the child and the registrar are systematically present. A support person such as an educator may be allowed as an exception, upon request of the child, and so may a psychologist, an interpreter or an NGO staff member (observed in a situation concerning an isolated child, with family members charged in the procedure). The presence of the ad hoc administrator was raised as a contentious point in some jurisdictions. Some investigating judges will accept their passive presence as support. Others will refuse while sometimes still summoning them.. Some ad hoc administrators report efforts to negotiate, finding themselves in "*relationships of bargaining*" with judges on this issue. All seemed to favour clarification on this and stressed the value of their presence (also sometimes expressly requested by the child) and their support (including in follow-up).

In terms of *physical setting*: hearings are usually organised in the judge's office, or in an adjacent room where the registrar sits, with recording device set up. Varying arrangements exist, including for confrontations. As observed, two sets of chairs may be placed one behind the other to limit visual contact between the child and defendant. A "*protected room*" has also been designed in Angers. It allows the child, through the use of a video link, to sit with his/her lawyer in a different room than the accused. As observed in Paris, the investigating judges' corridor in the section of the Tribunal may not be adapted, as children may find themselves in the presence of adults in handcuffs and with police escorts.

In terms of *other measures used to ensure a child-friendly and protective environment*: in larger jurisdictions, a number of investigating judges will be designated as competent for child-related cases. This attribution may not be based on or matched with specific training to conduct child hearings, and add up to many other “specialisations”. For judges concerned, it may however allow for training-by-doing and capitalisation of experience and for the development of closer contacts with relevant professionals. Some – but not all - investigating judges will be flexible, rescheduling for instance a hearing upon request of the lawyer/ad hoc administrator backed with a medical certificate suggesting the condition of the child is not favourable. For the hearing itself, also is particularly lengthy, breaks are allowed and may be offered to the child, as reported by several officers. Some investigating judges will open the hearing with trust-building questions about the child’s present situation and wishes for the future, and will look, as mentioned, not to return to the entirety of the evidence, but seek only missing information or clarifications.

In terms of *general assessment*, some of the lawyers and ad hoc administrators reported variability and sometimes gaps in terms of child-sensitivity among investigating judges, e.g. in their questioning. Others found practices generally adequate, although training and know-how with children may not be equivalent to what they observed among trained investigators or judges for children in civil cases, who are logically more specialised. In terms of the impact on children and on the case, hearings were usually deemed useful, though some interviewees insisted that recordings from the police hearing should be more systematically viewed, and when possible serve as alternatives to a hearing or confrontation. Others, including law enforcement officials, lawyers or judges, insisted that multiple hearings were often required and that, as stated by one experienced lawyer, “*nothing replaces a hearing in person*” which provide information/indications that will not be exclusively verbal. It was suggested that judges may sometimes use hearings to strengthen the case and that they ultimately are the ones in the best position to assess the added-value of such hearings.

Good practices identified include the development and use of a “protected room” (in Angers, awaiting replication) when confrontations need to be scheduled and the prior consultation of social experts or reliance on expertise before deciding on hearing the child once again, to assess feasibility.

Suggested *areas for improvement* included:

- Encouraging a more systematic viewing of the recording from the investigation prior to any re-hearing of the child and as possible alternative to confrontations.
- Ensuring further specialisation and/or qualification of investigating judges to hear children, although some do consider that practice remains the core training (see also 2.3.1 on training).
- Developing child-friendly premises, including protected rooms to limit the adverse impact of confrontations and also waiting areas when children should not be exposed to an intimidating environment.
- Adopting a clearer definition of the status of the ad hoc administrator, also to address issues faced in terms of timing of the designation – sometimes too late for adequate preparation with the child - and presence of the ad hoc administrator for hearings by the investigating judge. The concern expressed by some ad hoc administrators is that discretionary, and therefore unpredictable practices, impact on the level of support available for the child and preparation of hearings.

TRIAL STAGE

At the stage of trial (before *Tribunal pour enfants* if perpetrators are also children, otherwise *Tribunal Correctionnel* or *Cour d’Assises*), the participation of children remains somewhat limited. Given the absence of guidance from the legal texts confirmed by several practitioners, beyond a general principle of *oral* proceedings, practice will be very dependent on the attitude and demands of the

President of the Court, but also on the approach opted for by the ad hoc administrator and/or lawyer. Active participation of children as witnesses is, according to respondents, all the more exceptional. Ages of children heard in court will differ, once again in the absence of a set age governing their participation.

In terms of *timing and frequency*: interviewees report various arrangements, with children sometimes present for part of the hearing and/or the deliberation, or attending or actively participating, e.g. by answering questions of the jury or the defence. The issue of immediate trial (*comparution immédiate*) was raised by some interviewees, as this option is generally not conducive to any prepared participation for victims, whether child or adult. On the contrary, some regular court trials in which children will be participating may take place several years after the opening of the investigation. Some interviewees reported instances of children turning 18 before the proceedings were initiated in Court, or while these were on-going.

In terms of *background*: Interviewees report no issue with access to interpreters, including for sign language. Interpretation was however viewed as an unavoidable source of complexity for the procedure and interactions with the child. One interpreter shared a negative impression that in their interactions, professionals (e.g. judges and lawyers) will tend to turn to address the interpreter rather than the child. The legal aid system, available for designated lawyers for children, was considered to be generally functional although some lawyers deemed remuneration inadequate.

In terms of *participation*: *Cour d'Assises* proceedings involve a jury (6 members, and 9 for the Appeal stage) and a presiding judge, chairing the hearing, an Attorney general (representing the Prosecutor's office) and as a general principle, an open audience. Correctional cases involve 3 professional judges without any jury. In court, children will usually be supported by their legal representatives (parents or ad hoc administrator) and a lawyer. A victim support NGO staff member, usually a psychologist, may also be present: they will have been designated by the Prosecutor or called upon directly by the lawyer or on the initiative of the legal representative. However, respondents reported some issues – not always so exceptional – of trials being rescheduled due to the absence of an ad hoc administrator for children, or alternatively, of lawyers being called upon last-minute to step in to support children in proceedings (and sometimes refusing to do so, considering this as inadequate practice). Also reported was a clear gap in terms of anticipation of support available for child witnesses, although again many interviewees never took part or assisted in cases requiring their participation.

In terms of the *physical setting*: if scheduled, hearings of child victims (or witnesses) will happen in Courtrooms. Some interviewees insisted that *Cour d'Assises* rooms can be fairly daunting, even for adults, given also the number of persons usually present. Close sessions are a non-derogable right (*de droit*), if requested by one of the victims, minor or adult. Before the Tribunal Correctionnel, some jurisdictions will have some special hearing sessions reserved for cases concerning child victims of sexual abuse/rape, while others will group such cases for part of a court session. In other instances, such provisions do not exist: cases of children will be considered along cases such as armed robbery or drug dealing in a successive examination of cases, deemed inadequate with limited privacy and sometimes excessive waiting time for children, and sometimes late sessions.. A related challenge raised by NGO support staff was that of Appeal Court proceedings. De-localised, they require the involvement of staff and the child sometimes for several days and can be particularly straining for families and children missing school and being away from home, and whose situation often requires full-time support.

In terms of ensuring a *child-friendly and protective environment*, many interviewees saw the fact of having child-sensitive judges presiding as essential. With prosecutors and lawyers (both of the civil party and defence) they are seen as bearing a shared responsibility to ensure the protection of children in proceedings. For some interviewees, much depends, beyond personal sensitivity, on training and ethics of professionals involved (e.g. for defence lawyers). Relevant practices include

here the channelling of questions from the defence via the President of the Court (to avoid attempts to destabilise the child, e.g. suggesting consent of a child victim of sexual abuse or rape); the screening of the recording from the police hearing, or reading of a transcript as an alternative to a court hearing that would excessively expose the child (although these were not cited as common practice). A number of children and victim support NGO staff members as well as lawyers praised close inter-professional cooperation with child psychiatrists or psychologists to assess the feasibility of a presence and/or participation in Court for a child, beyond strategic and legal considerations, and to provide tailored support prior, during and after a Court hearing/session. Some interviewees also reported informal coordination, including with court (security) staff to limit the child's exposure to his/her abuser, in the context proceedings. Also observed and reported were informal practices, e.g. from a lawyer indicating to the judge prior to the Court hearing whether the child would like to be present and active; practice of a lawyer shielding the child from eye contact with the accused; practice of Presidents allowing for the temporary withdrawal of the accused from the room while his/her lawyer could remain but also to request the removal of the child from the courtroom (e.g. in a case where the murder of his mother by the father was to be discussed in detail). Use of video links was also identified as an option to facilitate participation, with Presidents seemingly more prone to accept a practice also used to ensure participation of experts located far away. One lawyer also explained the role he played as a *porte-parole*, contracting with the child that he would use some of his words in his pleading, while direct participation was not desirable.

In terms of *general assessment*: While practices were found to be generally adequate, several respondents shared negative experiences, with varying requirements set by presiding judges. As summarised by a staff member of a victim's support NGO with extensive experience of criminal court proceedings: *"I saw all kinds. Some Presidents who were saying: "The children are not here, so the next time I see them they will be in the accused dock, because they're not here.", (...)Some Presidents say: "the fewer children, the better I feel", because children cannot be managed. It's formalized very little".* Or one Prosecutor: *"I saw some Presidents who didn't even ask the minor, who was present, and who had attended the whole hearing, if they wanted to say anything at some stage, despite the fact that it was a trial about their own life.. And others, they are interrogated, interrogated again although everything is already in the file".* One ad hoc administrator reported a case of a child whose presence was requested by the President as a condition to respect the right of the defence, in the absence of confrontation before the investigating judge. As far as lawyers are concerned, feedback was also varied. Some respondents indicated a general moderation among lawyers of the defence. Others felt degradation was at play, with again some pleading efforts claiming the child victim in fact "consented", which can prove particularly straining for children, if present. Some respondents stressed gaps in terms of qualifications and training of ad hoc administrators. In the absence of any national standard, approaches differ. Some ad hoc administrators tend to limit their role to the appointment of a lawyer. Potential conflicts of interest were also reported, e.g. in cases where the responsibility of social services may be scrutinised and the ad hoc administrator is from the same institution, namely the *Conseil General*.

More generally ensuring an adequate and non-traumatising participation of children at the trial stage is seen as no easy task. Many social and legal professionals stressed the importance however of children being in a position to be heard, and also to witness and listen the debates, if adequately prepared, can be part of a process of building resilience. As explained by one experienced lawyer: *"The criminal trial is an extremely important moment since the accused may admit to the offences, and it may be that at the same time society also recognizes what the child has lived through and also recognizes the child as a citizen in law in society. This is an important time for the socializing of children (...) They learn the law, that they have rights, this is a crucial moment. (...)".* While flexibility in the procedure was generally appreciated, a common feature of responses was the somewhat excessive diversity in practices, again sometimes within a given jurisdiction. Some consensus emerged in the focus group on a flexible child-centred approach when it comes to participation at

the trial stage, perhaps against most common practice. While direct participation may not be always desirable given the context, the child should not be entirely kept away from court proceedings. This entails being able to consider, offer and adjust various forms of participation, including simple presence. As stated by a lawyer: *“Things must be reversed: we should say “the child should not be present, unless he/she asks for it. And we reverse things. We always talk about us, we never talk about the child.. If he/she asks to be heard, he/she can be heard in a protective way etc.(...)”*.

The practice of *“correctionalisation”* (revision of the qualification of the acts, from a serious crime to a lesser offence) was identified as a potential challenge given the absence of guidelines for judges on such decisions. Rationale usually follows a balancing effort, considering elements in the file, perspective in terms of outcome and sentence (limited to ten years if *“correctionalised”*, but cases will be reviewed by professional judges, avoiding the uncertainty of a jury trial). Considerations of timing may also be factored in in such decisions given the actual length of proceedings: before the Correctional Tribunal these will be scheduled faster; some interviewees reported up to a year's delay between a referral to Court by the investigating judge (*renvoi*) and scheduling of a *Cour d'Assises*. Yet treatment of the case will differ: a *Cour Assises* trial may last 2 or 3 days whereas one before the Correctional may last 2 hours. And the re-qualification of the evidence is not neutral – e.g. considering a rape will be re-qualified and sanctioned as sexual assault. For some respondents, these challenges raise questions about ways in which child victims are consulted and their opinion factored in.

Another challenge identified was that of the issue of damages, e.g. in intra-familial cases. One lawyer thus suggested decoupling proceedings concerning the *“social”* and *“economic”* indemnification as the latter may be difficult to envisage for the child victim as it implies demanding that his/her parents be held responsible for what he/she suffered, and may ultimately affect the positive impact of social recognition through the trial. This could be done by extending the possibilities for children to claim damages beyond the age of 18 (this can only be done within the first year of majority). A larger challenge is that the demands of child victims in criminal proceedings may conflict with requests of the ad hoc administrators, e.g. on engaging the civil responsibility of the parents (the perpetrator of the offence being a minor).

It should also be briefly noted that solutions and views also differed on selection and adequate models for ad hoc administrators, and consequently support available for children in procedures. Some interviewees expressed concerns about qualification procedures as set locally (with an absence of background checks and of clear training standards). Specific opinions viewed ad hoc administrators from NGOs (just as lawyers from NGOs) as potentially influenced by agendas going beyond the case, and those appointed within the local government (*Conseil General*) as likely to face situations with conflicts of interest.

Good practices identified include judges/prosecutors addressing children directly in the debates, using adapted language: judges and lawyers shielding children from intimidation attempts by lawyers of the defence; the use of video-conference or screening of investigation hearing as alternatives to direct in court participation.

Avenues for *improvements* identified by interviewees include:

- Clarifying procedural obligations or providing general guidance concerning children's presence and participation in Court while maintaining flexibility in the procedure, and encouraging a child-centred approach in relevant decisions, also dependent on lawyers.
- Adopting specific provisions concerning child witnesses, making legal and psychological support and protection more systematic and moving beyond ad hoc responses. Many interviewees could not identify any specific provisions (besides the right not to swear on oath for children under 16) other than those applicable to all witnesses. As stated by one psychologist, also a former

prosecutor and judge, children witnesses *“are the most vulnerable ones, the most exposed. Either because they fear testifying or because they are afraid or don’t know the procedures or don’t benefit from any kind of support. Either because they are testifying and they are risking retaliation and that they are left to themselves. Child witnesses exist for no one.”*

- Developing options for participation and child-friendly settings e.g. such as with video link solutions or use of video-recording from the investigation or instruction hearings as an alternative (as experienced in a trial in Angers in 2005 – appeal in 2007, with large numbers of victims and accused).
- Adopting additional measures in terms of protection of privacy for children involved in procedures. This could include an extension of the right for closed sessions (*huis-clos*) before the *Tribunal Correctionnel*. Currently, this may be granted but remains up to the judge. Some reservations are however that this may affect the general principle of public justice.

Some suggestions formulated were cross-cutting and applicable to the entire criminal procedure:

- Strengthening *legal support* available to children, whether victims or witnesses. This may include further clarifying the status of ad hoc administrators but also securing a form of prolongation of their mandate with the consent of the child who has just turned 18 in order to secure their support in an on-going procedure (practised informally).. Reinforcing the involvement of staff from victim support NGOs could be an avenue. Several interviewees mentioned structural efforts undertaken, with the creation of the Victim Support Office (*Bureau d’Aide aux Victimes – BAV*) within Tribunals (e.g. in Lille).
- Strengthening the *psycho-social support* available for child victims, witnesses and families in general and anticipating a more systematic intervention of social workers for intra-familial situations, including in the post-sentence phase. Experiences of some interviewees are that gaps sometimes noticed in support expose the child to pressure within the family or limit capacities of families to cope both with the trauma and the judicial process. This can negatively affect participation and outcomes in procedures that can be lengthy. More systematic and comprehensive support (via a support person/NGO contact) could also be activated in situations when parents are not targeted in the case and are assumed to be able to support their child throughout the proceedings (no ad hoc administrator then). They in fact may not always be in a capacity to do so fully (e.g. due to a lack of understanding of the judicial system etc., situation of social exclusion etc.).
- Strengthening inter-professional cooperation, communication and interactions to avoid also an excessive multiplication of interlocutors for children and their families, e.g. with parallel procedures and overlapping investigative measures. As reported by one educator: *“I am very respectful of families. Sometimes, families would practically need a secretary, there are so many people involved. Investigations by the police, others psychologists, psychiatric experts when there are investigations for the victims, the perpetrators, us. More and more and more, it’s very complicated”*.

2.1.2. RIGHT TO BE HEARD IN THE CIVIL JUSTICE FIELD

In the civil sphere, it should be noted that experiences of interviewees mainly relate to hearings of children before the judge for children, for protection, and the judge for family affairs for proceedings about the organization of the parental authority between the parents (exercise of parental authority, custody and visiting rights), that is to say proceedings on divorce and post-divorce. Beyond this, many did not observe significant hearing practices involving children. Thus, most interviewees reported no or little experience with hearings of children in areas such as delegation/withdrawal of

parental authority, guardianship, filiation or changing of a name¹². A former judge mentioned a tacit agreement to consider that it is not relevant to hear children where factual elements of proof are available (ex. DNA tests for recognition of paternity). Here again, it should be mentioned that children are also heard in the context of investigative measures carried out by social care professionals, although these are not here considered as judicial hearings of children as such.

HEARINGS BEFORE THE JUDGE FOR CHILDREN

Children are heard by judges for children in the context of hearings where parents are summoned and practices reported are that of systematic presence of the child, whatever the age. The presence of the child is considered as critical by judges as a “source of information”; for the child him/herself; and ultimately because his/her protection and interest are central to the procedure. Hence some judges value seeing children even aged 3 or 4 and will also pay attention to non-verbal communication and how the child and parents evolve together. There is no set age for hearings: judges will assess the child’s discernment and engage in interactions with him/her on that basis. It should also be noted that children may keep seeing the same judge on a regular basis for several years. As reported, different modalities exist for hearings and consequently the room the child is granted to express him/herself is variable. Some specialised educators saw children most frequently heard in the presence of their parents. Reported practice is that children will be heard alone if requesting it, or if flagged up as desirable by social services prior to the hearing. The judge may also deem it necessary on his/her own initiative, e.g. in cases of strong parental conflict or suspicion of mistreatment or if an important number of adults in the room may otherwise inhibit the child’s ability to express him/herself. Such face-to-face hearings may also be favourable to children identifying the judge as “their judge”, mandated for their protection (which is seemingly the case). However some judges may still deny that option, considering the child is not to be heard separately. Some judges for children also stressed the right of the child to remain silent and merely attend the hearing.

In terms of *timing, frequency and length*: Children are heard when a measure is under consideration, reviewed or coming to term, usually after a year for educational support measures (limited to a maximum of two years, they may be renewed). Children are however in a position to request a hearing with the judge and the judge him/herself can decide to anticipate review of a situation. If an emergency placement (*Ordonnance Provisoire de Placement - OPP*) has been ordered by the Prosecutor, it will be reviewed by a judge for children with a hearing within 15 days. Children may be heard in Court at the appeal stage (*Chambre des Mineurs*) even if heard in the first instance the judges conserving a margin of appreciation on discernment. One legal professional reported a practice of hearing children from the age of 9-10 at that stage. Some hearings are scheduled on Wednesday afternoons (when many French schools do not hold lessons), as this is seen as more child-friendly, but this is not universal practice. Reported length for hearings is variable, spanning from 20-25 minutes, for “consensual” hearings, or concerning the accepted renewal of a measure, to 2 hours in more “conflictual” situations with an average of perhaps 30 to 45 minutes. A general consensus was that judges do take adequate time to hear children and more generally families, even if some will also be more straightforward than others. Some social care professionals reported that the scheduling of hearings is often too tight (e.g. every 30 minutes) and causes recurring and excessive delays (up to an hour), particularly for families with young children. Several professionals, legal and social, considered hearings should not be prolonged too much, otherwise they may create additional anxiety among children and parents.

In terms of *participation* besides children, parents and the judge: registrars are usually present in hearings, as provided for by law, although exceptions were reported, due to human resources issues.

¹² France, Minister of Justice (2009). See also ad hoc information report.

This presence is viewed also as important by judges in cases of face-to-face meetings of the judge with the child. Some social care professionals also report that it gives the judge the ability to focus on the conduct of the hearing and interact with all present. Specialised educators responsible for the child if a measure is on-going are generally present, in a more (reporting on the situation) or less (reacting only to complement if asked the judge) active role. Social care professionals stress their role as a person of trust and support for children=in hearings. Practices and views differ on the presence of relatives other than parents or other persons (such as a neighbour present in the life of the child). This is left to the discretion of the judge. Some judges stressed the fact that "*hearings primarily belong to children and parents*" and should not be extended too much, to safeguard privacy. Some social care professionals thus held contrasting views on the presence of step-fathers or step-mothers, but one considered that the role relatives play in the daily life and development of the child (or may play, e.g. with a relative with whom the child may be placed) should be guiding the decision on their presence. The presence of a lawyer for the child is rarely, if ever, witnessed, including among social care professionals with several years of experience in hearings. But a clear majority sees their presence favourably in difficult cases and to the extent that they are trained, and not designated by one of the parents. When present, they act as facilitator and sometimes *porte-parole* for the child's expression and for his/her views to be taken into account, but also to secure a respectful hearing. As reported by one social care professional: "*The lawyer of the child is present when it is necessary, it's complicated, there are tensions, stakes. He/she brings appeasement (...), because he/she is neutral and doesn't have this need to satisfy clients who are the father or mother. He/she is truly here for the interest of the child. And so he/she can implement the law, a respect of justice, even if the judge is already in a position of equality*". Lawyers of the parents are sometimes present, with some positive impact and support function including for parents who may not be used to formulating demands and voicing their views or questions before a public authority. Some interviewees however indicated that some of these lawyers tend to be too close to their clients, losing sight of the objective of the hearing, and sometimes fuelling conflict with their interventions. For both types of lawyer, training and familiarity with the somewhat "informal" nature of hearings before the judge for children are seen as critical to ensure that their interventions have added-value. Some social care professionals reported that the number of adults present in the room (sometimes 8 or 9), with sometimes also interns of both judges and registrars present, could prove excessive and intimidating for children. A related question is the sequence of the hearing and distribution of opportunities for children and others present to express their views. Here interviewees reported varying practice. Some judges will hear children or parents first separately, or at the end. Others will use a more interactive format, asking for opinions of parents/the child on options they consider. Some respondents found it more adequate to start with the parents rather than the social services/educators, which is occasionally done by asking them to review the situation.

In terms of *physical setting*: children will usually be heard in the judge's office (usually a regular office space with the judge's desk and a row of several chairs facing it). A corner with toys/children's furniture, sometimes drawings or books, will allow children to sit back and still hear the discussions. This setting is generally found adequate and rather intimate. One educator also witnessed a judge using a round table to conduct hearings, and deemed it interesting for a less solemn and more interactive hearing. At the appeal stage, children are likely to be heard in a Courtroom, in the absence of the parents. Some social care professionals found waiting rooms in Tribunals not adapted for children (e.g. excessive darkness or shared space with the Tribunal for children, with the possibility of children in handcuffs passing). In terms of perception. The consensus is that there is a need for dedicated sections in tribunals and waiting spaces reserved for children (as evidenced in Evry). As reported, there may not be a specific budget or direction and the initiative may be taken by judges themselves to improve the environment.

In terms of *background and equality of treatment*: As indicated by a lawyer, children concerned may come from varying socio-economic or cultural environments while facing sometimes similar issues

(e.g. an absent father). The flexibility of the procedure, know-how and sensitivity of judges and other professionals were seen as favourable to hearings adapted to all situations. One judge recalled that the judge for children has to take into account the religious or philosophical convictions of the child and his/her family¹³. An initiative of the judge designating a cultural mediator to assist in the hearing (and help the judge understand underlying cultural values/concepts within the family) was reported¹⁴. A debate exists on whether children from families in situations of poverty are disproportionately affected by decisions of placement (position held by an NGO in the field, ATD Quart Monde, but one experienced professional deemed it was not the case). The situation of isolated minors was a cause of concern for one NGO staff member. Ad hoc administrators are designated, and interpreters will be involved, but understanding their personal trajectory remains complex for judges. Children may also understand little about the procedure, and feel a sense of collusion between judges and social services (ASE) given existing practices (e.g. member of the social services already present in the room as the child enters). Locally, some of these children may benefit from the support of specialised/NGO lawyers, knowledgeable of the larger legislation applicable to foreign minors (e.g. in Roubaix). Other children may have difficulties to speak up. On decision making, one judge reported the challenge of assessing “danger” for children in families with mental or intellectual disability: to what extent are children in danger if growing up in a difficult environment? Beyond this, no issues were identified in terms of access to interpretation, including for sign language, nor in terms of access for children with a physical disability. One social care professional mentioned an issue of cost of access to court for some families. Indeed in rural areas, some may have difficulties affording transport to Court for the whole family and this is not covered by the judicial system. The recent reform of the jurisdictional map (“*carte judiciaire*”) may have worsened such issues, even if some court hearings are localised (*audiences foraines*). Overall, beyond decision-making aspects and specific situations, difficulties seemingly reside more in options available for judges, with sometimes a reported lack of options for placement of children with disabilities, or reinforced educational support measures. As expressed by one judge: “*there is an equality of treatment guaranteed in the procedure...not in the solutions we offer to them*”. Some focus group participants confirmed such inequalities exist across regions and also concern mediation spaces, for separated parents and children to meet under supervision.

In terms of *measures and practices taken to ensure a child-friendly and protective environment*, and besides the possibility for a face-to-face meeting with the child in the hearing, the following were cited: practice of the judge going personally to the waiting room to welcome the parents and children; absence of robes in civil hearings in contrast to criminal proceedings; alternate use of *vous* and *tu* [formal and informal forms of 'you'], reserving the latter for younger children. In terms of procedure, the possibility for the judge to exclude some elements from the file accessible to parents, elements which may expose the child, was also mentioned. Some judges stressed the relationship of trust and confidence which can emerge between the child and “his/her” judge. Some participants also mentioned the possibility for the judge to exclude temporarily the parents (e.g. in cases of inappropriate or violent conduct) or the child from the hearing (e.g. when personal issues such as alcoholism of a parent is discussed). Security staff is now present in jurisdictions and usually in a position to intervene if necessary. A set of more specific initiatives were also reported in interviews. For sensitive cases and hearings involving young mothers under 18 with their child, and sometimes placed in specialised institutions together with their child, one educator stressed the added-value of decoupling the protection for the mother and the child, involving two separate judges, for the mother to be able to express also her own personal situation without restrictions. Such steps, on the initiative of the judge, were uncommon however. Concerning hearings of isolated foreign minors, a practice of hearing the child first rather than social services, and allowing an trusted NGO representative for the child to be present in the hearing (e.g. in the case of isolated minors) was praised, although again this is not systematic. In hearings concerning parents who are in detention,

¹³ France, Code of the Civil procedure (1973), article 1200.

¹⁴ Loteteka, J.B. and Maximy, M. (2010).

one judge shared a personal practice of welcoming the parents first so handcuffs can be removed and allowing them time together.

The *general assessment* of practices is positive, although again, social care professionals point out significant variations in practice, sensitivity and competence of judges for children. As a result, several educators reported that locally, some situations or proposals of social services are likely to be met with different decisions depending on the judge reviewing them. Social care professionals stressed the importance and impact of the hearings before the judge for children for their educational work, with hearings that are scheduled at regular intervals. To that extent, most judges and social care professionals in fact value the current flexibility of the procedure and context in which children are heard. For a large majority a hearing with all present may be at times challenging but beneficial in most situations. As explained by a judge *"If we received parents on their own each of them separately and the child afterwards, it is a succession of words, without its context, and it's one version against another. While when we receive everyone together, it is more difficult for sure, but at least we have material and the hearing is not frozen. The hearing helps give real perspectives of work for the educational services"*. Ideally, the hearing is thus viewed as critical in forging a somewhat common assessment of the situation. It can help return parents to their position of responsibility and parental authority (*titulaires de l'autorité parentale*), and work on adherence to the measure. Beyond this, the hearing itself shapes the situation of families and emphasis is on the process, for some, in contrast perhaps to other judicial processes.

That being said, the quality of the work accomplished eventually also depends on the ability of all professionals, judges, educators and lawyers to play their role and cooperate.. Several legal professionals also insisted on the importance of the child being in a position to hear what is said by parents, or by the judge and social services about the situation in the family, even if seemingly not understanding or even if not (asked to) react. Judges will also be there to put words to what the child may live through in the family. One judge stressed that if a young child is not in a position to explicitly voice a demand for placement or may not frame it in those terms, the judge may be able to draw from his/her words that this is in fact his/her demand and what is needed. All professionals, notably in the focus group, stressed the central (educational) role of the judge in framing the hearing and how it unfolds, handing the floor to parents, children and other actors to express themselves and create useful interactivity among those present. Also stressed was the support role of social care professionals in the preparation, during, and for the immediate follow-up of, the hearing, although it was pointed out that such support and information may be missing for the first hearing.

Hearings are anticipated by children, and will sometimes be a source of anxiety. As reported by a specialised educator, *"it is not easy for children to find the words in the middle of all those adults, to say what is in their mind, what they don't want"*. Beyond this, and in terms of impact of the child's words, a clear majority of professionals confirm that although children's views are considered, it is not they who make the decision. In addition, what the child expresses may inform, but this will be child- and case-dependent. As expressed by one judge, children should not feel that the decision rests on their shoulder: *"the non-responsibility of the child has to be preserved"*. So in practice, decisions are, as confirmed by interviewees, largely based more on an overall assessment of the situation and environment of the child. The opinion of the child thus remains, as confirmed by social care professionals, consultative, and the judge may go against it. A number of professionals pointed to situations in which children are separated from their parents and fear renewed contact or risks of conflictual debates on the occasion of the hearing. More generally, hearings impact variably on children: some may be traumatised before, others after, needing close supervision and support. But hearings are also important moments, even if some children do think judges will follow-up on what services they will propose: they usually, according to a majority of professionals heard, understand the stakes in those hearings, with decisions that will affect their lives.

Beyond this generally positive picture, some social care professionals also reported concern about occurrences of judicial decisions without hearings, due to temporary human resources issues in the

judiciary (e.g. judges on sick leave without immediate replacement). Even if isolated events, these are considered unacceptable, also for families that in practice, may not have the resources to appeal. One social worker also stressed a recurring issue with cases of families with several children, who may not be heard separately and will not all receive the same degree of attention: the situation of younger ones, or those being the least at ease in the hearing may be overlooked (a decision may concern/address all children at once).

Good practices reported include judges for children allowing for a separate moment face-to-face with the child, from their own initiative or following a suggestion of social services, and the overall design of the procedure before the judge for children.

Areas and suggestions for improvement identified by respondents included:

- Developing *guidance to streamline practices of judges for children* while preserving the flexibility of the procedure. Some judges considered they may also feel slightly isolated when taking up their position. Several social care professionals share the same demand, finding the variations in practice excessive. The identification and sharing of good practices, e.g. via a good practice guide, was seen as one possible option. It could also contain recommendations concerning specific situations: hearings with mother and child, or hearings with several children. A related suggestion was to work towards a system of evaluation – which would not undermine the independence of judges. Judges and social care professional also see a cultural dimension to this: the culture of the judiciary is by definition, rather individualistic. But more exchanges also among judges and between judges and social care professionals is seen as desirable by many of them, even though time constraints are a clear obstacle, and little is seemingly at play, particularly in large jurisdictions (see also 2.3.2)
- Making the *appointment of a lawyer* for the child systematic in hearings for situations where a placement is under consideration or when lawyers of parents are present, to prepare, protect and assist the child during the hearing and avoid conflicts of interests. As observed by a lawyer “*You have procedures where there is the lawyer of the father and the lawyer of the mother. There it is not good because in the extreme, if there should be only one lawyer, it should be the one from the child*”. While it should remain a right and the lawyer should not be imposed, an automatic meeting with a lawyer could be important step. The designation of a lawyer by the Bar association, at the request of the judge – currently possible but seemingly little practised - could be made more systematic than a designation by one of the parents.
- Securing more *child-friendly environments* (waiting rooms, play-corners) but also *protocols*. One aspect for concern is the waiting time in some jurisdictions for families summoned. Acknowledging the significance of the hearing for parents and children, also implies ensuring taking the adequate time to welcome them and to show respect and attention. One option in that direction would be to also have a person systematically available to take care of the child if he/she has to be temporarily withdrawn from the hearing room, to avoid having him/her wait alone in the waiting room. Currently, registrars may play that role but this situation is not satisfactory.
- Remedying issues of *capacity, financial and human resources* for the judiciary in this field. Some interviewees reported cases without hearings, the intervention of the judiciary losing meaning and function. Overall limitations in resources, and workload, impact on the conditions in which parents and children are received and can engage in procedures and hearings. One specialised lawyer considered that “*the jurisdiction for children resists for the moment thanks to the goodwill of all the stakeholders*”. Another lawyer observed a more favourable context in other countries (e.g. Switzerland, USA), where judges for children may have more tools and support to carry out their job, concluding that in France “*number of staff members should be higher than what it is now. Perhaps not 50% more, but 30%*”.

- Ensuring the *adequate timing of hearings and implementation of measures decided* by the judge for children. Several professionals reported sometimes excessive delays – with hearings postponed – or decisions awaiting implementation for several months due to hiring restrictions placed on structures financed by the social services. Such delays affect the educational work to be carried out, the protection of the child and the procedural rights of all concerned.

BEFORE THE JUDGE FOR FAMILY AFFAIRS

In cases relating to divorce or post-divorce, children are heard from different ages, based also on the assessment of discernment by the judge. Interviewees reported varying practices, including within the same jurisdiction. Some hear children from the age of 7 or 8 upwards, some from 10 or 11. Several interviewees reported tacit conventions locally (in Rennes, from 8-10, in Nice from 7, in Paris from 6/7), including at the level of Court of Appeal (12 in Nîmes). *De facto*, age is used to assess discernment (e.g. with judges refusing a hearing of a child under 7). Initial questions in the hearing (*Do you know why you are here? Do you know what a judge for family affairs is?*) may also be used to further evaluate or check discernment and can lead to a cancellation of the hearing if responses suggest the child is not in a capacity to form his/her own views. Judges may also draw upon the letter of the child requesting to be heard. Some judges will also exclude hearings when considering the child is not concerned, e.g. if the procedure, while relating to divorce or post-divorce, only concerns financial issues between parties. Some judges will, as an exception, ask to hear the child on their own initiative. Participants also reported that younger children (e.g. aged 4 or 6) could be heard too if there was a European dimension to the case, making it recommended¹⁵.

In terms of modalities, interviewees reported hearings conducted by the judge, or delegated to a social care professional: psychologists, family mediators, social investigators, sometimes retired. In some instances, the delegation appears to be organised and systematic (e.g. in Lille) or common practice (Marseille). Many interviewees however note that a hearing by the judge is to be construed as the norm. Some local conventions have been signed in jurisdictions to address the hearing of the child in civil proceedings. Some of these confirm that the delegation should remain an exception (Nanterre) or anticipate no alternative to the hearing by the judge (Chartres). As observed in Tarascon, some delegated hearings will be conducted by two social care professionals jointly. Diversity in local practices, from one jurisdiction to another, results as reported in varying rates of hearings, although official statistics are not available. A practice of co-hearing exists as well, and consists of the judge hearing the child together with a social care professional, in an approach advocated as complementary, informative for the judge's assessment, and also child-friendly. It remains seemingly exceptional, yet is deemed a good practice (see p.24). In terms of *timing, length and frequency*: children may be heard in the first instance or at the appeal stage, whether or not they have been heard previously and the request for a hearing can be formulated at any stage of the procedure. The re-hearing was recently confirmed as a requirement when asked for by a child with the necessary discernment to be heard, and regardless of the stage of the procedure¹⁶. Some interviewees reported tacit conventions not to re-hear children at the appeal stage. As reported also by judges and lawyers (including those acting for parents in certain cases), the child hearing will usually take place on a different day than the parents, as same-day hearings may otherwise be a source of excessive pressure for children. It may be before, or after, some judges considering it important to have all the elements from parties in their possession prior to hearing the child. One judge noted there was little guidance on how/when to conduct the hearing. A convention in Rouen points out that in the first instance, the hearing can be scheduled at any time, provided parents are given the opportunity to present their observations consecutively (verbally or in a written form). Some judges will make a verbal report in the final hearing with parents, with the opportunity for a

¹⁵ Council Regulation No 2201/2003, OJ 2003 L338/1.

¹⁶ France, Court of Cassation (2012).

spontaneous reaction. Judges/professionals will usually dedicate a day/session for child hearings. It may be on Wednesday afternoon, but not systematically. Reported length of hearings varies, spanning from 10 minutes to 1 hour (a hearing with 2 social care professionals in Tarascon).

In terms of *participation*, beyond the judge or professional conducting the hearing: when the hearing is conducted by the judge, the registrar will usually be present, although not systematically. The presence of a support person may raise issues. A local convention (Chartres) anticipates that the judge should check the neutrality of that person. One social investigator who conducted hearings reported opposing such presence in practice. She feared that person (sometimes a grand-parent) could be “mandated” by one of the parents and influencing the child in the context of the hearing. Children will be usually accompanied by one or both parents, who may be also put pressure on the child. From the experience of interviewees, presence of a lawyer for the child was rather exceptional, with a maximum of half of cases. One lawyer reported some reluctance of judges to allow the presence of the lawyer for the hearing of the child. Yet to the extent that they are trained, most judges, lawyers themselves and social care professionals deemed their involvement useful, both in terms of preparation for the hearing, support and, as shared by a social investigator, external witness to the hearing. Their role in the hearing may be to assist children in expressing themselves, and occasionally to complement if given an opportunity to do so, usually at the end of the hearing. One lawyer expressed concern, as did some judges in procedures before the judge for children, about representation by lawyers affiliated with NGOs (defending victims of sexual abuse, or separated fathers) as their agenda may look beyond the strict interest of the child heard in the procedure.

In terms of *physical setting*: When heard by the judge, children will be received in the Tribunal, usually it seems in the judge’s office some judges deem more comfortable and adapted for children than other rooms of the Tribunal. Alternatively, a meeting/hearing room may be used, also for co-hearings as in Tarascon. If the hearing is delegated, it may be set, as observed, in the premises of mediation NGO or at the Tribunal, in a designated room. In Marseilles, one social investigator chose to use a Court room designed for jury deliberations (large, with too many seats) instead of the room reserved. Several judges and lawyers were of the opinion that hearings should be located in the Tribunal, to mark the context of a judicial proceeding (case in Lille). Debates around an adequate location, in terms of comfort but also symbolic significance, relate to more general views on the hearing. As indicated by one judge, opposed to systematic delegation: “*If it’s a hearing by a judge, it is by a judge, it’s in a judicial place (...) One should not confuse locations and roles*”.

In terms of *background and equality of treatment*, a number of interviewees considered they had no adequate experience to assess how responsive the procedure was. No specific issues were identified concerning access to interpretation.

In terms of additional *practices to ensure a child-friendly environment*, respondents mentioned the delegation to or assistance of a social care professional for the hearing. As reported by the social care professional engaged in co-hearings with the judge “*the presence of a third person who is not part of the judicial world reassures children very much. I manage to be emphatic. Which the judge never has time to do*”. The hearing may be less “*rigid*”. In conducting the hearing, judges and social care professionals usually give time for the child to express him/herself before moving on to more targeted questions focused on daily life and practices of the parents, and adopt a child-centred approach. The child will be asked about how he/she sees the present situation, the environment at school, his/her projects for the future etc. Beyond the hearing itself, having a designated lawyer rather than parents to also accompany the child to the hearing was considered a positive practice. Some judges will also come to welcome the child and greet the parents in the waiting room (*Salle des Pas Perdus*). In terms of reporting, protective options include verbal or limited reporting to parties (no direct transcription of all the words used by the child), and restricted accessibility of written

reports: parents will be able to access it at the Tribunal but lawyers are not authorised to give any copy to their client¹⁷.

The *general assessment* of hearings is highly contrasted. For some, the starting point is an issue of principle: children are impacted by decisions taken by the judge for family affairs, and should consequently have an opportunity to be heard. In terms of *impact on the child*, the hearing of the child is viewed positively by some as instrumental in terms of parents reconsidering their responsibility and impact of their behaviour, while offering relief to the child who is able to express him/herself be heard and “lay down their burden”. Yet several legal and social care professionals point out that in practice, child hearings will be asked for and take place mostly in situations with strong parental conflict, and may be a feature of the procedural strategy of parents rather than the result of rare spontaneous demands from children themselves. As put forward by mediators: *“The child arrives with the family conflict. The parents were not able to discuss to decide with or for their child. So the child is sent on stage”* and *“the hearing of the child is the instrument of the conflict, because the parents will say to each other: “the judge is going to listen to him/her, and you will see what he /she has to say”*. Some judges emphasise that protection should remain a central concern, with a delicate responsibility to ensure that the hearing does not further expose the child to the conflict. Others are clearly sceptical about ways to ensure this in a post-hearing context and tend to consider that the best possible option is to bring parties to a solution keeping children away from the judicial arena, or to develop mediation opportunities. As expressed by a judge favouring a hearing of the child after parties have been exposing their claims if differences persist: *“An agreement at a hearing (nb: of parents)... gives the chance to the child of not going to the tribunal in order to take a position in a conflict opposing his/her parents... if we can avoid that, I think the child would be better playing football rather than waiting in a hall.” (...)* *I am not very happy that the legislator transformed the child’s hearing into a legal hearing. I preferred when we had the latitude of asking or not for a hearing.... But in some cases it can be justified: the child has something to talk about beyond the parental conflict...confidential information which can then lead towards a criminal procedure.”* Practices of judges may reflect their positions in principle. Interviewees reported that some judges may still be reluctant and opposed to hearing children (which may lead to delegation). One judge mentioned that his point of view changed over time, up to considering that the hearing itself could have a protective function *“I’ve changed a lot, because initially I thought ‘the less we hear the child the better, let’s distance the child from all the adversarial procedures, let’s work first on the parents. But a child who is heard and who has been able to speak out will purge their suffering better...when the procedure is truly adversarial, taking the child into consideration, and making the child aware that they exist and that they have the right to express their suffering somewhere and not just to a psychiatrist or psychologist, but that this suffering is recorded in a room that the parents are aware of. I think it’s very good for the child. And that, that’s really about protecting childhood”*.

In terms of *impact on the case/decisions*, views also differ. For some judges, the hearing sometimes provides further indications to make his/her assessment but also gain greater legitimacy and acceptance of his/her decision. One judge noted added-value was not systematic, and that in cases in which children formulate demands that are not in the pleadings of parties (e.g. alternate residency), she will not do anything with it. One social care professional, faced with children under duress, considered her role in delegated hearings to be restricted to a “recording device”, and eventually renounced conducting such hearings. In turn, one lawyer/mediator indicated a judge will perhaps be able to draw information from the hearing if the child who is visibly manipulated, as he detects the discourse of one of the parents in the child’s declarations. Some social care professional also mentioned the limit of the exercise of a single hearing, in which the child may be influenced by the immediate context and his/her interviewer lacks the necessary context. Social investigation was mentioned as alternative, also when the hearing is not asked for. It could allow for a more holistic approach to contextualise views expressed by the child, although costs of such measures will

¹⁷ France, Rouen TGI and Bar Association (2010).

eventually be shouldered by the parties. Some mediators also saw limits in judicial proceedings involving children, advocating the further development of mediation, at all stages of the procedure, as an alternative.

The question of delegation remains challenging and illustrates the varying viewpoints on the purpose and the adequate context for the hearing. A number of lawyers and other professionals are critical when considering current practices. They question the intervention of an intermediary, as the report may not replace a hearing in person by the judge, but also the ability of the social care professional to “record” the words of the child without intervening or seeking to help trigger a solution to the parental conflict. The risk would be one of a confusion of roles. Some social care professionals are equally critical, pointing to considerations that do not relate to an assessment of each situation and the interest of the child, but to the general functioning of the judicial procedure, and may not meet the demands and expectation of the child. As indicated by a lawyer in Versailles: *“Some judges have completely delegated... ..The delegation, it (should be) an exceptional case and in the interest of the child. Here, it is for the interest of the service...”*. Some lawyers indicate variable feedback from children: some may be more comfortable with a social care professional. Others, e.g. teenagers may be disappointed not to face the person making the decision or facing a retired professional who may seem too old to them. Some participants also reported some concern about professionals selected for such hearings, and varying practices in terms of questions or reporting. In some jurisdictions, social care professionals will receive clear guidance (e.g. template for reporting, use of direct style), in others, little guidance is offered. Hesitations or non-verbal elements may not be included in reports, and some judges will expressly ask social care professionals not to provide their own assessment. One family mediator practising co-hearings, and a lawyer, emphasised the usefulness of having the judge present also to set the context and frame the hearing, a context which is *“judiciary, not therapy”*. In cases of delegation, there seems to be limited exchange between social care professionals and judges, in terms of adjusting mutual expectations and practices (social care professionals may not/nor wish to be aware of the decisions made in cases). In turn, some social care professionals insisted that the words of the child should not be left to the sole assessment of the judge, pointing also to social investigations as an alternative measure and potentially a more acute assessment of the situation.

Good practices reported thus include the co-hearing experience reported in Tarascon, which is considered as child-friendly. According to respondents practicing co-hearing and recommending its replication elsewhere, the judge can rely on the social professional to guide the hearing and facilitate the expression of the child. The judge can focus on information to be recorded/sought with additional questions. While the child identifies the judge he/she was expecting to meet and can interact with him/her as well, the presence of the social professional can also be reassuring if the child is somewhat intimidated. Co-hearing allows also the judge not to be left alone with the child and the interpretation of his/her words. Promoted by the President of the Tribunal in Tarascon, the co-hearing project, engaging a mediator from a family mediation NGO, was recognised in the context of the Council of Europe and European Commission *“Crystal Scales of Justice”* 2012 Prize awarding innovative practices in the field of civil justice, aimed at improving the efficiency and functioning of the judicial system, procedures and the courts' organisation¹⁸. Many professionals are unfamiliar with this practice, others stressing budgetary constraints to its replication in their own jurisdiction. One pointed out that *“co-hearing is a luxury the French judicial system cannot afford”*.

Areas and suggestions for improvement identified by interviewees included:

- Providing additional guidance (besides the 2009 circular) for judges concerning the conducting of hearings. Clarifications could cover the assessment of discernment¹⁹, but also the adequate

¹⁸ http://www.coe.int/t/dghl/cooperation/cepej/events/edcj/cristal/default_EN.asp

¹⁹ See also *Defenseur des Droits*, 2012

timing and conducting of hearings, as well as conditions for delegating. Some delegations are rather systematic and could therefore appear somewhat inconsistent with the spirit of the 2009 circular, which foresees delegation - when the interest of the child commands it (suggesting a case-by-case assessment). .

- Developing more systematic lawyer's support for children. Designation of a lawyer by the Bar association, at the request of the judge – currently possible but seemingly little practised - could be made more systematic than a designation by one of the parents. It was also suggested that lawyers should not be compensated only on the condition that a hearing is scheduled, which raises the risk of provoked demands. Some lawyers considered compensation for lawyers under the legal aid scheme should be re-evaluated.

Views and suggestions differed on possible solutions, if needed, to limit the risk of instrumentalisation and exposure of children, beyond the option of systematising the intervention of a lawyer for the child. A couple of interviewees suggested making hearings systematic before the judge for family affairs, with a view to "*trivialise*" this component of the procedure. Others wished the 2007 revision of the legislation to be reconsidered, reinstating greater discretion for the judge in deciding to hear or not children.

2.1.3 CONCLUDING ASSESSMENT ON THE RIGHT TO BE HEARD

a) Criminal procedure

The general feedback of interviewees is that children are generally heard in adequate conditions in criminal procedures, and that significant progress has been achieved, notably at the investigation stage, and since the adoption of the 1998 legislation. Hearings are seen as both entitlements and procedural requirements, and multiple ones, just as with confrontations, may be legitimate. Legal standards are considered as fairly advanced although interviews flagged up some persisting gaps or imprecisions still leading to inadequate practices or practices seen as discretionary. These concern the involvement of trained investigators; confrontations during the investigation stage; presence of support persons before the investigation judge, presence and/or participation of children at the trial stage. The need for specific provisions addressing the situation of child witnesses which are likely to secure adequate support for them throughout procedures clearly emerged. Experiences of interviewees suggest differing treatment across the country, including in terms of environments in which children are heard. As reported by a former psychologist, former prosecutor and judge: "*No two police officers, no two tribunals, will proceed the same way, no two judges will proceed the same way*".

Many interviewees stress that the process of hearing children in criminal procedures remains a fragile one, given also the potential implications of their claims and risks of manipulation and exposure. Conditions in which children are heard, and the impact of such hearings on their situation, ultimately largely depends on the training, ethics and child-sensitivity of all actors concerned. Experiences of interviewees warrant a general conclusion on the impact of hearings for child victims of criminal offences. Hearings and judicial proceedings can prove traumatising. They may also contribute to a form of resilience and reconstruction, in best case scenarios. In that perspective several respondents raised the challenge of guaranteeing more systematic support, alongside and following the procedure, for children but also their families, and particularly in intra-familial cases. Ultimately, educational and psychological support may not only protect the child, but also determinate his/her ability to sustain effective participation in proceedings and the rendering of justice.

Although recognising some delays are not compressible, many interviewees stressed a general issue of excessive length of procedures – between the evidence and the judgement - and the negative impact on children heard. Examples included a 10-year procedure for gang rape, but also delays in

the instruction phase, and in terms of scheduling of Assises trials, with possible Appeal stages. As reported by one educator working with young mothers (minors) and victims of incest or rape: *"every hearing re-activates all the psychological suffering experienced; it puts off resilience, the repairing process, which starts at the time when the child manages to talk. It's a mixture, with permanent oscillations, and that's difficult."* At the other end of the spectrum, immediate trials proceedings may be one example of procedures where such participation may be overlooked. And as reported, in terms of post-sentence attention, there may be more focus on the accused than victims, children or adults.

To some extent, limitations in children's participation in criminal proceedings may also mirror those still faced by adult victims in a justice system in which their participation is not central to the process, but rather an instrumental component. As reported by a staff member of a victim's rights NGO: *"During the investigation, we can easily feel that the parties are at the service of the judiciary. It's not the phase afterwards when finally it is the manifestation of the truth for the benefit of people. Here we are in the service and that's all. The investigation comes first"*. The same professionals considered that there may be more available today for children, in terms of support, than for adult victims.

Eventually, many professionals interviewed spontaneously cited the Outreau case (criminal case of rape and sexual abuse of children in which many adults were convicted and later acquitted (7 in Assises Court in 2004, 6 at the appeal stage) – and which led notably to a parliamentary investigation in 2005²⁰), both to stress the challenges in hearing children and to mention its impact in the field. Comparing recommendations formulated in the aftermath²¹ with present day experiences of respondents, it appears that many agendas remain valid: scaling up training of law enforcement officials, designing child-friendly premises, inciting all investigation and trial judges to make use of the audio-visual recording, giving real content to the training of deputy prosecutors in charge of minors and investigating judges in charge of cases concerning children, encouraging the early designation of ad hoc administrators to support children in the procedure.

b) Civil procedures

The hearing of children in civil procedures has indisputably evolved with the 2007 legislative reform, aligning domestic provisions with the International Convention on the Rights of the Child (ICRC). In practice, children may still be inconsistently heard, depending on procedures. Concerning both contexts interviewees focused on – hearings before the judge for children and the judge for family affairs - the picture is contrasted. Before the judge for children, the child's participation is seen as only logical given the objective of the procedure. Before the judge for family affairs, some legal and social care professionals remain wary of mainstreaming the participation of children, even if the effect of the 2007 reform law has forced judges and other actors to adjust in that direction. Most adopt and recommend caution, and insist that children should not be made, feel, nor be perceived as responsible for judicial decisions placing them in a position that is incompatible with their status as children and likely to affect or expose them further. In practice, and in both procedures, the right to be heard for children is exercised in varying contexts. To some degree, flexibility in the procedure is valued by all actors – particularly before the judge for children. While it is recognised that individual sensitivity of judicial actors will always impact, a largely shared demand exists for further guidance to align practices on the basis of an identification of good practices. The support of children in both procedures is seen as a major area for improvement. Some respondents raised questions about procedural provisions and guarantees for children to be heard in administrative procedures, including in some that may pre-empt judicial proceedings. These include administrative procedures in the field of educational assistance, but also procedures prior to asylum-seeking procedures, family-reunification or visas. Participation of a lawyer or appointing, internally in social services (*Conseil*

²⁰ France, Assemblée Nationale (2006)

²¹ France, Ministry of Justice (2005a).

General), a person to “check” on the actual consent of families to the measure decided. Such aspects would warrant further research and evaluation.

c) Both procedures

“You have everything and its opposite. But generally, the judicial system is caring towards the victims. But it is so variable, from one jurisdiction to another, from one tribunal to another, from one magistrate to another, from one day to another”.

General feedback is one of affirmed presence and recognition of the place and voice of children in judicial proceedings, whether criminal or civil. A number of challenges are common to both civil and criminal procedures. These include excessive diversity in practices depending on judges and jurisdictions; issues of human resources and logistical limitations impacting on the organisation and conduct of hearings, but also implementation of measures and follow-up, and gaps in terms of legal support.

A number of recommendations apply to both set of procedures: they include the need for further evaluation of practices by public authorities (Ministry of Justice) and further specialisation of judges and other professionals (see also 2.3 on training). From that perspective, having more multi-skilled trained lawyers but also ad hoc administrators, in a capacity to support children in both civil and criminal procedures, and more systematically engaged in supporting children, is deemed desirable by many professionals. Eventually, their increased participation is also conditioned by a recognition which entails adequate remuneration under the legal aid system. As indicated by one lawyer, the current status may fall short of such recognition: *“Whoever says training says competence, whoever says competence says recognition... If we recognise professionals, we will recognize children, and it is maybe this way that we will be able to recognise children’s rights” (...)* *Saying the child has rights, saying a child has a right to a lawyer, saying that the lawyer must be trained... and not giving the means for the lawyer to do his/her job, and earn a living... it’s telling the child we give you rights but it is rubbish”.* The challenge is one of recognition of all specialised professionals involved in supporting children, which implies investments: as mentioned by a social care professional *“We talk about child hearings and the interest of the child but the interest of the child, it is about people, it is national solidarity, and that has a cost”.*

In addition, coordination and circulation of information across parallel procedures was identified as another agenda point for further improvement. In practice, children may be heard in concurrent civil and/or criminal procedures. Coordination is likely to impact on children’s understanding, but also to limit the number of interlocutors and ensure adequate responses in terms of protection (see also 2.3).

2.2 RIGHT TO INFORMATION

2.2.1 RIGHT TO INFORMATION IN CRIMINAL JUSTICE

Current practices observed: At the initial investigation stage, and when made necessary by the type of offences at stake, the child victim is usually informed about the recording, its technical set-up, purpose and future use, also clarifying any concerns in this respect. Information is also non-verbal, allowing the child to see the room of the recording and thus be informed about the presence of a second investigator, or tinted window. Law enforcement officers introduce themselves, point out where parents or other persons accompanying will be waiting for him/her, and may ask children if

they have any specific questions before initiating the hearing. For the hearing itself, some investigators will insist on children using their own words. Other actors (NGO staff member, ad hoc administrators) may contribute to information and preparation prior to the hearing. Once the hearing is completed, children may be informed about future meetings (e.g. medical assessment) but law enforcement officers, as reported, may not be in a position to answer all questions, e.g. on the incarceration of the alleged abuser (which may or not be desired by the child). Children may also be informed, if they ask, that other judicial hearings may be requested at a later stage, even if they wish not to come back to the evidence. Following the investigation, if the Prosecutor decides not to take public action forward, or refers the case to the investigating judge, the plaintiff and identified victims should be informed, as provided for by article 40-2 of the code of criminal procedure. In practice, this is most frequently done via a written notification addressed to the legal representative (*avis à victime*) – a practice some interviewees consider inadequate and not child-friendly. NGOs or the Delegate of the Prosecutor (*Délégué du Procureur*) may be mandated to notify and explain to victims (including adults) the decision and its grounds. It is seemingly rare that a deputy prosecutor in charge of minors will receive in person victims to explain a decision e.g. to close the case. Such practice may be more frequently reserved for cases in which allegations of children prove false as a result of the investigation, making a final warning (*rappel à la loi*) sometimes seen as necessary.

In the context of the legal information (*information judiciaire*), children are informed about the procedure by the investigating judge directly, prior to as well as after hearings, by the lawyer and to some extent the ad hoc administrator (if designated). In the context of hearings, the investigating judge may begin with information about the procedure, also giving an opportunity for the child to ask questions, also at the end. The judge may initially ask the child if he/she is aware of the reason for his/her presence in his/her office. One investigating judge mentioned he did not inform children of the audio-visual recording set-up in the hearing room, as this may cause unnecessary concerns. Should the child notice it, he/she will explain. There was no specific material identified by interviewees and used to explain the procedure at that stage other than verbally. At the end of the hearing, some judges will inform children if their declarations may not be enough to take the case further. Some will schedule a meeting towards the end of the instruction phase to inform the child of intended follow-up steps (a written decision – e.g. *ordonnance de renvoi* - will anyhow be addressed to the ad hoc administrator or lawyer). Such direct contact and information is often seen as important. As reported, in practice the lawyer and or ad hoc administrator, meeting with the child before the hearing, may mention basic information about the purpose and context of the hearing, also telling the child that he/she should not refrain from asking questions if aspects are unclear. Staff of victim support NGOs and/or parents, if qualified and in support throughout the procedure, may also inform the child to some extent.

At the trial stage, children, if not taking part or attending the proceedings, will usually be informed by the lawyer, their parents or ad hoc administrator but also again, in some cases, staff members of victim support or children's rights NGOs. Although children may be asked about their willingness to participate, several professionals insisted on the need to introduce it to them as a right, making clear the range of available options (including their simple presence). The ad hoc administrators and lawyers may approach this from a strategic angle, and sometimes consult with social experts to assess if participation – and what type of participation - can be foreseen, is in the interest of the child. This may lead to a decision not to let the child participate, or to adjust participation throughout proceedings. Ahead of the trial, and especially but not exclusively if participation of the child is anticipated, some information is usually shared with him/her on the various actors and their role in proceedings – judges, registrar, jury in *Cour d'Assises*, general attorney and lawyers etc. Some interviewees witnessed Presidents of Courts or court staff taking an active role in informing children, guiding access to the Courtroom prior to the trial. Some NGOs or lawyers reported using models of Tribunals or simple drawings of courtrooms to help children visualise and anticipate. In terms of the proceedings per se, lawyers and ad hoc administrators tend to insist on informing children on such

aspects as: the possibility to request closed sessions (*huit-clos*); the neutrality the judge needs to observe, also when interacting with the child (which can otherwise sometimes be felt as insensitive by children); the fact that a supportive presence will be there in court by his/her side at all times; the possibility for the child to temporarily leave the courtroom or, via the lawyer, to request temporary removal of the accused if under duress and disturbed by that simple presence. Concerning the pronouncing of the decision: if the child is present then there will rarely be a specific wording tailored for him/her. In fact, efforts to spell out the decision beyond reading, to also check understanding, will more likely target the person sentenced rather than the victim, whether child or adult. The decision may however be later explained by the lawyer, ad hoc administrator, or NGO staff member. The recent introduction of an obligation of motivation for judgements in Cour d'Assises²² is seen as positive for all, including children. Information then shared by the lawyer and/or ad hoc administrator will also include appeal options/risks, information about damages etc. Psychologists serving as judicial experts may inform children of their function - their role in the procedure rather than explain the entire procedure, as they also may not be familiar with it. One interpreter mentioned a role of information regarding children in proceedings played by colleagues, somewhat by default – e.g. informing children of the purpose and meaning of a specific discussion or a procedural aspect. This was deemed however inconsistent with their role and qualifications.

In terms of overall assessment: very few interviewees – whether legal or social - did mention legal rules setting standards in terms of information for children about, and throughout, criminal justice procedures and proceedings, even if they consider they have part of the responsibility to do so. In fact, some respondents, including social workers, lawyers and staff of victim support and children rights NGOs reported varying practice in terms of information, given the little guidance. Emerging from various responses is a notion that children's understanding is occasionally underestimated, at other times assumed, leading to thinking that in-depth information is superfluous or interfering with the procedure. Several interviewees concluded that there is a clear gap in terms of information, in fact not specific to children: sometimes parents themselves or social workers will be unaware of aspects of the procedure, and consequently will be unable to assist children.. To some extent, responses of interviewees suggest information is not systematically provided, but left to personal initiatives or action. As one former prosecutor in Evry reported: *"It's true that nothing is planned. We don't really worry about getting to know what information is given to the child"*. Practice remains largely individual, with obvious variations.

The majority of interviewees view information as critical. For them, it significantly affects how children will live various stages of the procedure; how they will be meaningfully associated to the making of informed decisions; and their ability to adequately participate and sustain their participation over time, in often lengthy procedures (including the post-trial stage, concerning damages for instance). Information is thus seen as fundamental to dissipate fears that children may have and which may bar their expression. Such fears may for instance pertain to dissemination of the recording from the investigation hearing, medical examinations, but also the presence of the public and personal exposure in the courtroom. Recurring questions and apprehension children related to the possible consequences of their claims for the persons charged, especially if they are a parent, and to their position and role in hearings and trials. Concerns may relate to the use of the recording (e.g. will it appear on Facebook?) or possible consequences for children themselves. As reported by a lawyer, young children may fear they will be the ones going to prison following their declarations – given that this could have been previously suggested by their abuser to secure their silence. This should then be addressed, also as part of confidence building. Adequate information may even unlock the declarations of children, e.g. when adequately explained, why their own words are

²² France, Code of the criminal procedure (1959), article 365-1.

needed for the procedure to go forward, even though the investigator may already be informed about evidence. Information may be used to prepare children for hearings that will anyhow be difficult, allowing them to anticipate and avoid surprises. This may involve explaining the role of an investigator (not to “believe” or be emphatic but primarily to seek factual elements) or a judge, bound by his/her neutrality. It may pertain to the audio-visual recording.

Many interviewees suggest the degree of understanding will be child-specific, depending on age and maturity. Most children are thought to understand that hearings are moments in which their words are taken into account and to circumscribe the potential implications of their allegations. Smaller children may not have a clear vision of the various steps of the procedure. Other interviewees insisted on the fact that, beyond their intellectual capacity, the evidence and psychological condition of children, their feelings – e.g. towards a parent charged - will impact on their ability to register and understand information given. For one ad hoc administrator, children may also forget some information over time, with the lengthy procedures. Both make continuous support and information critical, involving various professionals. This is echoed by a staff member of a victim support NGO in Lyon: *“We are available for them. We have a very important educating role. We can repeat things, re-explain. Children live things in a cyclical way. When a case starts we can feel that children in particular are not always psychologically available. They are so submerged or traumatised that they don’t always register what is said. We can also bring complementarity, with lawyers for children (...) There is a real need for reassurance”*. Some interviewees, including judges and prosecutors also pointed out their inability to assess fully the degree of understanding of children, in the absence of tools or occasions to conduct a proper assessment. Some information may be particularly uneasy to communicate: this includes appeal opportunities and/or decisions on abusers, following for instance a *Cour d’Assises* decision: some children will feel their condition as victim or what they have gone through is questioned again.

The overall judicial process – on the condition that adequate pedagogy is ensured - might help redress children's perceptions of, and references to, society, e.g. reinstating notions that there are supportive adults around them and that sanctions exist for those who disregard the law.. As echoed by a lawyer in Le Mans, and agreed upon by other participants in the focus group discussion: *“I was talking about information and preparation: for me the most important thing is that the child, no matter his/her age, is not a stranger to the trial. (...)*. Ultimately, and beyond a simply instrumental approach, several interviewees mentioned that information is a right’s issue, and an ethical obligation and responsibility for professionals in contact with children – although it may not always be identified as such. For instance, a child should be systematically informed that what he/she is about to reveal will be heard by a second investigator, then later made available to a judge etc. It is equally important that children understand the role, mandate and legitimacy of those supporting them as lawyer or ad hoc administrator.). At the same time, it is sometimes deemed preferable to tailor and sometimes limit information, particularly with regard to young children and given the gravity and context of the offences (e.g. not disclosing an attempted murder).

Good practices reported

Personal practices deemed good by interviewees included:

- Investigators initially asking the child if he/she is aware about the reasons for his/her presence, as a way to check also their degree of information, and to provide complementary information if needed prior to initiating the hearing.
- Prosecutors nominating an ad hoc administrator to support the child, even in cases which are not intra-familial but when parents may be too affected or lack the required knowledge to accompany the child in the procedure, also in terms of information.

- Lawyers informing children of the requirement for the prosecution to gather evidence to convict the person, but also that, if eventually no conviction is found, the decision will not mean that the judiciary does not recognise the child as a victim, and does not believe him/her.
- Ad hoc administrator from an NGO requesting the systematic presence of a colleague when meeting for the first time with the child to anticipate and facilitate, if needed, any future transition (given the sometimes lengthy nature of judicial procedures). In addition, the practice is also to record any decision made throughout the procedure (judicial decisions/information but also initiatives of the legal representative such as the appointment of the lawyer), to secure traces of what happened, even years later. Considering the child as a future adult, this may help him/her better understand what led to decisions he/she maybe opposed at the time but which were taken by the ad hoc administrator for his/her best interest (i.e. damages sought against the parents).
- Prosecutor meeting with victims in cases where he/she decided not to take public action any further (*“classement sans suite”*) in order to explain what was undertaken, the meaning of the decision, but also possibilities to appeal. Although it may be an uncomfortable moment for the magistrate, and not always possible due to time constraints, it may be fundamental for the victim.
- Similar practice at the instruction phase, with a *“binôme”* with both a judge and an NGO representative to receive the victim and explain a *non-lieu* decision. The judge will communicate and explain the decision, and the NGO representative pedagogically explains the possible recourse etc. Alternative could be to have a referent judge for decisions.
- Lawyers, court staff and sometimes judges accompanying the child to visit the courtroom or sometimes witness a trial (with perhaps more minor criminal offences at stake), to allow him/her to better identify the room, participants and functioning of the procedure. Such practices were observed in Paris, Rennes and Aix, inter alia.
- Prosecutor addressing directly a child victim in his/her arraignment (*réquisitoire*).

On a more structural level, positive practices identified include:

- Development of a leaflet to inform children about various steps of the criminal procedure, engaging all actors, including judges for children, education inspectorate, child and maternal health services, child psychologists.
- Presence of staff members of victim support NGO established in police units receiving and hearing child victims (*Brigade de Protection des Familles*), as observed in Lyon, and in a position to inform victims about possible follow-up to their complaint and upcoming acts of procedure.
- Development of contact points (*permanences*) offered by specialised lawyers in various cities, located within the Tribunal, Bar Association or in NGO premises. These allow children to access – often without appointment - free and confidential information about their rights, advice and support regarding legal matters, both civil and criminal. This is for instance in place in Rennes, with a weekly drop-in service on Wednesdays afternoon. Other similar services exist in Marseilles and Lille. In Poitiers, an NGO lawyer (*Avoc’enfants*), provides such a service, publicised through the distribution of flyers. Similar set-ups were reportedly in place in Marseilles and Lille, among other cities. Other services include hotlines as well as awareness-raising sessions in schools.

- Development of support services dedicated to victims in Tribunals (*Bureau d'Aide aux Victimes* (BAV)), competent to inform and orientate victims throughout procedures²³. Piloted in several tribunals starting in 2009, these have further developed, with a recent decree anticipating their generalisation, via local conventions between TGI and designated victim support NGOs²⁴. Their functioning is placed under the responsibility of a focal judge for victims (JUDEVI). Such structures may be instrumental, though they may not feature child-specific services.
- NGO-driven initiatives, involving teachers and judges, to organize for children in high-school visits to Tribunals and discussions with judges (NGO "Justice et Ville") or the organizing of mock trials, with the participation of judges²⁵.
- Discussion Groups e.g. as developed in Lyon for child victims of domestic violence (NGO Le Mas, in partnership with another specialised NGO).

Ambivalent, challenging issues

Among challenging issues identified were the question of information for children – as is the case for adults – on decisions made following their declarations, and in particular that of the Prosecutor deciding not to take public action further (see also above good practices section); the question of information shared (or not) by the judiciary on the advancement of procedures that, as already mentioned, may span months or years; and the question of "correctionalisation". These are all areas where improvement is called for.

Regarding specifically the challenge of correctionalisation: the informing of children is seemingly not always systematic and can be an issue, for instance as reported for a teenager facing a requalification of a "rape" to a "sexual assault". To some extent, the issue is not specific to child victims. As stated generally by the staff members of a victim support NGO: "*How many times there is an ad hoc correctionalisation and the victim was not able to understand why?*". Information about the rationale of such option may be shared by the lawyer/ad hoc administrator but who may approach it with a strategic angle. As reported, staff of a victim support NGO may be in a more neutral position to help the child, when appropriate, to understand the pros and cons of re-qualifying the offence and avoiding a jury trial. At a minimum, responses from respondents suggest this aspect may be overlooked by professionals, in terms of informing of the child, including on the possibility to oppose a decision of *correctionalisation*²⁶.

Areas for improvement

A number of areas and specific suggestions to improve information were identified by interviewees, including:

- Information on hearings: several professionals reported difficulties in anticipating the conditions of a hearing and therefore to adequately inform and prepare children. Such difficulties included uncertainty about an agreement on the presence of the ad hoc administrator in the judge's office, but also on the nature of the hearing (face-to-face or confrontations). While lawyers can gain additional information from the judge, further indications could appear in the summons. Information could also be communicated, should the judge not anticipate any hearing, thus avoiding useless information, preparation and apprehension on the part of the child.

²³ <http://www.justice.gouv.fr/aide-aux-victimes-10044/bureaux-daide-aux-victimes-19706.html>

²⁴ France, Decree (2012).

²⁵ <http://www.cdad-valdemarne.justice.fr/adresses-utiles/fiche/id/1151>

²⁶ France, Code of the criminal procedure (1959), Article 186-3.

- Information about the advancement of the procedure: some respondents stressed the difficulty for families - and particularly children whose perception of time may accentuate issues - in understanding the length of the judicial procedure, whether justified or not. Their perception may be negatively impacted by long periods of time without direct information being provided by the judicial authorities in charge. As one psychologist, active in the victim support NGO federation, reports, with regards to interactions with investigating judges: "*We pushed a lot, because we were telling them 'you do have things to say to them in fact'. They say 'we have nothing to say', well yes you do in fact, after 3, 4 years it could possibly be good to say to them 'we've put that in place'. But at least communicate (...) Because families and the child interpret it this way: 'they're not saying anything, so nothing is done. Which is not true'.*" Even if information can sometimes be gained indirectly or informally by lawyers, some respondents thus stressed the importance of more regular information.
- Information for child witnesses: feedback is that support may be lacking and impact negatively on their willingness to participate in judicial investigations and proceedings and their experience thereof. As reported by one respondent, they may feel unprepared, of fear exposure from a trial hearing: ("*Might my position change, might I risk being considered as perpetrator?*")
- Information and training of social care professionals (including specialised educators and maternal assistants) as well as experts on judicial procedures, including regular updates on reform. Currently, many reported facing limitations impacting on their ability to assist and inform children and proceeded essentially through learning by doing and from experience.
- Referral of children and families to victim support NGOs. Such referrals could be more systematic and occur early on, also recognizing the need for parents to be informed and supported. As reported by a psychologist from the victim support NGO federation: "*The sooner there is a first contact, the better it is for the support and the handling of the victim.*" As pointed out by one former prosecutor, staff are often motivated, trained, and in a capacity to assist children, e.g. in gaining information about their rights or anticipating /preparing a hearing. They also play a role in terms of continuous information, against feelings of abandonment that may arise after the initial investigation, in between summons or acts of procedure which can be separated by several months.
- Issue of information on the judicial decision, which may not be always adequate, child-friendly and given by legal professionals. The information gap may extend to the informing and consultation of victims, in cases of demands for conditional bail, while the judge is responsible for taking into account the interests of the victim or civil party in his/her decision. But this would require further research²⁷.
- Institutional memory of the judiciary: some respondents call for a large rethink on the judiciary's responsibility to provide opportunities for restitution for former child victims, years after a case, when facing "black holes" and seeking to better understand what happened (the investigation, trial, damages and other aspects). As captured by a former psychologist, prosecutor and judge: "*I think that justice should have a duty of memory towards the victims. Being capable of recalling what really happened, either because they haven't been informed or because their emotions were too strong at the time that they weren't able to accumulate all this information. They should be able to have the possibility to see a magistrate again, at any moment, and to say – now, it's calmer, could you re-explain to me how everything happened?*".
- Monitoring and evaluation: beyond gaps observed in practice, several professionals were keen to see evaluation developed in terms of professional practices, but also in children's understanding of procedures. Some professionals suggested they lacked feedback. Evaluation may be extended to the overall implementation of protective provisions set legally, defining rights whose enjoyment is conditioned by adequate information for both families and professionals responsible for their implementation. One example explicitly cited is the provision in the 1998 legislation which provides

²⁷ France, Code of the criminal procedure (1959), article 712-16-1.

that for child victims, medical follow-up costs will be entirely covered by the social security system. According to one former prosecutor and judge, this provision is not known – including among competent social security services (CPAM) - and consequently not activated.²⁸

2.2.2 RIGHT TO INFORMATION IN CIVIL JUSTICE

Current practices and assessment

As far as civil procedures are concerned, few interviewees identified specific legal provisions concerning information. Practices and assessment reported in the context of hearings before the judge for children and judge for family affairs are addressed successively.

PROTECTION AND EDUCATIONAL ASSISTANCE

Concerning initial hearings, the judge will usually introduce him/herself and spell out his/her function, also providing some explanation about the reason for the summons and the child's presence. Notably if and when heard separately from his parents and social services, the child is often informed explicitly that, while he/she is heard, his/her point of view matters but remains one source of information and does not automatically lead to the decision. Some judges may use sketches to explain to children notions such as parental authority and family structure. As far as the decision is concerned: it will usually be shared by the judge at the end of the hearing with all present. Some judges then check the understanding of the child and parents by restating the grounds and allowing them to raise anything for clarification. Some also make clear, in particular when adherence to the measure is limited, that it will be re-evaluated in a given time-frame, this leading to termination, prolongation or change. Some judges also verbally inform parents and children on the possibility to appeal (within 15 days, as notified on the decision itself). They may also explain the nature of requested measures such as social investigations. Delayed decisions (*délibéré*), notified in writing to the legal representative and structures are seemingly exceptional. Some social workers reported an absence of a hearing when a decided measure expires and when the judge considers, based also on educational reports, that the child is no longer at risk (e.g. and can return to his/her family). Children can access the file in the Tribunal, if accompanied by a parent or lawyer, but as reported, this is not common.

Ahead, during and after the hearing, and if present (which is seemingly not the case for a majority of cases), the lawyer of the child will play an important role in terms of information and preparation. Specialised educators insist also on their role both before and after the hearing: before, there will usually be a meeting scheduled with the family to share the evaluation of the situation. This allows the child and parents to prepare themselves somewhat: they can anticipate what is shared in writing with the judge, and what measure may be advocated as well as other possible options for the judge. The meeting is also used to indicate to the child (and parents) that he/she may be able to express additional views during the hearing and should not hesitate to do so. As the hearing ends, the educator will usually spend a moment with the child and parents if present to “debrief”, also making sure the decision was understood, and to try to respond to questions that remain. In a subsequent meeting with the child and family, also to define and adopt individual projects with objectives (*Dossier Individualisé de Prise en Charge (DI)*), the educator will re-state and elaborate upon what was said and decided at the hearing.

Most interviewees did not report any development or use of specific material to inform children about the hearing and procedures. Within educational institutions, some leaflets sometimes exist to explain the nature of various measures and their objectives: they are designed for parents, but some also for young children and adolescents. But these focus on the implementation, not on the judicial procedure, or conduct of the hearing per se, nor on the procedural rights attached.

²⁸ France, Social Security Code, article L. 322-3, article L322-3.

In terms of general assessment: social and legal professionals report varying practices in terms of information, personality and training impacting on the pedagogy of judges for children, though the latter is found generally adequate. The opinion expressed by a specialised educator in Lille is rather representative: *"I find that in hearings, it is rather well addressed, in the sense that on explanations, a majority of judges try to be vigilant: if the child understood well, if he/she hears well, the reasons why. Situations being difficult, we always make sure they understand the reasons why"*. Some judges may even address more generally the role and responsibilities of the parents and child, which are not symmetrical. As reported, including by judges for children, children identify with the judge and their protection mandate, which can facilitate their participation in the hearing. They may, overtime, establish a relationship of trust with a judge, some then identify them as their judge ("my judge"). Social care professionals stressed the recurring apprehension children naturally have, e.g. when about to meet again with separated parents in the context of a hearing or when fearing being removed from their home. Children are, reportedly, generally aware they can write directly to their judge. During the hearing itself, children are seemingly usually aware that they can also ask questions freely to the judge. Some will however be inhibited by the context, with many adults present, and the stakes of the hearing. Information and preparation efforts of the lawyer, when present, are overall seen as positive, and help the child to take an active role in the hearing. Several judges and professionals stress the importance of the process of sharing the decision at the end of the hearing, so that it can be heard in identical terms by all present. By contrast, there may be limits to adequate information: it may be preferable for some children not to be present in the hearing room when intimate aspects concerning their parents are discussed. Beyond this, and as reported by educators, if not addressed personally, children's degree of understanding of the decision will vary, sometimes requiring debriefing. This can also be applicable to parents. Beyond this the language used by the judge or other actors, emotions and stress may also impact on the ability of everyone to be receptive to information shared during the hearing itself. Recurrent information and pedagogy are essential to many, including judges themselves. As reported by a judge: *"The decision has to be understood in order to be useful"*. For a lawyer in Marseilles: *"Explaining the words of a judgment of placement is as important as the hearing itself"*. And another judge for children: *"Information participates in comprehension and therefore to the accepting of the decision. In educational assistance, we don't ask the people to agree. The parents of the child being placed rarely agree with the decision. We ask them however to adhere to it. But adhering to it requires understanding it, thus information"*.

Social care professionals and in particular several specialised educators insisted on the need to inform and support children before, but also in the immediate post-hearing context, answering their questions and elaborating on important and/or sometimes difficult discussions which took place during the hearing. This is viewed as part of a support function they assume. However some report a lack in their own training to adequately inform children and families about procedural aspects for the hearings. A challenging issue singled out by several interviewees and notably social workers remains that preparation and information prior to the first hearing remains limited or non-existent, as no educational service is yet in charge of supporting the child. And yet, as also pointed out, this is a decisive hearing that both the child and parents will approach with no experience of the judge for children, the judicial context and most probably, little information about their role or procedural rights.

FAMILY AFFAIRS

Before the judge for family affairs, children are usually informed of the purpose of the hearing, modalities of recording of their words and of the fact that their parents will have access to a report (if written) or will receive feedback from the hearing (if verbal reporting to parties). Some will inform children of the option to double check, modify or exclude some of their words from a written report, but this is not systematic. Some judges seemingly focus on making sure that their position is well

understood and transcribed – e.g. by summarizing at the end of the hearing - and in doing so, may rephrase or exclude some information if they deem there is the risk of the child being exposed. Judges usually check how the child has been informed about his/her right to be heard and usually inform children that, although their viewpoint will be taken into account, it will not make the decision even though the decision will look to serve his/her best interest (wording will differ). When the hearing is delegated to a social care professional, they and sometimes their organisation will usually address a summons to the parents, and sometimes directly to the child (as evidenced, those letters may however be identical in wording). The professional will usually check how the child has been informed about his/her right to be heard and inform him/her about the fact that a report will be addressed to the judge and that parents will also have access to what the child expressed. In co-hearing practice, as observed in Tarascon, the judge remains the key actor in terms of information, as confirmed by a social care professional: *“Information is given by the judge. My role as a child auditor is to make sure that the child knows that we are here in order to learn more about his/her needs and that their words are free and independent”*. Similar efforts are in practice deployed by social investigators, in the context of social investigations requested by the judge for family affairs. Those heard reported making explicit to the child the purpose of the investigation, but also the fact that, if the child will be heard, he/she will not make the decision. Lawyers, if designated for the child, play a role in informing and preparing the child for the hearing before the judge or social care professional. As reported, some will also share with the child his/her right to choose to remain silent and the fact that some degree of confidentiality will be preserved in the hearing. In the hearing, they may intervene to make sure the child has understood or was in a position to express him/herself as he/she intended to.

In terms of general assessment: one social investigator suggested that children may well see the function of the judge and identify the opportunity of being heard and using the judge as a *“transmission channel”* vis-à-vis the parents. Other views are more contrasted. For many respondents though, most children will understand that they do not make the decision, even if for some this is difficult to accept. Some children will thus express concerns about whether the decision will meet their hopes in terms of residence. Some lawyers insist on the information and preparation prior to the hearing, as a condition for a meaningful participation, and a way to address and perhaps overcome parental influence. As reported by a lawyer: *“If we explain his/her place to the child, if we accompany him/her, if he/she has thought about what he/she is willing to pass on (...) we will manage to avoid the instrumentalisation by one of the two parents”*. Some however reported cases of late appointment, which may limit available time to carry out adequate work prior to a hearing. As reported by a mediator, the hearing may be useful in itself for children to be better informed, by the lawyer and judge, about the decisions parents can make and what these practically imply, hence complementing or correcting information communicated to them by each parent.

A number of challenging issues were identified by respondents. One remains the information for children about their right to be heard and be assisted by counsel, whose primary responsibility is attributed to parents. Information may not be systematic nor adequate. A practice of certification was evidenced, requesting parents to sign a form stating that they had informed their child. But as reported in practice, some parents oppose the hearing of the child, as a matter of principle, and may reflect on the opportunity of signing such documents while disregarding their obligation to inform the child. A related issue is the more general channelling of information through parents, which may also impact negatively on their preparation for a hearing and understanding of the procedure and their position. As explained by a mediator and child auditor: *“Information coming from the parents: is it not clearly explained? Or is it parasite emotionally? It is difficult to evaluate but rare are children for whom it is clear”*. This is but one aspect of parental interference observed in such hearings (e.g. parents calling their child during a hearing). Another issue in terms of information pertains to the decision. Since the child is not a party to the procedure, the decision is, at least in theory, not communicated directly to him/her or their lawyer. He/she can however, accompanied by his/her

lawyer, access the decision in the Tribunal. One judge reports that receiving the child and parents again after the decision would be ideal to make sure the decision is adequately understood but notes that time-constraints do not allow for it. Views differed on the opportunity of making a copy of the decision available directly to the child and/or his/her lawyer.

Good practices on the individual and structural levels, including both sets of civil procedures.

- Individual practice of a judge for children insisting on not using/letting social services use terms such as “placement” (appropriate for an object) for a child whose situation is being reviewed in hearings.
- Practice of a bi-weekly drop-in session allowing children to access counselling from a lawyer of the Bar’s association, as observed in Lyon (*“Mercredi, j’en parle à mon avocat”*)²⁹.
- Practice in Créteil of a volunteer (e.g. former educator/auxiliary of justice) being available for parents wishing to consult the files of/access a decision, and if desired, to help them understand the content. Open once a week, with prior appointment. At the same time, for children (i.e. above 16), there is the opinion that it may be better to have them access information in an educational context – with their educator – rather than coming to the Tribunal to read the decision.
- Development of a short feedback questionnaire with open simple questions for children, to understand how they experienced the co-hearing, or hearing delegated to social care professionals, and their general feelings (initiative of the social care professionals). Questions include for instance: *“Did you feel you were able to express everything? Did you feel you were understood? How do you feel now? Do you have specific emotions?”*
- Practice within an NGO implementing educational support measures to have two educators jointly visiting the family on the occasion of the first meeting (the educator in charge, and a colleague). This is viewed as a support for the lead educator but also as a more institutional and reassuring approach regarding families, who may otherwise fear arbitrary practice if faced with a single educator.

Areas for improvement

- Developing information, through the school system.). Initiatives exist locally of awareness-raising sessions organised by NGOs, educators (including PJJ) or lawyers, and addressing the rights of the child or specific issues such as sexuality/relationship to the body. Some would favour the introduction of a dedicated component in civil education in school, considering that children’s perception of the judicial system is often limited or distorted. Information can also be channelled through schools on the rights of the child, on how trials work, or on specific issues (e.g. children’s ownership of their body), targeting children from an early age (4-5), or perhaps at the high-school level, for prevention purposes also.
- Systematising the designation of independent lawyers for children by the Bar association (as a guarantee of independence from parents): to inform and assist them in procedures and help them prepare hearings, also ensuring that such designation occurs early enough for adequate work to be carried out. This could be planned, as a minimum requirement and according to a number of respondents, for hearings where parents also have lawyers for themselves and/or when a decision of placement is to be considered.

²⁹ http://cnb.avocat.fr/agenda/Mercredi-j-en-parle-a-mon-avocat-1990-2010-20-ans-de-conseil-et-de-defense_ae110420.html

- Providing information for the initial hearing before the judge for children: currently, children and parents may have little or no information about such hearings. Interviewees did not necessarily elaborate on ways such preparation could be enhanced, although it was mentioned that there was a potential role for social services or court staff, with perhaps a possibility for children/parents to come to the Tribunal prior to the hearing to see the judge's office.
- Developing methods and tools of evaluation of children's information and understanding of procedures: many professionals, and in particular judges and social care professionals hearing children themselves reported lacking tools and occasions to evaluate to what extent children understand information given and the functioning of judicial procedures. Their responses suggest such feedback could certainly be instrumental for them to adjust personal practice.
- Mainstreaming information about procedures but also about decisions and respective competences of civil judges: social care professionals reported occasional difficulties for children to relate to procedures when both the judge for children and family affairs are involved (and possibly when a criminal procedure is also on-going). In some cases, the decision of the judge for children (e.g. on a placement) precedes or temporarily goes against a procedure/decision of the judge for family affairs (JAF), in which case children –particularly young ones - tend to be confused, e.g. about who decides what. Such information gaps may be addressed, and most interviewees do not question the existing divide of competence as such.
- Adjusting the content of decisions: some judgments are sometimes deemed too laconic, while a specialised educator pointed out the importance of such information as a reference point for educators, when interacting with children and families. As mentioned by one specialised educator: *"For me, the hearing is one of the most important moments, when the magistrate will take the decision and explain it to the parents and the child. A big part of the educative work is that what will follow will be based on the hearing, on what was verbally said, or even written in the judgment."*
- Development and dissemination of child-friendly information materials: adapted to various age groups to inform children about their rights, the procedure but also the role of the various professionals involved such as ad hoc administrators. Role of NGOs, e.g. in reaching out and informing children at risk, such as isolated minors (Hors la Rue, Gisti). One judge for family affairs considered CD-ROMs could be developed, with visuals to explain the procedure to children (as this reportedly exists in Canada). One prosecutor confirmed this could be useful, e.g. for younger children. Information could also target parents, to be distributed in police stations and all relevant social care professionals, and be developed on a national level, besides local initiatives that already exist. At the national level, some developed for adult public, e.g. on victims: should be child-tailored. Even as reported, at the NGO level, information leaflets will be designed for adults.

2.2.3 CONCLUDING ASSESSMENT ON THE RIGHT TO INFORMATION

Based on responses of professionals active in civil and/or criminal proceedings, and highlighting commonalities and specificities, the following aspects can be highlighted:

- Limited resources and legal texts exist on information. Few interviewees located specific provisions concerning information or specific guidelines, particularly in the criminal field, the right to information and the few relevant provisions that may be also hard to enforce, through recourse when overlooked in practice. As summarised by a psychologist, staff member of a victim support NGO, with respect to the information for child victims on public action: *"The big problem is that the victims' rights are not really opposable: some are in the code, we have to inform the victims, but if it is not done, nothing happens. It does not encourage jurisdictions to implement these"*.

- In that context, practices (including good ones) seem to be left to individuals and local coordination of professionals. As a logical consequence, adequacy of information (in level and content) varies, in both civil and criminal fields, depending also on the individual personality and sensitivity and training of professionals, and particularly judges. Some interviewees see major gaps, with professionals that sometimes assume that children are informed or conversely are not in a position to understand. Others deem a majority of judges vigilant, in particular in the educational assistance/protection proceedings before the judge for children.
- If the primary responsibility of information is often entrusted by respondents to judicial authorities, most professionals recognise shared responsibilities in terms of information. In criminal proceedings, the role of the lawyer, ad hoc administrator and victim support NGO, their complementarity and need for cooperation were stressed by interviewees. In civil proceedings, the educators' and lawyers' efforts were highlighted, at all stages, and in particular in the context of hearings (before, during, after). That said, the (too) limited designation of lawyers in civil proceedings to support children was a feature in many responses.
- In that context, a related observation is a reported need for greater attention to information for parents in both civil (particularly in the field of educational assistance and protection) and criminal proceedings, with needs for support often overlooked, and likely to impact negatively, if not identified, on the information and participation of children in procedures. In criminal proceedings, the information for child witnesses may also require greater attention in light of identified gaps, detrimental to their participation in proceedings.
- Beyond local initiatives, limited development of specific child-friendly materials or specific training on questions of information on procedures (in particular for social care professionals but also prosecutors or judges) but also specific evaluation and monitoring maybe reflects the lack of systemic attention to the right to information.
- These observations contrast with a general consensus that information is critical to enable and secure a meaningful participation of children in judicial procedures and beyond, in proceedings and hearings that will impact positively on children. As stated by a judge for children: *"The hearing's value is as much in the decision as in what the child understands from it"*.

This suggests overall a perfectible response, in both fields, in terms of respect and implementation of the right to information for children involved in proceedings. Many professionals outline avenues and concrete initiatives to that extent (see good practices).

2.3 TRAINING AND CO-OPERATION OF PROFESSIONALS

2.3.1 TRAINING AND CO-OPERATION OF PROFESSIONALS IN CRIMINAL JUSTICE

Most professionals active in the criminal field receive relevant training (16 out of 20 legal professionals, 8 out of 14 social care professionals, all 14 "mixed" professionals). Content-wise, such training included: 1 week training for investigators on child hearings (with 3 components: child psychology, technical training and practice), in addition to training on general hearings methods applicable also to adults (e.g. PROGREAL method for the Gendarmerie); thematic – and optional – continuous training sessions of the National school for the judiciary (ENM) within clusters on criminal justice and judicial environment (for example, the 2013 catalogue includes, within this cluster, training on domestic violence (4 days), sexual violence against children (3 days), youth and violence (5 days), syndrome of the shaken baby (bébé secoué) and its judicial treatment (2 days), the

perpetrator of sexual offences against minors (5 days)³⁰; training on ad hoc administration, provided by NGOs (INAVEM federation/Chrysalis) with a half-day component on the words of the child (*parole de l'enfant*) and covering both the criminal and civil procedures. For lawyers, a training kit was developed and approved by the Council of Bar Associations, with a view to harmonising existing training sessions for lawyers active in local Bar associations. Their training is usually cross-cutting, covering both hearings in civil and criminal procedures, and support of child victims as well as offenders. Training is usually a requirement to enter the specialised group of lawyers defending and counselling children. This exists in large cities: Marseilles, Paris, Lille, Lyon, Bordeaux etc. Some groupings may have an NGO status, such as Avoc'Enfants in Poitiers. Most offer weekly free consultations (*permanences juridiques*) often accessible within the Tribunals.

Some of these training provisions are multidisciplinary in content and attendance. Since 2011, training sessions of the ENM are thus also open to lawyers, and some NGO professionals, thanks to conventions signed with the Ministry of Justice and jurisdictions) and PJJ educators reportedly can also access such training sessions. A number of professionals took part in training set up by NGOs (La Voix de l'Enfant), e.g. on and around the set-up of UAMJs, involving the various professionals (prosecutors, investigators, medical professionals, staff of victim support NGOs, and social services). Other training attended included ad hoc seminars and colloquiums, set up by municipalities, social services of local governments (*Département*) and addressing specific topics such as intra-familial violence. Some mentioned by interviewees were set up by or in cooperation with specialised networks such as the CIDFF (*Centre National d'Information sur les Droits des Femmes et des Familles*) or the UDAF (*Union Départementale des Associations Familiales*) or children rights NGOs. A number of professionals (investigators, lawyers, psychologists) also pursued training in criminology, sometimes as auditor, as they deemed it instrumental to better grasp certain acts and aspects of procedures.

A number of professionals, e.g. investigators and ad hoc administrators were keen to engage in (*en demande*) training covering the role and mandate of other professionals they cooperate with (experts, judges), to gain a better understanding of their organisation, functioning and respective constraints. A number of professionals shared experiences before groups of professionals to precisely introduce their role and practice. These included a Gendarmerie investigator presenting her role as child auditor to a territorial grouping of 240 officers, and an ad hoc administrator annually visiting the police school in Rennes, to explain what her function consists in. Such experiences were valued as opportunities to raise awareness and are considered helpful to ensure that professionals, including colleagues, adopt the right responses, e.g. to delegate the hearing to a qualified professional, or to work jointly with the ad hoc administrator to support children in a criminal procedure.

Demands for training otherwise included the set-up of a harmonised curriculum for ad hoc administrators, backing a consolidated status. Some professionals, including an investigating judge or deputy prosecutor in charge of minors, did not report specific training on child hearings, but did not necessarily see it as critical, or at least as critical as for investigators. Emphasis was on learning through repeated hands-on practice. Another prosecutor highlighted that the general training as a judge (ENM) could turn out to be quite theoretical when it comes to practice. Experts (psychologists, child psychiatrists, interpreters) report insufficient training or regular updates on judicial procedures, given also their reported limited interactions with judges.

COOPERATION

³⁰ <http://www.enm-justice.fr/>

In terms of cooperation, most interviewees stressed the need for systematic communication and coordination among all the actors concerned. The Prosecutors' offices were pointed out as having and usually playing a crucial role in this regard, building bridges with social care professionals, defining common protocols and adjusting practices (e.g. on reporting situations of children at risk). One prosecutor thus reported having developed a guide on reporting of children at risk and led instrumental efforts to disseminate it in schools, targeting management and staff, and involving judges and social services. Such initiatives, also allowing all professionals to introduce their work, are also deemed important by many professionals who reported mutual (mis)perceptions affecting cooperation, and consequently, the support available for children throughout criminal procedures. The design of protocols to set up and run UAMJs was also seen as conducive for the cooperation and coordination of all actors (medical practitioners, law enforcement officials, social workers/psychologist and staff of victim support NGOs), by allowing for direct and regular contacts between them on site, and with sometimes the support of a designated UAMJ coordinator. Gaps in mutual recognition and knowledge are also still to be bridged, as exemplified by the ad hoc administrator. One indicated many judges still see their role as limited to the appointment of a lawyer to support the child in the procedure and reported inconsistent practices in terms of designation. A number of professionals also pinpointed a rather individualistic practice among judges and lawyers, also with forms of mistrust, though easily dissipated. Limited contacts are also due to time constraints, particularly in large jurisdictions. Some experts reported little contact with judges, besides the communication of assessment-related documents. Many reported a varying engagement and competence among ad hoc administrators, one educator also pointing out that some are overburdened and eventually have to make choices between situations they follow (e.g. for a hearing).

Cooperation can be institutionalised, to a variable extent. Investigators reported close cooperation with professionals of the educational sector, also developed through prevention and awareness raising actions carried out in schools by specific units in charge of child hearings (e.g. BPDJ), but also with social services and staff of victim support NGOs. The latter confirmed that weekly physical presence in specialised police/gendarmerie stations to assist victims (BPDJ for Gendarmerie and BPF for police), is generally conducive to building trust and close cooperation and contacts. In addition, there is seemingly less staff-turnover of officers working in such units, allowing them and partners to capitalise on training and networks. Ad hoc administrators and children's rights NGOs usually rely on a group of identified (and sometimes affiliated) lawyers, known for their child-sensitivity and professional ethics, and working in the framework of the legal aid system. Conventions will exist for victim support NGOs with jurisdictions, facilitating their support and involvement by the Prosecution (article 41 of the Code of criminal procedure). The designation of a judge of reference for victims (JUDEV) was, according to several professional, not followed up by many results up to now. Within the judiciary, a triangle (*trinôme judiciaire*)³¹ also involves the office of the Prosecutor, judges for children and services of the judicial protection of the young (PJJ) to discuss general coordination and policy issues, but also some individual situations.

At the juncture of training and co-operation, one professional reported a region-wide and year-long multidisciplinary training programme (10 modules) set up with the financing of the *Fondation de France* and with the support of the Conseil General (Drôme) and with a total of over 1000 participants. The interviewee valued it as a successful effort, not only to scale up competence of all actors, but also to build bridges between professionals.

2.3.2 TRAINING AND CO-OPERATION OF PROFESSIONALS IN CIVIL JUSTICE

³¹ France, Ministry of Justice (2010a).

Most professionals active in the civil field with children had received relevant training (4 out of 5 legal professionals, 9 out of 12 social care professionals, 11 out of 13 “mixed” professionals).

TRAINING

Judges for children and judges for family affairs reported continuous training offered by the National School for the Judiciary (ENM), which did not exist in the 1990s. The 2013 catalogue includes training on the practice of the functions of judge for family affairs (3 days); the practice of judge for children (3 days); changing function to judge for children (11 days), the quality of the civil decision (4 days); educational assistance in question (5 days); judicial investigation in educational field (3 days); from the preliminary information to the warning (*signalement*) to the involvement of the judge for children (3 days); filiation (3 days); adoption (4 days); parental authority (3 days); guardianship for children (3 days). A number of judges and educators attended training of variable length (from several days, to a year-long academic program) on systemic analysis (*analyse systématique*), family therapy, or interview methods. As reported, such training can be supported by their institutions of reference (social institutions, local government), as part of continuous training. NGOs are also involved in the design of specific training on the hearing of the child in civil procedures or on ad hoc administration, covering civil procedures. One such training provision is planned on delegated hearings to social care professionals (3 days, engaging judges, lawyers, social workers). Professional federations of ad hoc administrators (FENAAH), and social investigators (ANDES), are also organising seminars or colloquiums or annual meetings on relevant topics. As such, they are seen also by professionals as resource platforms and networks for advice on specific cases. Lawyers involved in specialised groups have received initial training (sometimes about 20 hours, covering both civil and criminal procedures) and have to dedicate at least part of their continuous training to child-related sessions.

Specific training does not appear systematic among judges. Some reported analysis of practices, conducted in jurisdictions, e.g. with the facilitation of a psychologist, judges discussing practices among themselves, based on a selected case and recording, several times in a semester. Some also highlighted training offered for judges when changing function (e.g. becoming judge for children), of about 15 days, with weeks of introductory practice in Court. Some judges for family affairs reportedly consider themselves unequipped to conduct hearings and therefore delegate. As also added by one experienced judge, those who attend the offered continuous training sessions are those likely to be motivated rather than those needing it the most. Some lawyers stressed the need for all professionals, including judges to be trained as “...a child is not an adult in miniature”. Some social workers participating in hearings considered judges should be trained specifically to hear children, including on non-verbal communication, but should also have access to further training in terms of drafting of decisions, notably to avoid judgemental and over-laconic statements which are sometimes reported. Some judges for children and family affairs conceded being somewhat isolated in their practice with children or hearings generally, at least when taking up their position initially (some years ago. One mentioned the practice of online discussions on practices, via a dedicated website (Jafnet). Exchanges among judges on their practice will happen most generally in an ad hoc and informal fashion, although one reported a monthly meeting to that end. In addition, locally, some conventions have been designed and adopted as reported in a number of jurisdictions on the hearing of the child in civil procedures (such as Paris). Several legal professionals were seemingly keen to take part in more analysis or practice and inter-vision, engaging also social care professionals.

Several social care professionals stressed the general nature of the curriculum (covering fields such as disability, child protection but also youth crime) and its limited legal component. Many specialised educators reported they would welcome additional specialised training or tutorials on procedure and hearings before the judge for children, to be in a capacity to better prepare for hearings and support children. Some reported opportunities to accompany a colleague initially to observe hearings, but

also to learn by practice and solicit lawyers when needed for information or advice – the implied idea being that if the educator is not well prepared, his/her insecurity will impact on the child.

COOPERATION

In terms of cooperation, judges for children are viewed as generally accessible to social care professionals but also to lawyers - by contrast sometimes with some judges for family affairs - and cooperation is viewed as rather constructive and positive, with a shared objective: the protection of the child. Social care professionals thus report that they are generally heard if suggesting that a child be heard separately from his/her parents. The geographical delimitation of the judges' jurisdiction (*secteur*), and yearly or regular visits to institutions in which children are placed, as well as partners implementing educational support measures are part of an on-going dialogue. However time constraints are noted by many professionals as an obstacle to more intense dialogue. A lawyer also pointed out that judges in smaller jurisdictions may exchange more, and be more accessible to lawyers and other professionals. Locally, meetings at regular intervals (e.g. 3 months or twice a year) between directors of structures and judges may allow them to discuss general functioning issues (e.g. gaps in terms of means to implement measures) but also in exceptional cases, individual situations. A number of specialised educators are somewhat critical of lawyers for parents who sometimes fuel conflicts in hearings as well as that of judges questioning the educator's competence in front of families, as this is seen as undermining their capacity to conduct the follow-up educational work. Some social care professionals witnessed gaps in 'motivation' or in *savoir être* among judges, beyond technical knowledge of standards.

Feedback of social care professionals conducting hearings ordered by the judge for family affairs or taking part in co-hearings reported varying degrees of interactions with judges. Some exchange regularly, others have simply a meeting on a 6-month basis to assess coordinated practice. Educators supporting children and present in hearings before the judge for family affairs confirm that exchanges are also informal, e.g. on the margin of a hearing. Some wished for more institutionalised, or at least more frequent exchanges. One educator thus said he would enjoy an opportunity to sit down with a judge for a couple of hours, to learn more about respective practice, as a starting point.

Several professionals pointed to the communication and coordination between judges for family affairs and judges for children as an area in which improvement is still needed, after the decree of 2009 which encouraged it³². Some exchanges are sometimes also scheduled to address potential overlap in mandates or friction, but this is not always taking place.

2.3.3 CONCLUDING ASSESSMENT ON TRAINING AND CO-OPERATION OF PROFESSIONALS

"We make mistakes in the commercial Court. It is less dramatic than making mistakes when the life of a child is at stake (...) Any appointment for a specialized function– one should check its adequacy – ensure a continuous training "

In terms of training, the responses of interviewees suggest some degree of heterogeneity as evidenced in hearing practices, both in criminal and civil procedure. The importance of ensuring that children are interacting with specialised professionals throughout procedures is a point of consensus. Offers of continuous training, e.g. with the National School for the Judiciary (ENM) or for lawyers assisting children in the framework of the legal aid system have significantly developed in the past few years. A National Charter (Charte nationale de l'avocat d'enfant) of child lawyers has also been

³² France, Decree (2009).

adopted in 2008³³. Time constraints are put forward by a number of professionals as an obstacle to more in-depth training. Yet many, and in particular judges, would welcome chances for further inter-
vision and analysis of practices. One judge for children also pointed out that the practice in France of geographic mobility for judges, but also the convention of changing function every 5 years for judges, could be reconsidered to give more value to vocation, as a guarantee of professional commitment, and as an incentive for continuous training and, simultaneously, greater capitalisation on training (as is seemingly the case in other countries such as Belgium). Personal demands for some basic training or briefings/updates on judicial system, procedures and protocols (oriented toward practice) were widely reported by social care professionals, and particularly specialised educators and experts,.

As far as co-operation is concerned, the degree of cooperation often depends on individual initiatives on specific projects, leading to a recurring need for re-engagement. To that extent and in all spheres, professionals note that informal exchanges are as important as institutionalised cooperation. Many favour a development of exchanges, also to address sometimes negative perceptions and enhance mutual understanding, trust and cooperation, particularly in large jurisdictions where contacts between legal and social care professionals may be less self-evident than in smaller, rural areas. As reported by a staff member of a children's rights NGO: *"We work in separate chapels. It's complicated and it's not innate to work in a multidisciplinary way. The more we do multidisciplinary training, the more we will be able to work in a multidisciplinary way"*. To that extent, local experiences engaging various professionals in training seminars (e.g. over a year) offer interesting examples of possible bridges between training and cooperation. Also highlighted was the opportunity of designating a coordinating judge when 3, 4 or more judges operate in a given jurisdiction to spearhead exchanges on respective practices, and good practices in conducting hearings. One experienced professional stressed proactive steps needed to ensure that judicial professionals (judges, lawyers, but also other auxiliaries) find opportunities to better grasp some realities they may not be familiar with, given their own background and career paths. This may be done through "internships" but also more informal initiatives, e.g. such as those set up by an experienced educator, for judges to visit disadvantaged families concerned by a measure, with their agreement.

Some priorities applicable to both the civil and criminal fields emerge recurrently in responses of professionals: they include the need for multidisciplinary approaches and cooperation when it comes to hearing children - yet while respecting positions and functions of professionals; the need for enhanced coordination when criminal and civil procedures are concurrent, and the need for more consistent and harmonised accreditation practices, training and monitoring for ad hoc administrators. Some respondents, critical of inadequate practices, would like to see additional supervision and evaluation introduced for judges. As one NGO legal adviser indicates: *"The law imposes a certain number of requirements but effective respect is left to professionals in the field, without having external monitoring reminding them to respect the law"*. One lawyer for children believes such supervision could be designed while preserving the independence of judges.

In both areas, professionals also insisted on the usefulness of professional groupings, as platforms to share experiences, access continuous training, seek advice, or to formulate demands. Such groupings come in the form of federations (i.e. of victims support NGOs (INAVEM) or of ad hoc administrators (FENAAH), associations (e.g. of judges for the family and children, (AFMJF) or social investigators (ANDES)), commissions (Commission Mineurs, National Bar Association (CNB)) or platforms (National Convention of Children's protection association (CNAPE)). These can certainly be seen as good practices.

33

Some respondents also saw opportunities in enhancing European cooperation and sharing information, e.g. through existing networks, such as the *Groupement Europeen des Magistrats pour la Mediation* (GEMME) or replicating national initiatives on a European level (i.e., *Assises Nationales des Avocats d'Enfants*).

2.4 HORIZONTAL ISSUES

2.4.1 DISCRIMINATION

In general terms, attitudes and responses of many professionals suggest that the question of systemic discrimination or policies to address it were not previously identified and reflected upon. Some respondents focused on a specific case, or indicated they lacked experience to share any meaningful assessment.

Concerning the procedure before the judge for children, many professionals, including judges and social workers, reported no major concerns, viewing it as adapted to children of different backgrounds. For some educators, this sensitivity and equal treatment is replicated at the level of implementation of judicial decisions - with an educational project which will be defined with the child and family, and based on his/her personal views and ambitions (where he/she stands, where he/she wants to go future) rather than pre-set objectives. Beyond this, the most serious limitations were identified in terms of solutions available to judges, e.g. for placement of children with disabilities in adapted institutions, or for upgraded educational support measures. As explained by a judge for children: *"there is an equality of treatment guaranteed in procedures...not in the solutions we offer to them"*. A specific issue that would call for further research is that of a de facto limited access of socially disadvantaged families and children to hearings before the judge for children. As reported by an educator (PJJ) in Vesoul, also following a reform achieved in 2012 that led to the suppression of several tribunals (sometimes compensated by out-of-tribunal hearings (*audiences foraines*) carried out by judges) it can sometimes prove difficult for families facing over-indebtedness to cover travel costs in order for all family members to take part in hearings, and no support seems to be provided for in that respect. One NGO professional also held critical views on hearings' concerning unaccompanied foreign minors including on lack of adequate information (including on appeal) and consideration for the child's situation and need for support. In procedures before the judge for family affairs, views varied, and again, were limited on this issue of discrimination. One mediator and a social investigator however considered the inter-cultural competence of judges still limited – in terms of appreciating cultural dynamics and functioning of families and avoiding the risk of projecting, in their practice, their own models or values.

In criminal procedures, professionals report ad hoc responses but also gaps in coping with specific cases, e.g. with hearings of children with disabilities affecting their ability to express themselves. As suggested by one prosecutor, no systematic response is provided for and the cooperation of professionals may still remain limited: *"We have few tools when confronted with a minor with a disability, special needs, we are totally helpless. (...) There is no system to take care of those children in the system, everyone passes the problem to the others. (...) I would say as soon as we are confronted with a child with those problems and who needs different stakeholders- social, medical, educational and judicial - all of a sudden we see the failure of the system which was not conceived in order to take care of those children."* For the staff member of a victim support organisation, this may be a cause for concern, as some professionals may tend to systematically question the words of vulnerable children, e.g. with a mental or intellectual disability and living in institutions (claiming for instance that they "misinterpret" acts they claim are forms of abuse). Other professionals active in

criminal procedures stress the general sensitivity and flexibility of professionals to find solutions in individual situations (e.g. of physical disability).

Ultimately, some respondents suggested room for improvement on this matter. One deputy general prosecutor was favourable to a more in-depth reflection on how the judicial institution, as others, may sustain specific values or how professionals may project their own values (e.g. conception of a family with a father and a mother) or prejudices (e.g. with the resulting treatment of travellers characterised by suspicion and a reprehension): *“Taking into account culture, origins, this is really under our radar. We tend to turn to reassuring models, we refer situations to the administrative protection services (ASE, e.g. for placements) – it’s the good guy, “they know best for the parents”. I am quite critical on that. At the same time, these are massive institutions, it is not easy to reinvent society every time... but it would be worth reflecting on this”*. One judge for children concluded with a view that the *“justice system is no more nor less sensitive to this than any other public institutions (schools, hospitals, etc.)”*. Beyond this, many professionals chose to focus on differential treatments across regions, depending on the training of professionals, resources available, notably in terms of child-friendly settings (e.g. UAMJ or not) or NGO structures.. Some called, in that context for more evaluation and harmonization of practices nationally.

2.4.2 BEST INTEREST OF THE CHILD

As a preliminary observation, and regarding the notion of *“best interest of the child”* itself (and its French translation *“intérêt supérieur de l’enfant”* – the ‘higher’ interest of the child): some interviewees were more comfortable with a notion of “needs”, many anyhow citing one or more of the following specific areas for consideration: protection, health, education/schooling, social development, affection and support etc. To some, it implies also considering children as persons whose personal development is on-going (*personnes en construction*), that is also as future adults. Some questioned the meaning of *“supérieur”*, interpreting it as a suggestion of undefined competing interests, e.g. such as parental ones. Some warned against references to the *“interest of the child”* by parties or professionals that would, in fact, hide the interests of adults, or their personal interpretation or projections of what such interest should cover, in the absence also of a clear definition. Some judges also stressed that for this very reason, referring to this notion did not readily give responses on the right decisions to be made, in the context of civil procedures in particular.

Many professionals mentioned, as a starting point, that the interest of the child explicitly appears in legal texts and guidelines addressing judicial procedures and their objectives, though with a different weight. This is most obvious before the judge for children, who needs, as mentioned, to make decisions based *“upon the strict consideration of the interest of the child”* (art. 375-1 of the civil code). Many judges, lawyers and social care professionals value the flexibility of the procedure; the margin of interpretation granted by the wording of article 375 of the civil code (e.g. with notions of *“physical, affective, intellectual and social development of the child”*) and the gradation of measures to support or step in when parents are unable or unwilling to meet the child’s needs.. Before the judge for family affairs, the interests of the child should be safeguarded in decisions (article 373-2-6 civil code). With respect to such procedures, responses of professionals, both legal and social, suggest a possible tension between a legitimate participation of children in procedures that concern them (*their right to be heard and right to information*) and a need to preserve their position as children, in a situation of non-responsibility and insouciance which should also define childhood. As suggested by a judge: *“Sometimes the interest of the child is to stop involving him/her in the judicial procedures”*. As reported, it differs in the criminal field, where the interest of the child is not the primary objective of the procedure (as reported by a former Prosecutor *“the interest of the child, it is more in the civil sphere”*) but should be considered alongside the interest of the procedure and public action. As suggested by one law enforcement official, these interests may not automatically coincide

or be given different weights depending on professionals: *“we (as investigators trained to hear children) are sometimes criticised for working in the interest of the child, and not in the interest of the procedure”*.

Most professionals shared a sense of relative improvement in recent years, with advances secured by legislation and derived from the International Convention on the Rights of the Child. Though procedures and practices are still perfectible, this is evidenced by a greater participation of children in judicial procedures. Whether civil or criminal, such procedures are seen as fairly responsive to the protection needs of children. Criminal procedures will often lead to sentences, when based at least partly on the declarations of child victims. Many professionals, social or legal, referred to the *Outreau* case and the fact that it stressed the need for cautiousness with children’s testimonies, but also helped identify structural gaps (hearings, supervision of investigating judges, assessments etc.), and pushed for further reform. Views still differ somewhat on the current credit granted to children’s declarations. Some believe a relatively balanced and cautious approach prevails today, while the words of the child may have been too easily followed in a pre-*Outreau* context. Others maintained that the words of the child will still tend to receive less credit than those of adults. Some, including several staff of children’s rights NGOs, insisted that allegations of children, even if proven false, should still be interpreted as calls for support and protection that should therefore be addressed - which may not always be so at the present time.

It all procedures the fact is that the views of the child heard in procedures do not automatically make the decision. A majority of respondents deem this consistent with an effort to determine and meet his/her best interest, while also respecting those of adults and preserving the child from excessive responsibilities that may expose him/her. As expressed by a judge: *“The child needs to express him/herself freely, to be able to be listened to, it’s a freedom, but one should not base the importance of the decision on the hearing. The child can’t carry the weight of this responsibility on his/her shoulders. It’s very delicate for a child to come between his/her two parents either before the judge for children, or before the judge for family affairs with the parents fighting to obtain custody, it’s very hard. We shouldn’t put too much weight on the words of the child.”* This is also true in criminal proceedings. Several lawyers or ad hoc administrators mentioned the issue of damages in intra-familial criminal cases as a case in point, with a best interest that may not necessarily coincide with the wish expressed by the child (e.g. that the parents’ responsibility may not be engaged). Moving closer to practice, the following quotes from a psychologist and former prosecutor and judge in Lyon and a social investigator in Marseilles are illustrative of challenges and conditions to ensure that procedures, in both civil and criminal fields, serve the best interests of the child:

“Acting for the interest of the child, is (making sure) that justice doesn’t generate more violence. Which is ambitious. Because the meeting of the child victim with justice is too often violent. Our duty as adults around him/her is to limit to the maximum the violence he/she might suffer during the procedure. The duration can be a form of violence. The way the trial is led can be a form of violence. The lack of information can be a form of violence. I think we can work on that. It’s a question of practices”.

“The interest of the child in the procedure is to meet professionals that can give them their place as a child back, that can explain to him/her the ins and outs and then give them the means, to support them enough so that they can be conscious of being an issue but that there is no fatality. Some professionals help him/her to be above the quarrels of adults” (...). Giving a child the right information so that he/she can have an idea of where he/she is, and from where he/she is speaking, as psychologists say.”

For criminal procedures, many interviewees pointed out this minimum requirement of ensuring that participation at all stages, including hearings and assessment, does not add to the existing trauma resulting from the offences. If tailored and carefully supported, and in best case scenarios, such participation of the child and outcome of the procedure will contribute to a resilience and

reconstruction process. For some respondents, as for adult victims, it may come second. A persisting lack of attention and provisions for child witnesses stresses perhaps the instrumental approach to children's participation in criminal procedures. The degree to which procedures, in practice, respect the best interest of the child, is limited by issues recurrently raised by professionals, and addressed under the overarching issues section (see 3.1).

2.4.3 DIFFERENCES AND SIMILARITIES IN REGIONAL, NATIONAL, INTERNATIONAL CONTEXT

Many respondents insisted on variations in both resources and practices across regions. Several professionals, including prosecutors, judges, lawyers and social workers hence pointed to a facilitated cooperation in smaller jurisdictions, often covering rural areas. As reported by a now former prosecutor in Vesoul: *"Practices depend also on jurisdictions. I would say that the advantage of small tribunals is the fact that we are working in great proximity with other professionals, so the message is better understood, better considered, better listened to and understood and we don't hesitate to pick up the phone to call our partners"*. Yet solutions in terms of access to judicial experts and auxiliaries may be more limited in rural areas, calling for sometimes ad hoc solutions. As reported, difficulty in finding an expert and otherwise their workload are likely to delay the conduct of a hearing and more generally to limit the diligence in judicial criminal procedure. Difference in training were also suggested at the law enforcement level, with specialised units (whether *Brigade des Mineurs* (police) or *Brigade de Prévention de la Délinquance Juvénile* (*Gendarmerie*)) being essential present in large urban areas. Beyond this, the degree of equipment, in terms of child-friendly settings to hear children (e.g. UAMJs), configurations and provisions in terms of ad hoc administration services and/or institutions implementing measures decided by the judge for children, can reportedly differ from one region to the other. This led one staff member of a victim support organisation to state that *"nowadays some children are unlucky to have been born in one particular region instead of another"*.

2.5 COE GUIDELINES

As evidenced also in the Annex table, interviewees had, for a vast majority, no knowledge of the existence of the CoE Guidelines on child-friendly justice. Among legal professionals, only 2 judges were familiar with the Guidelines and 2 others mentioned some awareness of their existence. One of these judges indicated the International Convention on the Rights of the Child (ICRC) was the key reference used in practice, and also pointed out that there was not enough information about European standards in this field, assuming that *"perhaps 90% of the judges for family affairs"* may not be aware of these Guidelines. Two prosecutors concurred that national standards are in fact used and are in practice, and now incorporated principles such as the right to be heard set forth in the International Convention on the Rights of the Child. One judge for children indicated she was more familiar with European jurisprudence (both ECHR and CJEU) and its impact in the field (e.g. on parental access to the file and the reform operated in January 2002³⁴). One focus group participant, with experience of ad hoc administration, made reference to the guidance provided by the CoE Convention on the exercise of the rights of the child, applicable in set of family cases³⁵ mentioning specifically the right to be informed (article 3). A more systematic inquiry on the general awareness/use of this legally binding convention and other European standards (STCE n°201 and STCE n°2) among professionals interviewed would seem a relevant exercise. Among social care professionals, one, also active as an ad hoc administrator, mentioned experience working with the International Convention on the Rights of the Child (CRC) and being involved in annual celebrations, and two staff members of the federation of victim support NGOs were among those sharing an

³⁴ France, Ministry of Justice (2002).

³⁵ Council of Europe (1996).

interest in receiving more information about the Guidelines. One judge suggested that the content of the Guidelines is in fact integrated in practice and “*part of what (we) know, of what (we) share*”. While the practices of all respondents cannot here be assessed against standards set in the guidelines, it should be noted that the following aspects may be overlooked in current practices reported include for instance: protection against discrimination (D.1), information and advice (2, 4), protection of private and family life (9) safety (special prevention measures) (12), training of professionals (14,15), right to be heard and to express views (49), avoiding undue delay (50 and 51), evidence/statement by children (68), child-friendly justice after proceedings (79,80).

3. CONCLUSIONS

3.1 OVERARCHING ISSUES

Many interviewees, including in focus groups, stressed the fragile nature of children’s participation, conditioned also by adequate sensitivity and training of professionals and their coordination and adequate support beyond the strict judicial proceedings. Multidisciplinary approaches, notably to assess words of the child are critical to many, and perhaps still missing sometimes. A judge for family affairs defending a co-hearing practice thus indicates: “*The child may lie, and being alone with a child is not simple whatever your background, having two people to hear a child in a difficult situation...the child deserves that...And being alone is a legal hazard, it is a hazard being alone faced with a child and possibly not understanding the child, possibly putting the child in danger, not understanding or holding the hearing too quickly (...)*”. Among the recurrent point of concerns, within an overall picture of rather adapted and responsive procedures, the following can be highlighted:

- *Length of procedures.* A majority of respondents, legal and social care professionals alike, raised a concern about procedures being excessively long. Procedures that can span several years are viewed as likely to slow down, if not block, the ability of the child to recover and his/her personal development. The issue may be aggravated by gaps in terms of information and often concurrent or subsequent procedures (civil and criminal, including appeals) causing a multiplication of interlocutors and solicitations (e.g. for hearings, assessments, social investigations). Another implication is that a lengthy criminal procedure for a parent (who may eventually be found innocent) will cause a separation that will affect over time the child’s development and his/her relationship with that parent. Now a concurrent trend is the development of fast-track justice, with immediate trials deemed by several respondents to be incompatible with the rights of victims (children or adult), their information and participation.
- *Gaps in the implementation but also psycho-social follow-up of decisions.* In the field of educational assistance, some specialised educators for instance report, beyond issues of decisions without hearings and gaps of several months between educational reports and hearings, delayed implementation of a placement or educational assistance measures, due to administrative and budgetary constraints on recruitment. These issues were seen as undermining the impact of the judicial process and detrimental to effective protection of the child. Structural gaps in options available for judges or to follow-up on their judgements (e.g. specialised institutions but also meeting spaces to maintain parental links) also impact on the rights of children and their parents. In the criminal field, several interviewees pointed out gaps in terms of post-sentence information and systematic support for child victims and their families. With the pronouncing of the decision, the existing support (*étayage*) provided (with the lawyer, ad hoc administrator etc.) will often disappear. As expressed by the director of a foster home: “*We accompany victims from the moment of the claims up to the trial. Beyond...beyond such support needs to be made available*”. Some collateral impacts of children’s participation in proceedings may also be left unaddressed. One law enforcement official thus referred to situations of children negatively impacted upon by their decision to be heard and their complaint: they will often be the ones having to change school, move

out of their neighbourhood, not their (alleged) abusers. Some children may also be further exposed to one of their parents by a hearing before the judge for family affairs.

- *Gaps in legal support.* Gaps in terms of designation of lawyers (independent from parents), and consequently support for children, was raised recurrently with respect to civil procedures. When present, most professionals deemed such support critical, including for an adequate preparation of hearings, some calling for systematic solutions. Also often raised was a persisting issue concerning the designation of ad hoc administrators in criminal procedures, with unjustified delays, impacting on children's participation and experience of judicial procedures.
- *Gaps in public monitoring and evaluation of follow-up on legal standards set* (e.g. derived from the 1998 and 2007 laws) and on NGO-driven initiatives (e.g. UAMJs) as well as in terms of research of children's experience of hearings and judicial procedures, which could inform adjustments in practice, notably in terms of information. Gaps also in terms of assessment of rights of children in administrative procedures (judicial and non-judicial), which would call for further research.
- *Resources.* Other overarching challenging issues related to the limited resources available to the judiciary both in human and financial terms (overall staff to support judges, number of prosecutors, legal aid schemes for lawyers, and compensation for delegated hearings/ ad hoc administration /etc.), which ultimately limits the child-friendliness of proceedings.

RECAP: THE AD HOC ADMINISTRATOR

KEY LEGAL REFERENCES

The ad hoc administrator is essentially defined by his/her function, set in a series of legal dispositions. In criminal procedures, the ad hoc administrator is to ensure *"the protection of the interests of the minor and exercises, if necessary in the name of the child, the rights open to a civil party"* (art.706-50 code of criminal procedure). He/she can be designated by the Prosecutor or the investigating judge *"in the context of facts perpetrated intentionally against a minor"* and *"where the protection of the interests of the minor is not completely ensured by his or her legal representatives"* (art.706-50 code of criminal procedure). His/her designation is mandatory in cases of incest, unless motivated decision of the Prosecutor or judge, and can also be designated before the jurisdiction of judgment (art. 706-50 Code of criminal procedure)³⁶. In civil procedures, the ad hoc administrator is designated by the guardianship judge or, by default, the instance judge of the case (e.g. judge for children) in procedures where *"the interests of the minor appear to be in opposition with those of his/her legal representatives"* (art. 338-2 of the civil code) (or, in the presence of a legal administrator, where his/her interest are in opposition with those of the minor (art. 389-3 of the civil code)). The Court of Cassation has considered article.338-2 (and competence of the guardianship judge) to be also applicable in the context of criminal procedures³⁷. Ad hoc administrators can be designated among the relatives or those close to the child or on a list of persons (art. 706-51 code of criminal procedure/ art. 1210-1 code of civil procedure). Accreditations are based on motivation and a set of conditions for physical persons (art. R-53-1 code of criminal procedure) and moral ones (art. R-53.2 code of criminal procedure) and a list is publically available in each Court of Appeal, is updated at least every 4 years (art. R-53 code of criminal procedure). In practice, ad hoc administrators can be members of non-governmental organisations (including child-focused and victim support NGOs or the local government (*Conseil General*)).

PRACTICE AND GAPS

³⁶ The definition of incest in article 227-27-2 of the penal code has been censored by the Constitutional Council in its decision QPC n° 2011-222 of 17th February 2012 and will need to be redefine.

³⁷ Court of Cassation (2005)

Feedback from interviewees confirms that designation it is more frequent in criminal procedures although rare at the stage of the police investigation (a 2005 Circular enjoins the Prosecutors to remind investigators of this possibility, under article 706-53, calling for appointment as soon as possible). In terms of impact: most respondents stress the role ad hoc administrators play in terms of support and information, acting as a referent person throughout procedures that can be lengthy and confusing for children. However practices and evaluation of their competence by other professionals are variable. Some ad hoc administrators seemingly limit themselves to a constitution as civil party and appointment of a lawyer while others do support children and defend their interest throughout the procedure, including at the trial stage. Some have developed close cooperation with child-sensitive and trained lawyers working in the framework of the legal aid system. Key issue points reported by interviewees include:

- A persisting low rate of designation in civil cases and an absence of/or late designation in some criminal ones with sometimes a lack of concrete indications in the designation letter issued by the judge or prosecutor (whereabouts of the child, specifics of the mission of the ad hoc administrator).
- Variable interpretations of article 706-53 of the code of criminal procedure allowing for the presence of the ad hoc administrator in hearings/confrontations at the investigation (*enquête*) and judicial information (*information judiciaire*) stages. In practice, such presence is still denied by some investigating judges (something several ad hoc administrators consider detrimental to the support of the child).
- Gaps in qualifications and training of ad hoc administrators, with an absence of national curriculum/diploma and accreditation practices that differ locally, may be lengthy or not include sufficient control of profiles (e.g. background checks).
- Potential conflicts of interests when moral persons are designated, raising concerns that the interest(s) of the child may come second to that of a public institution whose responsibility can be at stake in the procedure (e.g. Conseil Général) or to larger advocacy when ad hoc administrators (but also lawyers) have an NGO affiliation. Responses to this issue would warrant further research.

SUGGESTIONS formulated by respondents include:

- Adoption of a clearer and consolidated status, accompanied by awareness-raising efforts to enhance visibility and recognition for the function among other judicial actors, beyond existing tools (e.g. example of Charter in annex of the 2 May 2005 circular³⁸; Charter developed by the INAVEM Federation³⁹; methodological guidebook on the ad hoc administrator edited in 2003 by the Ministry of Justice⁴⁰).
- An harmonisation of training on ad hoc administration and accreditation standards in practice as current training opportunities remain initiated by NGOs (INAVEM federation/Chrysalis and regular meetings of the professional federations of ad hoc administrators (FENAAH)

3.2 RESEARCH

As far as research engaging children for this project, the feedback of professionals brings the following remarks: An overwhelming part of interviewees, social and legal, confirm the opportunity and feasibility of involving children in the study, which may be rather unprecedented. Several professionals (e.g. Judges for Children) admit finding themselves somewhat “blind” on how children experience their hearings or can only rely on their own impressions and would welcome such feedback. As voiced by a judge for children: “*Sometimes we don’t perceive the impact of what we can say, and that would be good*”. The notion is that it could be useful to assess and adjust personal

³⁸ Ministry of Justice (2005a).

³⁹ www.inavem.org/associations-locales/mandats-judiciaires/administration-ad-hoc

⁴⁰ Ministry of Justice (2003)

practices, if not procedures. In addition, many believe it would serve an approach consistent with the rights of children, who are the first concerned. A few respondents however shared scepticism relating to the risk of negative impact (additional interlocutor, risk of reactivating trauma for child victims), the possibility of their feedback on procedures and proceedings being distorted by the outcome of the decision, or practical obstacles such as parental consent.

Recurring observations and suggestions of interviewees include:

- Hearing parents would be equally relevant, given their role (e.g. information for the child), sometimes also in difficult positions in the procedure and their need for support (notably in criminal cases which are intra-familial), and ultimately their impact on the child's experience of the procedure.
- Views of children may vary depending on their age at the time of the interview (a child aged 10 may look back differently on a procedure than they would as a teenager). For some respondents, there is no need to set a minimum age for interviews. Some suggest interviewing children even from the age of 6 to 7 as their understanding is sometimes greater than assumed. Others deemed necessary, if not more relevant to engage children aged over 16 or young adults, which may also be a way of overcoming the issue of parental consent and for some interviewees, a guarantee of appropriate distance from the procedure and its outcome.
- Guidance from professionals is essential to ensure that only children in a position to discuss the procedure and how they lived it are contacted. Interviews may sometimes not be desirable, e.g. in criminal cases (e.g. sexual abuse etc.) or civil cases of divorce which, even when focusing on the procedure, may reactivate traumas or affect children. "Intermediaries" such as specialised educators may be of critical support to explain the purpose of the project, create interest among potential child respondents, and to secure necessary consent.
- It may be desirable to interview children for whom the procedure has been closed, with perhaps a couple of years of lapse since the evidence and procedure. For some, participation could still be considered if an educational support measure is being implemented, but depending also on how the child, and parents (whose consent is still required) cope with it (e.g. a placement).
- In terms of design, it is suggested ensuring a tailored protocol with open questions, e.g. asking children (*Did you ever meet a judge before? Could you tell me a bit how it was?*) Young children may have no problem telling about their experience if allowed to speak freely. Another suggestion was to use a focus group approach, e.g. for children placed in a given institution. It is deemed also perhaps easier to interview children in their own environment.

On ways to identify children in a position to participate, respondents mention various channels. These include social workers, lawyers for children, ad hoc administrators, NGOs (including NGOs of parents of child victims such as the APEV). Some stressed a need for prior validation of the project with the Ministry of Justice or Prosecutors' offices locally, also to ease up access to children and fieldwork in practice. Calls for voluntary participation, and questionnaires may also be studied. No research of such a nature was identified by respondents, with the exception of a related effort to gather perceptions of families, and parents in particular, in relation to placement procedures and decision. As indicated by another respondent, data collection and evaluation concerning children in procedures may remain too scarce (e.g. reports of the National Observatory of children at risk /Observatoire National de l'Enfance en Danger /ONED⁴¹).

3.3 ANY OTHER ISSUES

No specific issues not covered by other sections

⁴¹ <http://oned.gouv.fr/>

4. ANNEXES

4.1 DOCUMENTATION

Quotes

- “Acting for the interest of the child, is (making sure) that justice doesn’t generate more violence. Which is ambitious. Because the meeting of the child victim with justice is too often violent. Our duty as adults around him/her is to limit to the maximum the violence he/she might suffer during the procedure. The duration can be a form of violence. The way the trial is led can be a form of violence. The lack of information can be a form of violence. I think we can work on that. It’s a question of practices”
- "The interest of the child in the procedure is to meet professionals that can give them their place as a child back, that can explain to him/her the ins and outs and then give them the means, to support them enough so that they can be conscious of being an issue but that there is no fatality. Some professionals help him/her to be above the quarrels of adults” (...). Giving a child the right information so that he/she can have an idea of where he/she is, and from where he/she is speaking, as psychologists say.”
- “We don’t insist enough on this obligation, for a trained officer to hear the child. Until it is not written in bold, underlined in the code of criminal procedure...there is always that uncertainty, there are always investigators who make it vague and say “I’ll nevertheless take care of the case”.
- « I saw all the possibilities. Some clumsy Presidents who were saying: “The children are not here, so the next time I see them they will be in the accused dock, because they’re not here.”, (...) For him, the presence of children was a principle. We consider that it’s somebody who needs some training. What makes him say that the child has to be there all the time? No legal text says so. (...) Some Presidents say: “the fewer children, the better I feel”, because children cannot be managed. It’s formalized very little”.
- “Things must be reversed: we should say “the child should not be present, unless he/she asks for it. And we reverse things. We always talk about us, we never talk about the child. It is “if the child asks for it, he/she can be present. If he/she asks to be heard, he/she can be heard in a protective way etc.(...).
- “You have procedures where there is the lawyers of the father and the lawyer of the mother. There it is not good because in the extreme, if there should be only one lawyer, it should be the one from the child”.
- “Some judges have completely delegated...I can’t say the hearing is not well done, except that it is not at all a child hearing any more. It corresponds to an investigation measure... It is not the free words of the child...The delegation, it (should be) an exceptional case and in the interest of the child. Here, it is for the interest of the service... For us, it is not at all matching the demand of the child for a hearing”.
- "Reflection and provisions are needed for child witnesses who need to give judicial testimonies, those are the most vulnerable ones, the most exposed. Either because they fear testifying or because they are afraid or don’t know the procedures or don’t benefit from any kind of support. Either because they are testifying and they are risking retaliation and that they are left to themselves. Child witnesses exist for no one.”

- “If we explain his/her place to the child, if we accompany him/her, if he/she has thought about what he/she is willing to pass on (...) we will manage to avoid the instrumentalisation by one of the two parents”.
- “I was talking about information and preparation: for me the most important thing is that the child, no matter his/her age, is not a stranger to the trial. (...) He/she should not play a heavy role in terms of responsibility but he/she should not just be a stranger”.
- "I think that justice should have a duty of memory towards the victims. Being capable of recalling what really happened, either because they haven't been informed or because their emotions were too strong at the time that they weren't able to accumulate all this information. They should be able to have the possibility to see a magistrate again, at any moment, and to say – now, it's calmer, could you re-explain to me how everything happened?"
- “Whoever says training says competence, whoever says competence says recognition... If we recognise professionals, we will recognize children, and it is maybe this way that we will be able to recognise children's rights” (...) Saying the child has rights, saying a child has a right to a lawyer, saying that the lawyer must be trained... and not giving the means for the lawyer to do his/her job, and earn a living... it's telling the child we give you rights but it is rubbish”.
- “The judicial system for children holds on for the moment thanks to the goodwill of all the stakeholders”.
- "I am very respectful of families. Sometimes, families would practically need a secretary, there are so many people involved. Investigations by the police, others psychologists, psychiatric experts when there are investigations for the victims, the perpetrators, us. More and more and more, it's very complicated”.
- “We talk about child hearings and the interest of the child but the interest of the child, it is about people, it is national solidarity, and that has a cost”.
- "I saw some Presidents who didn't even ask the minor, who was present, and who had attended the whole hearing, if they wanted to say anything at some stage, despite the fact that it was a trial about their own life. Considering that they were too young to do so, and without asking if their lawyer if they wanted to speak despite the fact that the child was here and prepared. And others, they are interrogated, interrogated again although everything is already in the file”.
- "The criminal trial is an extremely important moment since the accused may admit to the offences, and it may be that at the same time society also recognizes what the child has lived through and also recognizes the child as a citizen in law in society. This is an important time for the socializing of children, it's extremely important. They learn the law, that they have rights, this is a crucial moment. (...)"
- "The lawyer of the child is present when it is necessary, it's complicated, there are tensions, stakes. He/she brings appeasement in my opinion, because he/she is neutral and doesn't have this need to satisfy clients who are the father or mother. He/she is truly here for the interest of the child. And so he/she can implement the law, a respect of justice, even if the judge is in a position of equality”.
- “If we received parents on their own each of them separately and the child afterwards, it is a succession of words, without its context, and it's one version against another. While when we receive

everyone together, it is more difficult for sure, but at least we have material and the hearing is not frozen. The hearing helps give real perspectives of work for the educational services”.

- “The hearing is a critical moment for all concerned – it should not be rushed”.
- “The non-responsibility of the child has to be preserved”.
- “The overflowing of the offices is surprising. The number of staff members should be higher than what it is now. Perhaps not 50% more, but I would say 30%”.
- “Co-hearing is a luxury the French judicial system cannot afford”.
- “If it’s a hearing by a judge, it is by a judge, it’s in a judicial place (...) One should not confuse locations and roles”.
- “I’ve changed a lot, because initially I thought ‘the less we hear the child the better, let’s distance the child from all the adversarial procedures, let’s work first on the parents. But a child who is heard and who has been able to speak out will purge their suffering better...when the procedure is truly adversarial, taking the child into consideration, and making the child aware that they exist and that they have the right to express their suffering somewhere and not just to a psychiatrist or psychologist, but that this suffering is recorded in a room that the parents are aware of. I think it’s very good for the child. And that, that’s really about protecting childhood”.
- “The presence of a third person who is not part of the judicial world reassures children very much. I manage to be emphatic. Which the judge never has time to do”.
- “The child arrives with the family conflict. The parents were not able to discuss to decide with or for their child. So the child is sent on stage”
- “The hearing of the child is the instrument of the conflict, because the parents will say to each other: “the judge is going to listen to him/her, and you will see what he /she has to say”.
- “An agreement at a hearing (nb: of parents)... gives the chance to the child of not going to the tribunal in order to take a position in a conflict opposing his/her parents... if we can avoid that, I think the child would be better playing football rather than waiting in a hall.” (...) I am not very happy that the legislator transformed the child’s hearing into a legal hearing. I preferred when we had the latitude of asking or not for a hearing... I don’t find it normal that parents let the child choose, it shows parental immaturity. For me, the best parent is the one who doesn’t ask for a hearing of the child. But in some cases it can be justified: the child has something to talk about beyond the parental conflict... confidential information which can then lead towards a criminal procedure.”
- “No two police officers, no two tribunals, will proceed the same way, no two judges will proceed the same way”.
- “Every hearing re-activates all the psychological suffering experienced. Coming back from a hearing is always an extremely difficult time, heavy, burdensome, difficult. The period of the hearing is long; it puts off resilience, the repairing process, which starts at the time when he/she manages to talk. It’s a mixture, with permanent oscillations, and that’s difficult.”

- “During the investigation, we can easily feel that the parties are at the service of the judiciary. It’s not the phase afterwards when finally it is the manifestation of the truth for the benefit of people. Here we are in the service and that’s all. The investigation comes first”.
- “It’s true that nothing is planned. We don’t really worry about getting to know what information is given to the child”.
- “We are available for them. We have a very important educating role. We can repeat things, re-explain. Children live things in a cyclical way. When a case starts we can feel that children in particular are not always psychologically available. They are so submerged or traumatised that they don’t always register what is said. We can also bring complementarity, with lawyers for children (...) There is a real need for reassurance”.
- “How many times there is an ad hoc correctionalisation and the victim was not able to understand why?”
- “We pushed a lot, because we were telling them ‘you do have things to say to them in fact’. They say ‘we have nothing to say’, well yes you do in fact, after 3, 4 years it could possibly be good to say to them ‘we’ve put that in place’. But at least communicate (...) Because families and the child interpret it this way: ‘they’re not saying anything, so nothing is done. Which is not true.”
- “The sooner there is a first contact, the better it is for the support and the handling of the victim.
- “I find that in hearings, it is rather well addressed, in the sense that on explanations, a majority of judges try to be vigilant: if the child understood well, if he/she hears well, the reasons why. Situations being difficult, we always make sure they understand the reasons why”.
- “Pedagogy is essential... The decision has to be understood in order to be useful”.
- “Explaining the words of a judgment of placement is as important as the hearing itself”.
- “Information participates in comprehension and therefore to the acceptance of the decision. In educational assistance, we don’t ask the people to agree. The parents of the child being placed rarely agree with the decision. We ask them however to adhere to it. But adhering to it requires understanding it, thus information”.
- “Information is given by the judge. My role as a child auditor is to make sure that the child knows that we are here in order to learn more about his/her needs and that their words are free and independent”.
- “Information coming from the parents: is it not clearly explained? Or is it parasite emotionally ? It is difficult to evaluate but rare are children for whom it is clear”.
- “For me, the hearing is one of the most important moments, when the magistrate will take the decision and explain it to the parents and the child. A big part of the educative work is that what will follow will be based on the hearing, on what was verbally said, or even written in the judgment.”
- “The big problem with helping victims, it’s that the victims’ rights are not really opposable: some are in the code, we have to inform the victims, but if it is not done, nothing happens. It does not encourage jurisdictions to implement these”.

- “The hearing’s value is as much in the decision as in what the child understands from it.”
- “We work in separate chapels. It’s complicated and it’s not innate to work in a multidisciplinary way. The more we do multidisciplinary training, the more we will be able to work in a multidisciplinary way.”
- “We make mistakes in the commercial Court. It is less dramatic than making mistakes when the life of a child is at stake (...) Any appointment for a specialized function– one should check its adequacy – ensure a continuous training.”
- “The law imposes a certain number of requirements but effective respect is left to professionals in the field, without having external monitoring reminding them to respect the law.”
- “There is an equality of treatment guaranteed in procedures...not in the solutions we offer to them.”
- “We have few tools when confronted with a minor with a disability, special needs, we are totally helpless. (...) There is no system to take care of those children in the system, everyone passes the problem to the others. (...) I would say as soon as we are confronted with a child with those problems and who needs different stakeholders- social, medical, educational and judicial - all of a sudden we see the failure of the system which was not conceived in order to take care of those children.”
- “Taking into account culture, origins, this is really under our radar. We tend to turn to reassuring models, we refer situations to the administrative protection services (ASE, e.g. for placements) – it’s the good guy, “they know best for the parents”. I am quite critical on that. At the same time, these are massive institutions, it is not easy to reinvent society every time... but it would be worth reflecting on this.”
- “The justice system is no more nor less sensitive to this than any other public institutions (schools, hospitals etc).”
- “We (as investigators trained to hear children) are sometimes criticised for working in the interest of the child, and not in the interest of the procedure.”
- “Acting for the interest of the child, is (making sure) that justice doesn’t generate more violence. Which is ambitious. Because the meeting of the child victim with justice is too often violent. Our duty as adults around him/her is to limit to the maximum the violence he/she might suffer during the procedure. The duration can be a form of violence. The way the trial is led can be a form of violence. The lack of information can be a form of violence. I think we can work on that. It’s a question of practices.”
- “The interest of the child in the procedure is to meet professionals that can give them their place as a child back, that can explain to him/her the ins and outs and then give them the means, to support them enough so that they can be conscious of being an issue but that there is no fatality. Some professionals help him/her to be above the quarrels of adults”(…). Giving a child the right information so that he/she can have an idea of where he/she is, and from where he/she is speaking, as psychologists say.”
- “Nowadays some children are unlucky to have been born in one particular region instead of another. »

- “The child may lie, and being alone with a child is not simple whatever your background, having two people to hear a child in a difficult situation...the child deserves that...And being alone is a legal hazard, it is a hazard being alone faced with a child and possibly not understanding the child, possibly putting the child in danger, not understanding or holding the hearing too quickly. And you get the feeling at the moment that in justice 'you should hear the child, hear the child'...Personally, I prefer not to hear the child than to hear them poorly.”
- “We accompany victims from the moment of the claims up to the trial. Beyond...beyond such support needs to be made available.”
- “Sometimes we don’t perceive the impact of what we can say, and that would be good.”

4.2 RESOURCES

The following resources were mentioned or communicated by professionals interviewed

NATIONAL REPORT ON CHILD-FRIENDLY JUSTICE OPINIONS AND GOOD PRACTICES GUIDES

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- Association Nationale des Enquêteurs Sociaux (ANDES) : <http://www.andes-enquete-sociale.com/>
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- Convention Nationale des Associations de Protection de l'Enfance (CNAPE) : www.cnape.fr
- Association Française des Magistrats de la Jeunesse et de la Famille (AFMJF) : <http://www.afmjf.fr/>
- Union Nationale des Associations Familiales (UNAF) : <http://www.unaf.fr/>
- Ecole Nationale de la Magistrature (ENM) : <http://www.enm-justice.fr/>

4.3 TABLES

SAMPLE

Professional Group	Gender		Location		Age Group			Total
	Male	Female	Rural/small municipality	Urban/big cities	< 45	45-65	> 65	
Legal	9	16	6	19	12	12	1	25
Criminal	3	4	4	3	6	1	-	7
Civil	1	4	2	3	1	4	-	5
Both areas	5	8	-	13	5	7	1	13
Social	7	19	6	20	11	14	1	26
Criminal	-	2	-	2	1	1	-	2
Civil	4	8	4	8	6	6	-	12
Both areas	3	9	2	10	4	7	1	12
Mixed	3	11	2	12	8	6	-	14
Criminal	-	-	-	-	-	-	-	-
Civil	-	2	-	2	1	1	-	2
Both areas	3	9	2	10	7	5	-	12
All professionals	19	46	14	51	31	32	2	65

KNOWLEDGE OF COE GUIDELINES

CoE guidelines:	Familiarity with Guidelines			
Profession	Familiar with CoE guidelines	Just heard of them/somehow familiar	Never heard/not familiar	Total
Legal	2	2	21	25
Civil	2	-	5	7
Criminal	-	-	5	5
Both areas	-	2	11	13
Social	-	-	26	26
Civil	-	-	2	2
Criminal	-	-	12	12
Both areas	-	-	12	12
Mixed	-	1	13	14
Civil	-	-	-	-
Criminal	-	-	2	2
Both areas	-	1	11	13
All professionals	2	3	60	65

TRAINING PARTICIPATION

	Training Participation		
Profession	NO	YES	TOTAL
Legal	5	20	25
Civil	1	4	5
Criminal	2	5	7
Both areas	2	11	13
Social	9	17	26
Civil	3	9	12
Criminal	-	2	2
Both areas	6	6	12
Mixed	-	14	14
Civil	-	-	-
Criminal	-	3	3
Both areas	-	11	11
All professionals	14	51	65

	Type of Training				
Professional Group	Legal	Social/ psychological	Specific justice issues	Specific child issues	Methods/ procedures
Legal	2	7	1	14	3
Social	2	10	-	5	-
Mixed	2	1	1	7	2
All professionals	6	18	2	26	5

NB: Figures include additional focus groups participants. Basic training as educator (diplôme d'éducateur spécialisé) was not counted + trainings of lawyers and psychologist in criminology were included in "social/psychological" type of training

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