

2013 Annual Report  
**dedicated to**  
**the rights of the child**  
(summary)

RÉPUBLIQUE FRANÇAISE

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*CHILDREN  
AND THEIR LEGAL TESTIMONY*

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**E**very year, thousands of children come into contact, in one way or another, with our country's legal system. It may be during divorce proceedings, where, unfortunately, the child too often becomes a stake in the parents' conflict. Or the child may be a victim, or a witness of reprehensible acts. Children's testimony is taken and becomes evidence that may be decisive in the legal decision that follows.

The Organic Law of March 2011 assigns the Defender of Rights responsibilities that include defending children and their interests. Indeed, there is no task more delicate than taking young children's testimony. While all those who work in the legal and socio-educational domains constantly demonstrate their unquestionable professionalism, our Institution, in view of thousands of files it handles every year, observes that the subject merits additional thinking. Sometimes fragile or clumsy, often changing as a function of their current circumstance or interlocutor, young children's testimony is indispensable and invaluable for justice to be done, but must be handled with extreme prudence. Certain cases attracting widespread media attention, but also everyday family justice cases (e.g. separations), illustrate to what extent this subject remains unexplored and unsatisfactory from the procedural point of view, even if the last ten years have seen advances - sometimes contradictory - and the implementation of certain safeguards.

This observation led us to choose the theme of children's legal testimony for this year's annual report, which we will publish on 20 November, International Children's Rights Day. Therefore, together with Marie Derain, the Children's Defender, we have met with and listened to all parties involved when the minor encounters the legal system: judges, lawyers, associations, police, gendarmes and doctors, and last but not least, those with the overriding interest, the children themselves.

Whatever the nature of the child's involvement or the area of law (criminal justice or family law), specific and protective

measures for taking these children's testimony must be implemented by public authorities.

First, this requires a dedicated room that does not provoke anxiety, as is already the case in some jurisdictions where the child can speak in a neutral location, away from the offices of the courts and police.

The second key issue is the child's interlocutors: although training modules now exist for police and judicial staff, it is essential to strengthen and systematise them, and especially to ensure universal training on this subject. Too often, in our hearings and meetings, we noted disparate practices that undermine the consideration of children's testimony.

Finally, a special effort must be made concerning the child's understanding of the legal world: at 6, 12 or 15 years of age, the notion of justice in its broadest sense is at best unknown and at worst a protean and incomprehensible entity with an arcane vocabulary. The child cannot assess the stakes and the impact of his words.

Young children must be given a set of documents of various kinds, appropriate for their age, to provide them with all necessary explanations of the reasons for their hearing and what use may be made of it.

In a mature democracy, it is essential for a child's encounter with the legal world to be appropriately governed, heard by professionals and reassuring for the child. That is why, after providing a survey of this subject, we will make ten recommendations, addressed to all policymakers. Most of them are based on common sense and the fundamental respect for children's rights that remain core values of our activities.

**Dominique Baudis**  
**The Defender of Rights**

# CHILDREN AND THEIR LEGAL TESTIMONY



photo: David Delaporte

Following a long process of change in peoples' fundamental attitudes, laws and political will on the national and international levels, children's expression has found its place amongst their primary recognised rights. The Convention on the Rights of the Child, the reference text in this field, affirms a strong and intangible requirement: the child - and of course, the adolescent - has the right to express his opinion freely in any proceedings that concern him. «States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.» (Article 12).

Recognising this right and putting it into real practice are directly related to the best interests of the child. This is a key principle put forward by the Convention beginning in Article 3, and necessarily «a primary consideration.» Each of the social players, and especially those concerned with children or adolescents, faced with concrete situations should seek to determine the best interests of the child and implement this principle as he listens to the child, obtains his testimony, and takes it into consideration.

Yet, after twenty-four years of applying the Convention on the Rights of the Child, is French society ready to accept that the child is truly a person, who has rights, which he naturally exercises?

Letting children and their legal testimony take their place in the legal domain, in proceedings and in the approach of the professionals involved, has engendered various opinion movements. They have contributed to sowing doubt and discrediting their testimony. It is, nevertheless, the expression of child victims,

children whose families are shattered, children who have witnessed unlawful acts and are, without exception, shaken by their personal ordeal.

The 2013 report of the Defender of Rights endeavours to present a survey of current laws and practices. It also seeks to put forward concrete proposals to ensure these rights and make them more accessible and more understandable to children, who often feel lost in the legal world.

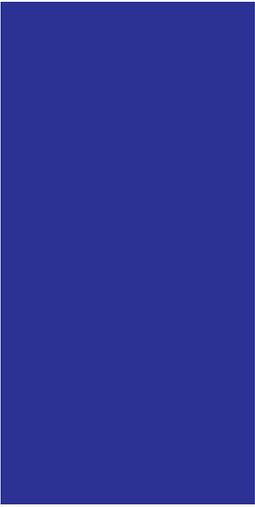
It is not a trivial challenge to systematically consider the child as a subject capable of thinking, of having a personal opinion, of «discernment,» rather than as an object possessed by adults. Thus, it is the adult's role to help the child build this discernment, to keep him from being manipulated or exploited by those who shirk their educational responsibilities by casting children, too young, into a world of adults, in a process where they do not know how to protect themselves.

Often, children's testimony disturbs the professionals who hear it. Promoting a cooperative effort on the part of the investigator, judge, lawyer, expert, ad hoc administrator, doctor, etc., strengthening their training so they better understand the child, his development and his needs, establishes a beneficial, common culture in the best interests of the child.

On the eve of the 25th anniversary of the passing, in 1989, of the Convention on the Rights of the Child, France should sign and ratify the 3rd Protocol recognising the possibility to bring complaints directly to the Committee on Rights of the Child, including by the children themselves, in the event of serious violations of rights of the child. This commitment was made in the spring of 2013, during the Universal Periodic Review by the UN High Committee for Human Rights, and would finally provide parity between the Rights of the Child and Human Rights.

**Marie Derain**  
**The Children's Defender**





# Proposals

## Proposal

1

A child capable of discernment can be heard by the judge; the hearing shall take place automatically when the child so requests (Article 388-1 of the Civil Code). This request occurs frequently in Family Court during parental separation.

The implementation of this right must face the assessment of the child's discernment in the absence of homogeneous criteria and practices giving rise to disappointment and unequal treatment of children who ask to be heard.

Given that in its General Comment, the Committee on the Rights of the Child considers that Article 12 of the CRC does not impose an age limit on this right and that States should not do so either.

**R**ecognise a presumption of discernment for any child who asks to be heard by the court in proceedings concerning him.

The judge thus hearing the child may then assess his discernment and maturity.

**R**eformulate Article 388-1 of the French Civil Code in this regard.

## Proposal

2

Child victims need individual, legal and psychological support throughout their contact with the legal system.

Several hearing support units have been created, assembling, in a single location, a multidisciplinary team of professionals trained to listen to child victims, to obtain and record their testimony, and to carry out any medical examinations the procedure may require.

**D**eploy hearing support units throughout France in order to guarantee that child victims are heard and supported by professionals - police, gendarmes, doctors - under optimal psychological and legal conditions. The hearing's quality has repercussions on the legal proceedings.

**S**upport from public authorities is essential for the success of this initiative.

## Proposal

3

Hearings of child victims must be videotaped. This provision means that the child will not have to repeat his statements throughout the legal proceedings, multiple times and before multiple interlocutors, which risks them becoming distorted. (Article 706-52 of the Code de procédure pénale CPP, Code of criminal procedure) introduced by the Law of 17 June 1998, Circular of 20 April 1999)

Although these recordings are available to judges, experts and lawyers, who can watch them at any time during the proceedings, the law is silent on the obligation to view them. The Children's Defender has observed that they are rarely consulted by the professionals for whom they are intended.

**L**aunch a nationwide assessment of the actual use of recordings of child victims' hearings by the professionals for whom they are intended.

Facilitate their consultation and promote the use of the information they provide.

## Proposal

4

Complaints received, as well as the investigation and hearings conducted by the Children's Defender, show that the legal status of the child witness is *"not covered by procedural safeguards."*

**G**ive the child witness a precise legal status that guarantees his rights and takes into account his vulnerability in view of his minority.

This status would be reserved for child witnesses in the most serious cases.

## Proposal

## 5

**A**ctively provide children and adolescents with information and understanding regarding “child-friendly justice” so that they can be acquainted with the legal process, their rights, how to exercise them and the support to which they are entitled.

The Council of Europe adopted in 2010 its *Guidelines on child-friendly justice* intended to enhance children’s access to and treatment in justice.

The legal world is generally rather distressing to a child who finds himself facing it: the legal language, the different players, their roles, and the course of the proceedings all raise numerous questions for him.

- **D**eveloping “child-friendly justice” presupposes giving children the means to be acquainted with and to understand the legal world:

Mobilise all education professionals so that, in the framework of truly learning about citizenship and its implications, every child and adolescent is informed substantively about the legal world, their rights and how to exercise them.

Provide every child facing the legal world with clear information tailored to his age and level of maturity, concerning his rights, the law and how it functions. This information (brochures, digital tools) should provide children with the means to understand the different players and the course of the proceedings that concern them, as well as the means to have their status as a child respected in full view of their rights.

- **D**eveloping “child-friendly justice” presupposes giving children the means to be players in proceedings that concern them.

During family separations brought before Family Court, the Children’s Defender has found that children are not consistently informed of their right to be heard by the judge.

Inform the child of all his rights and use every means to do this: a letter sent to the child by the Court Registry, information booklets, free consultations with lawyers, Internet sites.

Encourage and make best use of the presence of a lawyer trained in child rights, not only before the Family Court but also for educational support.

Give the child or adolescent additional information about this right to assistance so that he can understand the legal proceedings and his place in their context.

Proposal

6

**Make clear to the child, with a pedagogic approach, the implications of his legal testimony.**

- When a child or adolescent has been heard during legal proceedings, whether civil or criminal, it is rare that the terms or the motives for the judge's final decision are explained to him so that he truly understands them.

The Children's Defender has noted several situations in which poorly-explained decisions could be a source of confusion for the child and hence give rise to mistrust of the law:

- The decision of the Family Court, after the child has expressed his desire for a lifestyle not in his interests
- The decision of the Children's Court concerning educational support after hearing the child
- The dismissal of a case or the closing of a case with no further action after an investigation in which the minor was heard as a victim of physical or sexual assault, when, for example, the collected evidence did not allow prosecuting the alleged perpetrator.

It is not uncommon for the child or adolescent to interpret the court's decision as proof that his statements were not taken into consideration and have no value.

**The judge, the child's lawyer, the assistant public prosecutor (délégué du procureur) and representatives of the educational services should give the child an oral explanation of the judicial decisions in proceedings that concern him, in clear terms, adapted to favour his understanding.**

- At a child's hearing in Family Court, Article 338-12 of the Code de procédure civile (CPC, Code of civil procedure) requires the establishment of a report subject to the adversarial principle.

Observations by the Children's Defender show inconsistency in the practices used to establish this report and the information that is given to the child.

**Encourage Family Court judges, under the leadership of that court, to harmonise their practices in order to avoid unequal treatment of children, to ensure compliance with the adversarial principle and to protect the child against the abuse of his statements.**

- The disparity of motives justifying delegation of hearings, as well as the procedures used, undermines the utility of this practice.

**Draft a charter for the delegation of hearings to promote the creation of common professional standards and practices.**

Proposal

7

The current status of the ad hoc administrator position does not always allow the child's rights to support and representation to be fully ensured in legal proceedings concerning him.

**C**omplete the current definition of the ad hoc administrator's status in order to clarify his responsibilities and strengthen his training, independence and obligations, in order to ensure the child proper representation.

Raise judges' awareness concerning the need to change their practices for the use of ad hoc administrators: rapid designation, clear responsibilities and the obligation to meet with the child in order to allow him full and rapid access to effective representation and to his rights.

Proposal

8

**O**rganise appropriate interdisciplinary continuing training for all professionals working with children in the legal framework in order to raise awareness concerning the specific approaches to be used with children and create a common culture and shared professional practices.

Training in child development, family relations and rights of the child must be integrated in the initial and continuing training of all professionals involved in the legal framework and whose responsibilities lead them to take children's testimony. This is provided for in the Law of 5 March 2007.

- **M**ake it mandatory for all judges taking office in Family Court to receive specific training in children's hearings and the "family approach."
- **E**stablish an initial training module common to all law schools and mandatory for all future lawyers.

Require continuing training for any lawyer wishing to practice in this field; approve these modules as continuing training.

Develop conventions between bar associations and courts to ensure the presence of specialised lawyers all across France.

- While an investigator's primary goal is to seek the truth, this cannot be accomplished without considering children's minority and its specific implications.

**R**equire training on the rights of the child, approaches to be used with children and family situations before assuming any position as a police officer or gendarme in specialised brigades.

Proposal

9

Work undertaken by the Children's Defender was hindered by the lack of legal statistics, particularly in civil proceedings, which made it difficult to make a quantitative, keen and precise assessment of children's testimony in court.

**Develop tools to allow better understanding of these situations; in particular, integrate the Ministry of Justice's statistical system with national statistics concerning legal decisions taken during parental separations and divorces** (number of divorces, contentious and otherwise, in which a child is involved, number of hearings of minors by a Family Court judge, etc.), **as well as all other legal proceedings concerning children** (delegation of hearings, appointment of an ad hoc administrator).

Proposal

10

The Convention on the Rights of the Child, the most comprehensive international instrument on this subject, does not give children or adults the opportunity to directly address the Committee on the Rights of the Child to assert their rights.

On 19 December 2011, the United Nations General Assembly adopted the 3rd Optional Protocol to the Convention establishing a complaints procedure for violations of children's rights. Its goal is to guarantee children the possibility of legal recourse at international level in order to help them find solutions to their problems. This Protocol is open for signature since February 2012.

**Sign and ratify the 3rd Optional Protocol to the Convention on the Rights of the Child, which establishes a complaints procedure for violations of children's rights before the UN Committee on the Rights of the Child.**

# Children and their legal testimony

## SUMMARY of the 2013 Report on the rights of the child

**R**ecognised as a person and as a subject of rights, the child's personal expression and the consideration of his testimony are being accorded increasing attention in the legal and sociological fields, as well as in the media. This progressive transformation of the child's status, rights, and the appreciation of his capacity to influence his own life is the result of the evolution of mentalities and of national and international political wills. This recognition is embodied in several instruments that specify the right of the child to be heard and to express his opinion in all matters concerning him, as in the Convention on the Rights of the Child (CRC), the Brussels II Regulation (EC), the European Convention on the Exercise of Children's Rights.

**The Convention on the Rights of the Child**, adopted in 1989, ratified by France in 1990, is a forceful statement, in our consciousness and as a legal instrument, that the child is a subject of rights, and not just obligations, and that it is paramount to take his best interests into account. Article 12 of that convention states that *"the child who is capable of forming his or her own views [has] the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child... For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."* Articles 19 and 40 seek to accompany children and protect them from the potential repercussions of their expression.

**The European Convention on the Exercise of Children's Rights**, (1996), recognises in its preamble that children should receive relevant information so that their rights and best interests can be promoted and their views can be taken into account.

**The EC Regulation** concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, called "Brussels II bis," which entered into force on 1 March 2005, states that *"the hearing of the child plays an important role in the application of this*

*Regulation."* Four articles evoke the possibility for the child to be heard in different situations, including wrongful removal or wrongful retention.

**The Guidelines on child-friendly justice**, developed by the Council of Europe, emphasise that the right of the child to be heard is linked to his right to be informed and that listening to the child consists of having rigorously-trained personnel take his testimony and interact with him.

**The Committee on the Rights of the Child** issued in June 2009 a **General Comment concerning Article 12**. The right of every child to be heard is one of the four general principles of the Convention on the Rights of the Child. This implies that the child's opinions are considered important, that there is no minimum age for this right, that, furthermore, States should not impose a minimum age, that the child's expression is not only verbal and that the conditions for the hearing are paramount.

**The European Network of Ombudspersons for Children** (ENOC), at its 16<sup>th</sup> annual conference in October 2012, addressed child-friendly justice in the criminal context: no law or practice can limit the right of the child to be heard and to give his opinion; professionals called upon to collaborate with, to represent or simply to work with children in contact with the legal system must be trained in that regard, the confidentiality of texts of children's hearings is concerned by the right to privacy and confidentiality.

These instruments raise an array of complex questions that are constantly faced when applying these rights, and particularly when they determine the interests of the child.

## Children's expression is increasingly recognised in their social environment

The practice of listening to children has slowly emerged in the social, family and legal domains. For a long time, because of their immaturity and dependence, the adult - the father - held all authority and power over the child. In France, starting in the 1970s, some paediatricians and child psychiatrists began to observe and understand the physical and sexual abuse suffered by children; previously, they were "truly denied, i.e. something seen but not taken into account."

Two laws embody the criminal approach concerning this violence on the child's body and mind: the Law of 10 July 1989 on the prevention of child abuse and the protection of minors and the Law of 17 June 1998 on the prevention and punishment of sexual offenses and the protection of minors.

Stating that "parents should involve the child in decisions that concern him, in accordance with his age and maturity, the Law of 4 March 2002 on parental authority incorporates the notion of the interests of the child. The parental authority that also organises the relations between parents and children must not neglect listening to the children, especially during major life changes such as parental separation. 58% of divorces in 2010 included one or more minor children. In these cases, the Family Court judge is particularly vigilant "to protect the interests of minor children."

The social environment of the child and adolescent and the academic, medico-social and health domains also leave room for expression and participation, e.g. the Education act of July 1989, the Law of 2 January 2002 on social and medico-social reform and the Law of 4 March 2002 on patients' rights and the quality of the health system. These laws encourage professionals to create different tools so that children exercise these rights of expression in accordance with their age and capacities.

In a sort of reversal, the law of silence has given way to the sanctification of children's testimony. An unfortunately literal perception of the word "believe" instead of an attitude based on listening and empathy for what the child accepts to share, vocational training certainly too brief to cover a subject so new and delicate and uncoordinated activism, all contribute to losing sight of important points. This has opened the way for various abuses and disastrous mistakes in the search for truth and the interests of the child; the "Outreau case" is emblematic of this. In its wake, an expert report submitted to the Minister of Justice made 49 proposals that call for the introduction of new skills and vocational training programmes and the thorough reshaping of existing ones.

As points of view evolve, **the testimony of the child and adolescent is perceived as contingent**, it is "*not to be taken literally*," but must be contextualised, obtained and examined in terms of technical elements based on shared points of reference.

Language reflects how the child organises his thoughts, detaches himself from the reality and becomes capable of conceptualisation; the limits of his expressive capacities can lead to confusion between his words and reality.

Emotional elements play a major role. The need for security felt by all children can lead them to adapt what they say on the basis of the potential consequences on their safety and living conditions, e.g. changing their housing or being taken into care. Conflicting loyalties may distort the child's expression, feelings and desires. Contrary to what he really wants, he may take the side of a parent that he has "chosen" because he feels emotionally engaged in supporting that parent.

In criminal proceedings, a child's hearing is intended to clarify the facts and contribute to the investigation. In civil procedures, it is more concerned with the child's right to share his personal experience so that the judge can make an informed decision. In all cases, that hearing is an element of a legal decision with a strong impact on the child's life and his environment. **The assessment of the information contained in the child's statements** is therefore determinant, especially when those statements constitute the only evidence, for lack of other physical findings (in the case of sexual violence, for example), and the scenario is reduced to the child's word against that of the respondent. The child's intellectual and psychological immaturity makes him vulnerable and impressionable, sensitive to "**the interaction with the interrogator and the methods used for questioning**." Age, facts, social pressure, the effect of the group to which he belongs and the attitude of the interlocutor-investigator encourage the child to conform to his perception of that interlocutor's expectations. The methods used for listening and questioning are crucial: incentive, formulation of questions, way of speaking, references to things the child knows or does not know, voice, tone, gestures, etc.

While acknowledging that "*the criteria for veracious testimony*" are difficult to define and that "*no one has absolute knowledge concerning the techniques*," the majority of professionals follow (or draw inspiration from) technical elements, tools borrowed from knowledge of child development and children's needs and the child's fatigability. They provide a framework for interviews and evaluation that win the trust of the child, promote listening and expression and help protect subjectivity.

## The law provides for children to express themselves before the court

### The child's testimony is taken in proceedings where he is a third party, in particular before the Family Court.

A veritable right for the child capable of discernment to be heard in proceedings that concern him was recognised by the Law of 5 March 2007 reforming child protection, which amended Article 388-1 of the Civil Code. *"In any proceedings concerning him, a minor capable of discernment may, without prejudice to dispositions providing for his intervention or consent, be heard by the judge or, when it is in his interest, by a person designated by the court to this effect. This hearing takes place automatically when the minor so requests. If the minor refuses to be heard, the judge shall assess the cogency of that refusal [...]."*

The request for a hearing can occur at any stage of proceedings involving the child. Parents, or the judge himself, may request that the child be heard. The Circular of July 3, 2009 establishes a non-exhaustive list of these proceedings, which relate, above all, to the exercise of parental authority. However, in Family Court issues, the hearing should be regarded as a measure to benefit the child and not the adults.

The judge has the obligation (Article 388-1 of the Civil Code) to ensure that the child has been properly informed of the opportunity to be heard. In general, this information is part of the notice of the hearing, addressed to the parents, so it is their responsibility to pass it on to the child; this is clearly dependent upon the parents' willingness to inform the child.

Although the Circular of 3 July 2009 states that the judicial decision must include specific reasons for informing minors of the possibility to be heard, including decisions to approve a divorce by mutual consent, in practice, children's testimony is not envisaged. Yet, in 2010, such divorces accounted for 55% of all divorces and in 53% of cases, one or more minor children were concerned.

*"When a minor requests a hearing, refusal cannot be based on his lack of discernment or the fact that the proceeding does not concern him."* Hearing the child upon his request is therefore subject to the condition that the child is capable of discernment. Discernment is commonly understood as the capacity to assess a situation clearly and accurately; its determination requires a subjective assessment and demands verification of the intellectual capacities of the child. Age-based criteria do not always correspond to the child's actual capacities. It is difficult for the judge to verify discernment before the hearing because

he is not acquainted with the child; this obliges him to make a subjective judgment without a proper basis. Consequentially, amongst jurisdictions and sometimes within the same one, the criteria used vary significantly; in particular, this leads to children of widely varying ages being heard.

In application, discernment is a source of questions, inconsistencies and misunderstandings, especially for the child, who faces practices that vary among jurisdictions and sometimes among judges, having the impression of being at the mercy of a judge who decides, without having met the child, whether the latter is capable of discernment. In addition, common misperceptions persist that after a certain age - 13 years, in general - the child will always be received by the judge, even if the former does not request it, or that the law specifies an age for "mandatory" hearing.

The study of hearings refused for lack of discernment, referred to the Defender of Rights, shows that in most cases, the justification is based solely on the age of the child without further elaboration. Therefore, the recommendations of the Defender of Rights include the evaluation of discernment in concreto depending on the child's age, his actual abilities and the context in which he is developing (implying that the judge must meet with the child) and that the refusal to hear the child be justified in explicit and concrete terms but also that such a refusal may be based on its character manifestly contrary to the child's interests (Article 373-2-6 of the Civil Code).

The judge decides when and how he will hear the child, adapting that hearing, to the extent possible, to his availability, his way of speaking and his understanding. The child is received without his parents, alone or accompanied by his lawyer, before or after them. As he must explain it clearly to the child, the judge "considers" his feelings but is not obliged to follow them. After the hearing, the judge prepares a summary, which differs from the minutes and may be consulted in court. We must seek a balance between the adversarial principle and the protection and interests of the child. When the child speaks freely in front of the judge, we might worry that his parents, hearing the testimony, hold it against the child.

The child should have the right to refuse to be heard: *"if the minor refuses to be heard, the judge shall assess the cogency of that refusal"*. It is not in the child's interests, given his vulnerability and the strong tensions induced by a legal hearing, to compel him to speak before the Family Court if he does not want to. He should be given a genuine right of refusal, in word and in deed.

**When the child is a witness in proceedings**, in particular criminal proceedings, it is not sufficient to consider him as a child. The Defender of Rights has been called upon in several cases in which the treatment of a minor witness was a repercussion of the absence of specific provisions, in particular in the most serious situations. The lack of provisions specifying the rights of a child witness who is neither perpetrator nor victim means that judges, police and legislators may forget that this witness to a crime of a certain gravity is still a minor, who must be treated and protected as such. Unlike a minor victim, it is not expressly provided that the child be received in a suitable hearing room, that he receives an explanation of the criminal context and the consequences of his testimony and that he benefits from the protection of anonymity. As noted by one judge, "*the child is heard without procedural safeguards.*" Without impeding the proper course of the investigation, we must ensure the physical and psychological protection of a child who is a witness to a crime, regardless of its gravity. Support for the child from a legal guardian or a professional, recording of the interview, his participation only in situations when his presence is indispensable, being heard in an appropriate framework by trained professionals, the opportunity to refuse confrontation and reconstitution in the presence of the alleged perpetrator should be anticipated and encouraged. A Circular concerning hearings, methods for reception and the consideration of maturity, based on current best practices, could be drafted jointly by the Justice and Interior Ministries. The website [www.ado.justice.gouv.fr](http://www.ado.justice.gouv.fr) could develop this information to best advantage.

### The child's testimony in proceedings involving him

In educational support hearings, the Juvenile Court hears a minor who is not necessarily accompanied by a lawyer.

**Juvenile criminal court** specifically considers the perpetrator's minority and vulnerability. Several provisions seek to protect perpetrators who are minors: the videotaping of their testimony is obligatory (Law of 5 March 2007 on crime prevention); at all stages of the proceedings, the minor must have the assistance of a lawyer (Article 4-1 of the Ordinance of 2 February 1945).

The hearings of children who are victims of abuse or sexual offenses must be videotaped to facilitate the child's expression and limit the number of hearings; this seeks to guarantee against variations in the child's account and to protect against the reviviscence of emotions. Gradually, appropriate locales, reserved for such hearings and staffed by trained professionals, have been set up, but they are not located throughout France.

### An abuse: the proliferation of hearings of children not held in custody

The Defender of Rights has been called upon in some situations where a very young child (under 10 years of age) has been interviewed or heard without being held in custody. Given that only children over thirteen years of age can be taken into custody, which gives them rights and specific guarantees, the question of the protection of minors is particularly acute in two situations: for children under ten years of age and for minors heard without being held in custody. The Ordinance of 2 February 1945 lays down rules designed to protect the minor at all stages of the proceedings, but does not explicitly provide conditions for hearing children under 10 years of age, nor for the hearing of minors not held in custody.

Examination of situations brought to the attention of the Defender of Rights led him to publish two decisions, one of which was addressed to the Minister of Justice. It recommended making an overall study of the issues - legal, improvement of procedures, proper behaviour - concerning children (especially very young ones) heard without being held in custody.

For her part, the Children's Defender has held discussions with lawyers and judges concerned with young people; they had all encountered such situations in the course of their duties and regretted the weak protection afforded to these minors. A child heard without being held in custody is theoretically not subject to the regulations that apply in custody: he came to the premises of the police or gendarmes, where he is being heard, of his own free will and could leave whenever he wants. His freedom to come and go, his voluntary presence in that location and therefore his right to terminate the hearing at any time, appear to be a statement of principle; yet, would a teenager - or even a child - dare to affirm this freedom? He cannot help but be impressed by the context. Additionally, his parents are rarely aware of his presence, he does not have a lawyer and his statements are not recorded.

Paradoxically, a child heard without being held in custody has less protection than if he were in custody: that is to say, deprived of his freedom. This is certainly not to say that the practice of hearing children without holding them in custody be supplanted by bringing them into custody, but that the former should be "imperatively governed by law." This governance could include an agreement obtained from the minor, informing his parents as soon as the hearing starts, a maximum duration set in advance and a recording of the hearing.

## Supporting children's expression

Depending on the proceedings, their complexity, the stage they have reached, the child's age, the parents' attitude and the pace of the decisions, various professionals will accompany the child, hear his testimony and decide his future. The diversity of these situations calls for specific skills and qualifications for listening and interpretation, as well as patience. Creating a common culture amongst professionals from the legal, social, medical, educational, and law enforcement domains, based on training in child rights and specific approaches to be used, will favour practices in the best interests of the child.

Initial and continuing training of **judges** was thoroughly revised in 2009. Initial training is organised into eight clusters of courses and specific workshops that provide transversal training in the various issues related to their functions, such as children's testimony, a core subject in the training of Juvenile Court judges. As the function of Family Court judges is not specialised, they unfortunately do not receive training in hearing minors other than that provided to all future judges.

The Family Court judge may appoint another person to carry out the hearing of a child who has requested to be heard. He must then explain his decision in terms of the interests of the child and advise the child that they will not meet directly. The Children's Defender, in the course of her various interviews and visits, has observed remarkable heterogeneity in the motives and methods for delegating hearings, particularly in how the child's statements are communicated to the judge, a diversity that does not guarantee a sufficient level of professionalism. The development of common guidelines, enabling uniform professional practices, appears particularly desirable.

**Children's lawyers** have gradually forged their place in the legal system. A charter for children's lawyers, drafted in 2008, provides, on a voluntary basis, for the creation in each bar of a group for the defence of minors; 70% of bars now have such a group. Several locations offer free legal consultations for children. Specialisation in the rights of the child does not exist in the legal sense of the term; training provided by universities and law schools remains limited. A working group of lawyers from the Conseil national du Barreau (national bar association), which handles all issues related to rights of the child, has developed a training kit recently approved by the bar association's national training commission. It would be beneficial to establish an initial training module common to all law schools.

The presence of a lawyer is mandatory in a criminal procedure; his intervention begins after his client is taken into custody. Although it is rarely the case, that same lawyer should be able to assist and defend the same young person throughout the proceedings. Before the Juvenile Court when educational sup-

port is concerned, and before the Family Court, the presence of counsel is not required. However, the judge must inform the child of his right to be assisted by a lawyer and that the court will appoint one if he so desires. In these cases, the child may autonomously benefit from legal aid. Well trained in child rights and in communication between parties, the lawyer acts as a facilitator, explains the role of the judge, the course of the proceedings and the issues involved. Bound by professional secrecy, he does not represent the child, but rather assists him. This presence should be encouraged and developed. Children and adolescents should be better informed of this right to additional assistance.

**An ad hoc administrator** may be appointed by a judge or the state prosecutor in a civil, criminal or administrative proceedings when the interests of the minor child appear to be in conflict with those of his legal representatives, in order to represent the child, protect his interests and create a relationship of trust with him. That administrator only intervenes within a legal framework. Although the Decree of 16 September 1999 set down the status of the ad hoc administrator, his mode of appointment and the compensation for his assignments, interviews with representatives of ad hoc administrators and legal institutions converge upon the same conclusion: the ad hoc administrator function is currently not sufficiently defined, thus potentially limiting their interventions in the child's favour. A review of that status would help to clarify the ad hoc administrators' assignments, diversify their training and strengthen their independence and neutrality.

**The testimony of a child victim** of physical and sexual assault is taken by the police (**Brigades des mineurs** or **Brigade de la famille, minor/family brigades**) or gendarmes (**Brigades de Prévention de la Délinquance Juvénile, BPDJ, juvenile delinquency prevention brigades**). It is obligatory to videotape this hearing of the minor victim (Circular of 20 April 1999). At that hearing, the child or adolescent confides a violent episode in his life and is questioned about events that greatly disturbed him; the particular fragility he is given by his status as a child cannot be ignored. The physical conditions of his reception - properly equipped locales - and the training of investigators concerning children's testimony and family issues before they begin working in the domain remains uneven. The effects of this can be seen in how cases are handled.

To carry out their delicate task under the best conditions, all investigators should be able to make use of appropriate material and technical resources and should have, in all cases, received specialised training on approaches to be used with

children and for obtaining their testimony before taking on these job responsibilities.

**The hearing support units**, which appeared in France starting in the 1990s, are rapidly expanding. Known as “Accueil pédiatrique de l'enfance en danger (APED, paediatric reception for children at risk)” or “Unité médico-judiciaire (UMJ medical-legal unit),” these units, based on the Circular of 2 May 2005, confederate professionals from several disciplines trained in the approach to child victims of violence (which often means sexual violence). They are usually located near the paediatric ward of a hospital, **and provide a single location and a complete, safe reception for the presumed child victim**, in order to take his testimony under the best conditions for the child and for the investigation, and to ensure in the same environment any medico-legal examinations that may be necessary.

Since 1998, the federation “Voix de l'Enfant” has established 44 Unité d'accueil médico-judiciaire pédiatrique (UAMJP, paediatric medico-legal reception unit) that operate on request from the courts. Their unique feature is the presence of a coordinator to guarantee continuity of care for the child and to effectively communicate information concerning the child amongst all professionals, the families and the child.

What happens to recordings of child victims' hearings and, from now on, hearings of children guilty of crimes? The video recording is systematically accompanied by a written record of the hearing. The law is silent on the viewing of the video recording. In fact, it appears that they are rarely viewed by judges, lawyers and experts who have them, nevertheless, at their disposal. The law's objective to provide protection does not appear to be fulfilled. Significant material resources were, and still are, devoted to the deployment of well-suited recording equipment that does not frighten the child, while permitting his words and attitude to be accurately followed. The underutilisation of these video recordings is disappointing. ■

2013 Annual Report  
dedicated to  
the rights of the child  
(summary)

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**CHILDREN**  
AND THEIR LEGAL TESTIMONY

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