

# Penal Issues

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## The Juvenile Court Judge in Context : in Search of Balance

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### A survey of four juvenile courts

The survey, conducted in 2006 and 2007, covered four locations, with courts of different sizes: two juvenile courts with about ten judges and two medium-sized courts with three or four judges. It included interviews with those judges, members of the juvenile court prosecutor's office and the other judges involved, as well as with all of the institutional partners of juvenile courts; that is, the Youth Protection Department, the *département*<sup>1</sup> council (*conseil général*) and the accredited youth support associations. Information was mostly collected through semi-structured individual interviews, completed by observation periods. The data were analyzed so as to reconstruct the juvenile court judges' action system. On the basis of these analyses, an attempt was made to determine the present state of the profession of juvenile court judge, as observed in field work, and more generally, how these judges regard their speciality.

Concern with juvenile delinquency, but also with educational assistance work, has fired much debate, often critical, on the juvenile justice system. The practices of juvenile court judges (JE = *juges des enfants*), in particular, and above all the primacy they give to education, symbolized by the Feb. 2, 1945 *ordonnance*, have been seriously challenged. Several laws have considerably modified the juvenile justice system. Structural reorganizations are under way, tending above all to give greater responsibility to *département* councils<sup>2</sup>. Furthermore, within the courts themselves, the position of JEs has been weakened by the growing role of the public Prosecutor's office in the treatment of cases, and by the budget cut-backs suffered by courts in general.

What, then, is the position of JE, within this shifting situation? Several projects for transforming it are presently under study. Our aim is to examine the particular practices of specific judges, in their environment, so as to understand what those judges do, and what makes them so atypical.

### The work of the juvenile court judge: conciliating the law with attentiveness

Our interviews and observation point to the main features defining the JE's profession today, first of all: a number of peculiarities: they handle both civil and criminal cases, they deal with minors receiving educational aid as victims, as well as with those who are offenders, and as criminal judges, their functions cover those requiring several judges in adult offenders' cases: investigation, sentencing, and sentence enforcement. They enjoy the same degree of independence as all magistrates, but have greater organisational freedom, mostly because they manage their own hearing agenda. Nevertheless, freedom does not mean autocratic decision-making power. They spend much of their time with the families they monitor, and with a number of partners, including workers in social aid, youth care facilities, and the medical sector. They attempt to muster every possible resource so as to reach decisions that are good for the child, be he offender or victim. Whence several essential features which guide their action.

First of all, JEs assert their status of full-fledged judges, whose action is grounded in the law. By asserting their tie to the law they reject what they view as an outdated image, too often attached to their function, of marginal judges doing their work with no concern for its legal framework :

« Still and all, there's an obvious change: today's juvenile judge pays more attention to the legal side than fifteen years ago. That doesn't change anything for me, because my way of working hasn't changed. I've always administered the law (...) Judges administer the law and that's what they're there for. So we're judges whose position is a special one, it's true, but above all, we are judges » (Juvenile judge, R3).

The concern with inscribing their action in law is also a way of positioning themselves with respect to the people with whom they deal, be they families or partners. The law, they say, enables them to remain impartial and to make decisions more serenely. It is both a resour-

<sup>1</sup> The *département* is one of the territorial administrative divisions of France (96 metropolitan, 4 overseas) each run by its own local council, the *conseil général*.

<sup>2</sup> The March 28, 2003 Act gave local governments the possibility of taking over some of the central government's prerogatives. Four *départements* have acted accordingly, taking over the complete implementation of measures pronounced by juvenile court judges, thus withdrawing, *de facto*, their power to designate the facility or service to which a juvenile is entrusted.



ce backing up their authority and a tool for setting themselves at a distance :

« *The law sets rules (...) That gives us a framework and means we can't be all-powerful. It's a guide that helps us stay coherent, with our feet on the ground* » (Juvenile judge, C2).

That legalism is not in contradiction with educational action, however, which is always central to these judges' activity.

« *There are minors you see once a month, so you're more severe, and at the same time you try to remain logical and to do what is appropriate and coherent for them. But you can't forget you're dealing with a minor, and that you have to be educational, above all, even if there are punitive measures at the same time. The two aren't contradictory: they have to complete each other...* » (Juvenile judge, A11).

The second basic feature to be found in most judges has to do with their interaction with youths and their family. It corresponds to a change in paradigm in the whole social sector, presently, and which has its translation in law. Judges do not – or no longer – act from a position of authority. They try to involve the family in the decision-making process, and to get it to agree, or at the least, they try to be didactic.

« *What's important is that the family clearly understand why it's there, the aim of the measures, what the decision is for, and that at the point we're at, the decision is authoritarian but legitimate* » (Juvenile judge, C3).

« *Our role is to work on the defaulted parental authority, but to work on that we're supposed to work with the parents, to keep them informed, to allow them to explain themselves, to reply to the reproaches against them, and that's the only way we can work with them to try to get the situation to change* » (Juvenile judge, R6).

This is a long, difficult task, since the goal is to change people's views. It also brings the judge to modify his opinion and often to put off making a decision until the exchange that takes place during hearings – often in chambers<sup>3</sup>. This means that the judge is obliged to be cognizant of people's environment so as to have arguments in discussions, and not be misled by families. This entails very long hours and extremely tiring work. The consequences of any mistake may indeed be very serious, and the judge is often faced with dilemmas :

« *The law demands that we get the family's consent to the measures we take. I've learned by experience that when a family is extremely distrustful or hasn't understood, it refuses the action and foils our decisions. That's very complicated to handle. If you are really absolutely sure the child is in serious danger, you do what is necessary, you take the child away from the family. But most of the time, it isn't that obvious. There are suspicions, things that should*

*be changed, but the child isn't abused to the point of his life being threatened. So when families refuse to let social workers in, you're in a bad position: there aren't enough elements to have the child taken away and sent to a safe place. Now, if the danger isn't so great, just suddenly placing the child in a home may have serious consequences. At the same time, you're worried, nonetheless* » (Juvenile judge, A4).

This leads us to a third feature characterising JEs: their strong investment in the territory and in partnerships. They need access to elements helping them make the right decision, which supposes knowledge of the milieu in which families live, and of the history of the juveniles with whom they deal. Many JEs are attached to one area within the court district – which gives them the possibility of knowing it better. The necessary exchanges with partners are also very time-consuming.

Partnerships are all the more necessary since the work of JEs is not confined to decision-making. As opposed to most other judges, who only have sequential, limited action within the judicial process, be it civil or criminal, JEs are invested with a mission that involves long-term case follow-up. It is not unusual for them to follow children – and their family – for several years, for instance. The outcome is that their decisions are periodically reviewed, in the light of changes in life situations. Not only is each child a new, special case requiring a specific decision on the part of the judge, but in addition, new decisions will be taken in accordance with the course the child's and her family's life has taken.

This makes the judge's work an ongoing search for the best solution, in a sense, followed by a de facto evaluation of the consequences of each decision made. In this context, it is hardly meaningful to set a rigid partition between education and punishment, since both may be applied at different points if they help the child to progress. The judge's options cannot be final, and constantly require re-examination. In contrast with a justice system that hands down final, definitive sentences, and has trouble acknowledging its own errors, as shown by several highly publicised affairs, juvenile justice seems relatively open to doubts and questioning. A decision is not meant to be untouchable.

This constant reconsideration all the more difficult to achieve since JEs rarely work collegially. While they do hold hearings which are real trials, with assessors, most of their activity takes place in their chambers, in private talks with the children and their families. The decision-making processes are such that decisions, the outcome of those exchanges in the chambers, are neither reproducible nor automatic, and therefore cannot easily be assessed by colleagues. Although styles may differ, with some judges more prone to be punitive and others emphasising education, those diffe-

rences are respected, and elicit few comments:

« *The work involves exchanges with families, with the youth, but it's rather lonely work... We're 'on our own' a lot, I find... We each handle our own cases, and are very much alone. That doesn't mean there isn't any collective life, but that collective life doesn't necessarily involve a collegial dimension in the perception of cases and situations* » (Juvenile judge, A7).

« *The practices of JEs have always been very individual, that's nothing new. We used to say, 'there are as many kinds of judges as there are courts'. But on the whole, maybe they are all more in the same orientation... There are still some exceptions, but less so than in earlier days, when people took very divergent positions* » (Director of a youth home).

### Complex partnerships

We have stressed the judges' need for their institutional partners in the management of the situations with which they must cope. These partners play a role upstream of the decision, by investigating the cases and providing the judge with the information and appraisals they need for their interactions with families. They also act downstream, as they implement the judges' decisions and report on the evolution – positive or negative – of the youth they monitor.

Three broad categories of partners work with JEs: the Youth protection department (*Protection judiciaire de la jeunesse*, PJJ), the *département* council services in charge of children, and associations involved at various points in the process. The PJJ, an external department of the ministry of Justice, is definitely the judge's best ally in most courts. But the PJJ suffers from a crisis that has several facets: it lacks resources, and staff in particular, to cover all of its missions; most of its resources go primarily to respond to the requests for personnel for the recently created closed reform schools and prisons for minors. More generally, the increasingly strong inclinations to confine the PJJ to the penal facet of their field of competence do not correspond to the expectations, nor to the reality of the work of either JEs or educators:

« *The boy has committed some offence, and his family situation is such a mess that it's a civil problem. If they take that away from us, that possibility of using a civil approach with kids who have committed an offence, because you have to do other work first, what a pity! There's a risk of turning cases that should be handled in the civil sphere into criminal cases* » (an official in the PJJ).

For the PJJ professionals as well as for judges, the paradox resides in the fact that for lack of sufficient resources, the former are unable to respond to needs in time, so that the situation worsens for minors who should be given follow-up, thus backing up the arguments of those who favour punitive measures, which are, moreover, costly, both financially and personnel-wise.

<sup>3</sup> Lawyers, when present, may also have a role to play on such occasions. See BÉNECH-LE ROUX P., 2006, *Les rôles de l'avocat au tribunal pour enfants, Déviance et Société*, 30, 2, 179-202.

The second broad group of partners is in the political-administrative sphere. The *département* council services in charge of children and social-educational action may be at odds with JEs, since their practices are contingent on budgetary constraints that judges refuse to consider, their main concern being the child's best interest. Charged with implementing decisions over which they have no control, these services sometimes drag their heels. Since 2006, some *départements* have been experimenting with transferring some of the judge's activities to them. In the experimental project, the idea is to remove the judicial authority's ability to entrust a child directly to an association or to the PJJ. If this reform comes to pass, the *département* council would be directly in charge of those measures. In the long run, some people consider confining JEs to the criminal procedure, and giving *département* councils complete control of civil custodial care. JEs have some assets, however, to counter this evolution. In their quality of guardian of the law and spokesperson for families, judges are definitely an unavoidable partner and an all-important reference point.

« *What I notice is that the public, families, find it more comprehensible to have the judge, that is, the justice system, intervene in the innermost family circle, because still and all, there's the idea that law is respected. With an administrative approach, it's not the same thing, they have the impression there is more abuse of power, it's really amazing... They have the feeling that court measures are more respectful of people's rights than administrative measures. It's different: people have to endorse administrative measures, whereas judges can decide without their endorsement. There's also the possibility of an appeal, and of having a lawyer, with the court. With the administration, you have none of that* » (head of a social work association).

« *There's a general trend toward putting département councils in charge of custodial care, with juvenile court judges there only to settle conflicts between the administration and parents. We're against that conception, because parents are heard, and we think that a procedure giving due hearing to both parties, with the département council on the same footing as the parents, often leaves each side in its place. Especially when parents are extremely disadvantaged and wouldn't carry weight in the face of the administration. And that would be a much less interesting function* » (Juvenile judge, R4).

The third type of actor is the association sector, which effectively enforces the measures decided by judges. For the carrying out of civil decisions, authorisations for non-profits are delivered by the *département* council, for criminal decision, they are delivered by the PJJ. Many associations have authorizations from both. Here, then, we have a three – or even four – sided relationship involving the judge, the PJJ, the *département* council, and associations, which experience a twofold dependence, on the judges who order measures and on the *départements* who finance them. Whence, the

need for them to maintain good relations with all of the other actors, or at least, to rely on the judges to convince the others.

« *Still and all, we're always faced with the problem of the possible conflict between three constraints, economics, politics and education. We're in that antagonism, and so are judges. There's the number of vacancies in facilities, the problem of costs, problems of space, and so on. The question of the financial management of measures, as opposed to the educational interest, and the interests of families: do we prolong them or not? We're faced with that. If there's no longer a danger, we stop the educational measures. Can the département afford to set up an AED (home educational aid) so that the break won't be too abrupt? Judges too are faced with those problems and that reality. The questions of cost are put to us by the département council, which is our parent body. The département council questions us on the length of measures, for AEMO (community educational aid), given that the faster the turnover in AEMO, the shorter the waiting lists, the less dissatisfaction there is. There's constant pressure. We're always in the context of a separate decision-maker and payer, it's a constant problem, one that neither the département council nor the judges can stand. The judges would like to have all their decisions carried out and the département council would like measures to be reasonable with respect to the resources available* » (head of department, social work association).

Today, in spite of all those changes, the JE is still central to the system, its linchpin and reference point. Within that system, extremely variable from one location to another, judges build their network and lean on different actors to have their decisions enforced. Although their position remains central, their power is now restricted by the loosening of their ties with social workers.

« *There was a period, I've heard, when there were group synthesis meetings in the chambers, with the participation of social workers. The family only came in afterward. We're no longer in that sort of complicity now, we're in due process, and debates systematically take place in the presence of the family. There's more respect for people's rights, and the law is enforced* » (Juvenile judge, C4).

Social workers and judges both have access to youths and their family, but differently so. Nonetheless, the judge's relationship with his partners is marked by shared views and an extremely strong interdependency: social work is rooted in the judge's decision, and the judge's activity – especially interaction with families at hearings and the decisions made in that framework – is inconceivable without the help of the services in direct contact with children, youths, and families in their own settings. Nonetheless, if there is anyone who deals with the situation as a whole, it is the judge. It is on judges, then, that the aura traditionally surrounding the judicial sphere is reflected.

With respect to the functioning of the system as described above, the interviews point, however, to a general impression of a threat hanging over all of the actors. That threat pertains to the durability of a working style, specifically based on the judge's central role. The threat takes the form of partial measures: restructuring of departments, dropping or restriction of some activities, the impossibility of dealing rapidly with some at-risk situations. Over and beyond these spotty signs of change, the future to which the overall transformation of the system points is blurred, difficult to counter since it is the government that makes these changes with, on the face of it, financial justifications. The actors perceive, unclearly for the moment, a political determination to restrict the autonomy of the judicial sphere and to limit the sphere of influence of juvenile court judges.

### Juvenile court judges and Public prosecutor's offices: turning juvenile justice into criminal justice?

Among judges, JEs continue to be viewed as atypical. They do of course participate in all sorts of assignments that bring them to work with other judges, in hearings trials for over-ageadult defendants, for instance. Collegiality does function, in this respect. But as juvenile court judges, they find it difficult to develop relations with other judges. One explanation resides in the growing workaccelerating working pace loads in courts, resulting in hastened procedures, both civil and criminal. A closer look shows that owing to the very nature of their work, JEs reason along very different lines from their colleagues, so that exchanges with examining judges and those in charge of liberty and custody (JLD) are generally rather limited.

« *Sometimes a JLD contacts us, but we feel like they're completely swamped. If I'm in contact with a JLD, it's because he wants to know what time I plan to make my decision, so he can schedule a trial... That's really not much. We practically never work together* » (Juvenile judge, A5).

In civil cases too, interaction is usually limited, especially with the family court judges. The latter do not work within the combined procedures, both civil and criminal, characteristic of their colleagues in juvenile courts. Tensions therefore arise :

« *Occasionally there's some friction. Our procedure is such that a family court judge may decide on a child's custody whereas the JE decides the opposite, especially if the family court judge is in Versailles or in Paris – because divorces aren't necessarily settled in the same district. Information – sometimes much of it – may be lost along the way, especially in really difficult divorce cases. In addition, culturally speaking, there's a tremendous split between family court judges and we who are in criminal law, and the JE, so there again, it's really different* » (Deputy public prosecutor for juveniles).



Juvenile judges are in an off-centre position with respect to the Public prosecutor's offices, which epitomise the criminal justice system. First of all, the Public prosecutor represents punishment but also the productivity requirement that increasingly reigns in courts<sup>4</sup>. Deputy prosecutors also echo the concern about crime now developing among both local and national-level politicians. For instance, JEs accuse public prosecutors of referring to them cases that are not worth their while.

« *The public prosecutor submits cases to us under criminal procedures, whereas they aren't all that serious, actually. Sometimes they're situations that have deteriorated terribly, but were not known to the educational aid services... The issue here is the strategy in the Public prosecutor's criminal policy. They have their imperatives, which aren't necessarily those of educational aid. Other parameters – including some at the national level – are at work here... We feel under pressure. We receive a lot of referrals. The Prosecutor's office sends us kids with no license for driving scooters, for instance... Really, one wonders whether it was worth while. It's a question of strategy, on which we have no control. Responding with this or that measure is how we take a stance with respect to that, except that the case has been submitted to you, you have to rule, initiate judicial investigation, hand down a decision... So, maybe our reaction as JEs is a bit focused on our own professional interests, but we have the feeling we have less control over referrals with respect to educational aid, so that finally,*

<sup>4</sup>See BASTARD B., MOUHANNA Ch., 2007, *Une justice dans l'urgence : le traitement en temps réel des affaires pénales*, Paris, Presses Universitaires de France, Collection « Droit et Justice ».

*maybe we're somewhat defiant about the action and approach of the Public prosecutor's office » (Juvenile judge, A8).*

On the other hand, the Prosecutor's office, beset with political and hierarchical demands, simultaneously defends judges and their decisions. Juvenile court prosecutors' offices and the deputies in charge of those cases are the first to defend the judges' positions, since the latter represent a balanced position, and also because they represent the law. There definitely is some tension, but many people in Prosecutor's offices, especially the oldest, have come to realise that they have to « protect » juvenile judges, as a way of protecting the very principle of the autonomy and independence of the justice system. In that sense, JEs still have a very strong symbolic position: they represent an ideal of justice, even if it isn't an ideal justice.

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Juvenile court judges, who symbolized modernity and innovation until quite recently because they represented a model toward which the justice system should tend for both adults and juveniles, are now pointed to as residues of an obsolete notion of justice, unable to deal with the challenges of today's society, worried about its youth. The actors of the court and social work systems view this reversal as a sign of

the broader trend affecting the justice system as a whole, and calling into question the balances on which it is based.

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