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FRANCE

CHILDREN'S RIGHTS: INTERNATIONAL AND NATIONAL LAWS AND PRACTICES

Executive Summary

France is a signatory to all the significant treaties dealing with children rights. It has in place several mechanisms to monitor the implementation of the 1989 Convention on the Rights of the Child, in particular, an ombudsman for children.

Pregnant women are entitled to paid maternity leave. To offset the loss of salary, they receive benefits via the public maternity insurance, often supplemented by a complementary sum payable by the employer as per a collective bargaining agreement. Several categories of family allowances are provided without any condition of employment.

Children under six receive free and mandatory preventive health services in a widespread network of thousands of health-care facilities. After the age of six, children's health is monitored by school health services. Mandatory physical and psychological checkups take place when the children are ages six, nine, twelve, and fifteen. When they are of sufficient maturity, children must be informed of their medical treatment and participate in the decision-making process.

School is mandatory from ages six to sixteen. Although not compulsory, pre-school for children under six is widely available and strongly encouraged. Children with special educational needs are educated in mainstream classes alongside their peers wherever possible, to better incorporate them into society.

There is no specific legal age under which a juvenile cannot be prosecuted. The sole criterion is that of moral discernment. Penalties, however, are adapted to the age of the child.

I. Introduction

In the past twenty-five years, laws concerning children have multiplied in France. These laws generally use the term "minor" instead of "child"; the Civil Code defines "minor" as "an individual of either sex who has not yet reach eighteen years of age." The recent changes aim at developing a greater legal status for minors, to reflect their place in today's society. The new legislation has also been geared towards the implementation of the fundamental rights and obligations enshrined in the 1989 UN Convention on the Rights of the Child. The government and Parliament have tried to strike a balance between children's rights, the protection of children, and the parents' rights and duties.

II. Implementation of International Rights of the Child

Among others, France has ratified the following treaties addressing or having an impact on children rights:

- International Covenant on Economic, Social and Cultural rights 1966. Entry into force for France: February 4, 1981;¹
- International Covenant on Civil and Political Rights 1966. Entry into force for France: February 4, 1981;²
- Minimum Age Convention 1973. Entry into force for France: July 13, 1991;³
- Convention on the Recognition and Enforcement of Decisions relative to Maintenance Obligations 1973. Entry into force for France: October 1, 1977;⁴
- International Convention on the Elimination of all Forms of Discrimination against Women 1979. Entry into force for France: April 25, 1984;⁵
- Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women 1999. Entry into force for France: December 22, 2000;⁶
- Convention on the Rights of the Child 1989. Entry into force for France: September 6, 1990;⁷
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000. Entry into force in France: March 5, 2003;⁸
- Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography 2000. Entry into force in France: March 5, 2003;⁹
- European Convention on Human Rights 1950. Entry into force in France: May 3, 1974;¹⁰
- Hague Convention on the Civil Aspects of International Child Abduction 1980. Entry into force December 1, 1983;¹¹

¹ Decree 81-77, Jan. 29, 1981, JOURNAL OFFICIEL [Official Gazette of France, J.O.], Feb. 1, 1981, 405.

² Decree 81-76, Jan. 29, 1981, J.O., Feb. 1, 1981, at 398.

³ Decree 91-1088, Oct. 16, 1991, J.O., Oct. 22, 1991, at 13826.

⁴ Decree 77-1120, Sept. 22, 1977, J.O., Oct. 5, 1977, at 4835.

⁵ Decree 84-193, Mar. 12, 1984, J.O., Mar. 20, 1984, at 875.

⁶ Decree 2001-953, Oct. 15, 2001, J.O., Oct. 20, 2001, at 16578.

⁷ Decree 90-917, Oct. 8, 1990, J.O., Oct 12, 1990, at 12363.

⁸ Decree 2003-373, Apr. 15, 2003, J.O., Apr. 24, 2003, at 7306.

⁹ Decree 2003-372, Apr. 5, 2003, J.O., Apr. 24, 2003, at 7303.

¹⁰ Decree May 3, 1974, J.O., May 4, 1974, at 4750.

¹¹ Decree 83-1021, Nov. 29, 1983, J.O., Dec. 1, 1983, at 3466.

- European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children 1980. Entry into force for France September 1, 1983;¹²
- Hague Convention on Protection of Children and Cooperation in respect of Inter-Country Adoption 1993. Entry into force for France : October 1, 1998;¹³ and
- Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children 1996. Entry into force for France: no date was specified in the law authorizing ratification. An additional decree should be published at a later date.¹⁴

France entered a reservation to the 1989 Convention on the Rights of the Child concerning article 30, which provides:

In those States in which ethnic, religious, or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

The French government declined to apply article 30, as article 2 of the 1958 Constitution reads that “France is a republic, indivisible, secular democratic and social. It shall ensure the equality of all citizens before the law without distinction of origin, race or religion. It shall respect all beliefs.” The Constitution, therefore, excludes recognition of groups enjoying a special status.

France has in place several mechanisms to supervise the implementation of the Convention. The government, for example, must submit each year a report to Parliament on the implementation of the Convention. Since 2000, France also has an ombudsman for children whose mission is to defend and promote children's rights in France.

III. Child Health and Social Welfare

General Access to Healthcare

All legal residents of France are covered by public health insurance (*Assurance maladie*), a branch of the social security system. Workers and their families are affiliated with public health insurance funds determined by their social and/or professional category, while the neediest members of society are covered under Law 1999-641¹⁵ on Universal Health Insurance. The universal health coverage provides basic coverage to all those residing lawfully in France, irrespective of their employment situation or insurance contribution record. It also provides free supplementary coverage to people whose income is less than €7,178.79 (about US\$9,900) per year per person.¹⁶ The benefits of the public health insurance include the full range of health services.

Children under sixteen, under seventeen if they are looking for work and registered at the

¹² Decree 83-724, July 27, 1983, J.O., Aug. 6, 1983, at 2567.

¹³ Decree 98-815, Sept. 11, 1998, J.O., Sept. 13, 1998, at 13997.

¹⁴ Law 2007-1161, Aug. 1, 2007, J.O., Aug 2, 2007, at 12988.

¹⁵ Law 99-641, July 27, 1999, J.O., July 28, 1999, at 11229.

¹⁶ CODE DE LA SECURITE SOCIALE, art. D.861-1 (Dalloz, 2007) (The Dalloz Codes are an unofficial source of law but are widely used by attorneys and judges).

National Employment Agency, under eighteen if in an apprenticeship, and under twenty if they are students or are disabled, are covered by their parents' health insurance.¹⁷

Health and Social Protection of Pregnant Women

The Public Health Code guarantees the health and social protection of pregnant women. Prenatal and post natal examinations are mandatory.¹⁸ There is a widespread network of thousands of health-care facilities, called *Centres de Protection Maternelle et Infantile*, to ensure that every mother and child receives basic preventive care. Each pregnant woman receives a booklet (*carnet de grossesse*) where every visit and all test results are recorded.¹⁹ Some of the family allowances are tied to the attendance at the mandatory pre- and post-natal visits. The maternity insurance, a branch of the public health insurance, covers the cost of the mandatory natal visits, of the delivery, of all prescribed medicines and tests, and of home care, if the condition of the woman requires it.²⁰

Pregnant women are entitled to maternity leave as follows: six weeks before and ten weeks after birth for the two first children; eight weeks before and eighteen weeks after birth for the third child; thirty-four weeks (twelve before birth) for twins; and forty-six weeks (twenty-four before birth) for triplets or more. Their right to return to the same position is guaranteed. To offset the loss of salary during their maternity leave, pregnant women receive benefits paid via maternity insurance known as *indemnités journalières de repos* (per diem rest allowances).²¹ The payments often are supplemented by a complementary sum payable by the employer, as per a collective bargaining agreement. Women who breastfeed their children are entitled to take one hour every day (two thirty-minute breaks) at work. Employers who employ more than one hundred women must have at their disposal a breastfeeding bedroom.²²

Preventive Health Services for Children

Children under the age of six are evaluated by team of pediatricians, nurses, psychologists, and social workers in the *Centres de Protection Maternelle et Infantile*.²³ A decree provides for a number of mandatory medical visits: nine during the first year, one of them to take place within eight days of birth, one during the ninth or tenth month, three between the thirteenth month and the twenty-fifth month, and finally two for each of the next four years.²⁴ When parents fail to bring their children in for regular checkups, social workers are dispatched to the family home. After the age of six, children's health is monitored by school health services. Mandatory physical and psychological checkups take place when the children are ages six, nine, twelve, and fifteen.²⁵ In addition to monitoring children's health, schools also have the responsibility to educate children on health issues including, for example, nutrition, sexual education, and addictions (drugs, alcohol, & tobacco).²⁶

¹⁷ *Id.*, art. L.313-3.

¹⁸ CODE DE LA SANTE PUBLIQUE, art. L.2122-1 (Daloz, 2007).

¹⁹ *Id.*, art. L.2122-2.

²⁰ CODE DE LA SECURITE SOCIALE, art.L.331-2.

²¹ *Id.*, arts. L.331-3 to L.331-8.

²² CODE DU TRAVAIL, arts. R.224-1& R.224-4 to R., 224-23 (Daloz, 2007).

²³ CODE DE LA SANTE PUBLIQUE, arts. L.2111-1 & subsequent.

²⁴ GUY RAYMOND, DROIT DE L'ENFANCE ET DE L'ADOLESCENCE 255 (Litec, 2006).

²⁵ CODE DE L'EDUCATION, art. L-541-1, LEGIFRANCE, <http://www.legifrance.gouv.fr/> (Les Codes) (last visited Aug. 13, 2007).

²⁶ *Id.*, arts. L312-16, L312-17.

Consent to Medical Treatment

The Public Health Code provides that minors, where they are of sufficient maturity, must be informed of their medical treatment and participate in the decision-making process.²⁷ The consent of the parents or legal guardian is also necessary.²⁸ When a minor refuses a medical treatment that would save his life, however, the juvenile justice judge may enter an order to force him to undergo the treatment.²⁹

Minors have access to contraceptives without the consent of their parents.³⁰ Family planning centers are authorized to deliver to minors anonymously and at no cost certain medicines or contraceptives.³¹ A minor may request an abortion without parental consent. In such a case, she must be accompanied by an adult of her choice.³²

Family Benefits

The Social Security Code provides that “every French citizen or foreign national residing in France, having one or several dependent children residing in France, will receive for these children family benefits.”³³ These benefits are supplementary income designed to offset some of the costs of bringing up children. There is no condition of employment. Benefits are paid for dependent child until the age of sixteen, when the period of compulsory schooling ends. They are extended until the age of twenty for children who do not work or whose income does not exceed fifty-five percent of the statutory minimum wage. They include:³⁴

- A family allowance due with the second child and varying in amount depending on the number of children;
- A supplementary family allowance payable to any family with at least three children, all aged three and above. It is subject to a means-test;
- An allowance for young children to assist the family before and upon the birth of a child;
- A back to school allowance to help low income families to meet part of the expenses incurred at the beginning of each school year;
- A single parent allowance to help parents with the sole responsibility for raising one or more children. Recipients must earn less than the official minimum family income; and
- A family support allowance granted to a parent or family with dependent orphan children or when one of the parents refuses to pay maintenance or alimony for that child.

²⁷ CODE DE LA SANTE PUBLIQUE, arts. L.111-2 & L.111-4.

²⁸ *Id.*, art. L.111-7.

²⁹ CODE CIVIL, art. 375 (Dalloz, 2007).

³⁰ CODE DE LA SANTE PUBLIQUE, art. L.5134-1.

³¹ *Id.* art. L.2311-4.

³² *Id.*, art. L. 2212-7.

³³ CODE DE LA SECURITE SOCIALE, art. L.512-1.

³⁴ *Id.* arts. R.521-1 to R-544-1.

When a child is being raised under harsh conditions or the amount of the allowances is not used for his welfare, a juvenile justice judge may order that these allowances be paid to an allowance guardian. This guardian will use the funds to improve the life conditions of the child.

Access to Social Assistance

France has a dual system of child welfare. Social welfare is the responsibility of the local authorities (social services, early childhood health services, and child protection services), while judicial juvenile protection is the responsibility of the central government. Social services provide material and psychological support to minors and families facing social problems that are likely to have an impact on family stability. These types of services usually require the family's approval with respect to the proposed measures concerning child protection. If the family means are insufficient, additional financial aid may be granted. In case of danger or if it is impossible to obtain the family's approval, the youth judicial protection service will intervene. A juvenile justice judge may order family counseling or placement. The danger to a child and the child's best interest are the two fundamental concepts which must guide social welfare workers and judges in choosing the best possible protection measures.³⁵

Infant and Child Mortality

According to the 2007 World Health Statistics published by the World Health Organization, the infant mortality rate (per 1000 live births) is four, the neonatal mortality rate is two, and the under five-year old mortality rate is five.³⁶

IV. Education

General Principles and Statistics

The Constitution proclaims that, "The nation guarantees equal access of children and adults to education, vocational training, and culture. The organization of a free and secular public education system at all levels is a duty of the state."³⁷ The Education Code further provides that "the right to education is guaranteed to every one to enable [pupils] to develop their personality, to rise above their level of initial education, to integrate into social and professional life, and to exercise their citizenship."³⁸ Public schooling is provided free through the age of eighteen, and education is compulsory for children between the ages of six and sixteen.³⁹

There were approximately twelve million students in primary and secondary public and private schools for 2005-2006, in a population of sixty million. One primary student out of seven and one secondary student out of five attended a private school. The majority of private schools are Catholic schools that have signed a contract with the state. This entitles them to receive public funding. In return, they must adhere to the public school curricula and are subject to state supervision. Two million, three hundred thousand students attended universities or other institutions of higher education. The national education budget was €66 billion (about US\$90.8 billion) or 23.31 percent of the overall national budget

³⁵ GUY RAYMOND, DROIT DE L'ENFANCE ET DE L'ADOLESCENCE 61- 67 (Litec, 2006).

³⁶ 2007 World Health Statistics Published, WORLD HEALTH ORGANIZATION, <http://www.who.int/research/en/> (last visited Aug. 13, 2007).

³⁷ 1958 Constitution, Preamble, LEGIFRANCE, <http://www.legifrance.gouv.fr/> (Constitution) (last visited Aug. 13, 2007).

³⁸ CODE DE L'ÉDUCATION, art. L.111-1, <http://www.legifrance.gouv.fr/> (Les Codes) (last visited Aug. 13, 2007).

³⁹ *Id.*, art. L.131-1.

and represented 3.91 percent of the GNP. The French government spends an average of €6,970 per student per year (about US\$9,600).⁴⁰

General organization

Pre-school

Although not compulsory, pre-school (*école maternelle*) for children under six is widely available, as the Education Code further provides that “any children over three must be able to attend the nearest pre-school to their domicile.”⁴¹ In addition, the option to attend is offered to children over two who are socially disadvantaged. Attendance is strongly encouraged. Pre-schools follow an established curriculum; psychomotor, developmental, academic, and social aims have been set forth nationwide. The children are generally divided into three sections: lower, middle, and upper, to take into account their different learning rates, degrees of maturity, and skills. Teachers are well-trained professionals, as highly paid and respected as teachers in the later grades. The percentage of children attending pre-school ranges from thirty-three percent for two-year olds to about one hundred percent for five-year olds.⁴²

Primary Education

Primary education lasts five years, from the age of six to eleven. It is divided into two cycles, a two-year basic cycle focusing on mathematics, reading, writing, and the introduction of foreign languages and a three year advanced cycle focusing on literature, history, geography, social sciences, sciences, and technology.⁴³

Secondary Education

Secondary education extends over seven years, divided into two cycles. The first cycle lasts four years, from age eleven to fifteen. It is offered in a *collège*. Children study the same core curriculum. A diploma is awarded upon the successful completion of a national examination at the end of the fourth year. The second cycle last three years, for children aged fifteen to eighteen.⁴⁴ It is offered in a *lycée*, which offers a wide variety of courses. There are two types of *lycées*, vocational ones and the general and technical education *lycées* that prepare students for the *baccalauréat* examination, which they usually take at eighteen. This exam opens access to higher education. Vocational *lycées* prepare for various types of vocational degrees or certificates or for a vocational *baccalauréat*.⁴⁵

Higher Education

Higher education is provided through universities or other prestigious establishments where admission is by competitive examination, entrance examination, or applications accompanied by

⁴⁰ Ministère de l'Éducation Nationale, *Les chiffres clés*, <http://www.education.gouv.fr/cid195/les-chiffres-cles.html> (last visited Aug. 13, 2007).

⁴¹ CODE DE L'ÉDUCATION, art. L. 113-1, <http://www.legifrance.gouv.fr/> (Les Codes) (last visited Aug. 13, 2007).

⁴² Ministère de l'Éducation Nationale, *L'école maternelle*, <http://www.education.gouv.fr/cid166/l-ecole-maternelle.html> (last visited Aug. 13, 2007).

⁴³ Ministère de l'Éducation Nationale, *L'école élémentaire*, <http://www.education.gouv.fr/cid213/l-ecole-elementaire.html> (last visited Aug. 13, 2007).

⁴⁴ Ministère de l'Éducation Nationale, *Le collège*, <http://www.education.gouv.fr/cid214/le-college.html> (last visited Aug. 13, 2007).

⁴⁵ Ministère de l'Éducation Nationale, *Le lycée*, <http://www.education.gouv.fr/cid215/le-lycee.html> (last visited Aug. 13, 2007).

interviews. All *baccalauréat* holders have the right to enter universities without any prior selection procedure. These universities offer an extremely wide range of studies.⁴⁶

Special Needs Education

Law 2005-102 of February 11, 2005, on Promoting Equal Rights and Opportunities, Participation, and Citizenship for Disabled Persons, proclaims the right to education of disabled children and the responsibility of the state to ensure them an uninterrupted education.⁴⁷ Children with special educational needs are educated in mainstream classes alongside with their peers wherever possible, to better prepare them to participate in society. They are schooled in special classes within mainstream schools or part-time or full-time in special schools when it is not possible to educate them in mainstream schools. Learning assistance at home may also be arranged.⁴⁸

V. Child Labor and Exploitation

Employment of children

With a few exceptions for those enrolled in certain apprenticeship programs, doing light work during school holidays from the age of fourteen within the limits set forth by the law or working in the entertainment industry, children under the age sixteen may not be employed.⁴⁹

It is expressly prohibited to employ minors under the age of eighteen in the preparation, handling, or sale of written material, posters, drawings, and other materials whose sale, supply, exhibit, display, or distribution are contrary to public morality and constitute a criminal offense.⁵⁰ Employing young people under the age of eighteen in certain dangerous jobs is also prohibited.⁵¹

As for the employment of children under school-leaving age in the entertainment industry, they may not be employed by fixed or itinerant entertainment companies or in radio or television unless they have received an authorization in advance from the competent administrative authority. Written authorization from the child's legal representative must be attached to the employer's application for authorization.⁵² Agencies wishing to employ child models must also apply in advance for an authorization from the competent administrative authority, unless the agency has been approved and granted a general license for hiring child models. A decree has set forth the conditions under which approval is granted and the maximum amount of time the child may work per day and per week.⁵³

As a general rule, minors under eighteen cannot work more than seven hours a day and thirty-five hours a week. In addition, those over the age of sixteen may not work between the hours of 10:00 pm and 6:00 am; minors under sixteen may not work between 8:00 pm and 6:00 am. Laws prohibiting child

⁴⁶ Ministère de l'Éducation Nationale, *L'enseignement supérieur*, <http://www.education.gouv.fr/cid26/l-enseignement-superieur.html> (last visited Aug. 13, 2007).

⁴⁷ Law 2005-102, Feb. 11, 2005, on Promoting Equal Rights and Opportunities, Participation and Citizenship for Disabled Persons, J. O., Feb. 12, 2005, at 2353.

⁴⁸ Ministère de l'Éducation Nationale, *La scolarisation des enfants handicapés*, <http://www.education.gouv.fr/cid207/la-scolarisation-des-eleves-handicapes.html> (last visited Aug. 13, 2007).

⁴⁹ CODE DU TRAVAIL, art. L. 211-1 (Dalloz, 2007).

⁵⁰ *Id.*, art. R.234-1.

⁵¹ *Id.*, arts. R.234-5 & subsequent.

⁵² *Id.*, art. L.211-6.

⁵³ *Id.*, arts. L 211-6, R. 211-6 & subsequent.

employment are strictly enforced through periodic checks by labor inspectors who have the authority to take employers to court for non-compliance with labor laws.⁵⁴

Children and the Armed forces

The minimum recruitment age is seventeen, or sixteen for entrants to military schools.⁵⁵ Personnel wishing to join the French Armed Forces must provide evidence of their age and written consent from their parents or guardians. Upon ratification of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, France made the following declaration:

France hereby declares that it recruits only volunteers aged at least 17 who have been informed of the rights and duties involved in military service and that the enlistment of recruits under the age of 18 is valid only with the consent of their legal representatives.

In addition, minors do not participate in military operations taking place abroad. The national service was suspended in 1997. If ever reinstated, minors would not be called, because the National Service Code provides that "French nationals, who are male, owe their national service between the ages of eighteen and fifty."⁵⁶

VI. Sale and Trafficking of Children

Sexual Exploitation and Abuse

Categories of Offenses

The Penal Code distinguishes several categories of sexual offenses according to their nature and their gravity. When committed on a minor, the law generally provides for stiffer penalties. They are as follows:

- Rape: The penalty is increased from fifteen years' imprisonment to twenty years in cases where the rape is committed on a minor under the age of fifteen; on a person who is particularly vulnerable due to age, sickness, infirmity, physical or mental deficiency, or pregnancy; or where it is committed by an ascendant relative or by any person having authority over the victim.⁵⁷
- Sexual assault: It consists of any sexual infringement committed with violence, constraint, threat, or surprise. The penalty is increased from five years' imprisonment and a €75,000 (about U.S. \$102,750) fine to seven years' imprisonment and a €100,000 (about U.S. \$137,000) fine when committed on a minor less than fifteen years of age or on a person who is particularly vulnerable due to age, sickness, infirmity, physical or mental deficiency, or pregnancy. It is further raised to ten years' imprisonment and a €150,000 fine when it results in an injury or is committed by an ascendant relative or by any person having authority over the victim.⁵⁸

⁵⁴ *Id.*, art. L.L.213-7.

⁵⁵ CODE DE LA DEFENSE, art. L 4132-1, LEGIFRANCE, <http://www.legifrance.gouv.fr/> (Les Codes) (last visited Aug. 13, 2007).

⁵⁶ NATIONAL SERVICE CODE, art. L. 3, <http://www.legifrance.gouv.fr/> (Les Codes) (last visited Aug. 13, 2007).

⁵⁷ CODE PENAL, art. 222-24, (Daloz, 2007).

⁵⁸ *Id.*, arts. 222-27, 222-29 & 222-30.

- Indecent assault: Performing without violence, constraint, threat, or surprise, a sexual assault on the person of a minor less than fifteen years old is punishable by five years' imprisonment and a fine of €75,000. This offense is punishable by ten years' imprisonment and a €150,000 fine when committed by an ascendant relative, by any person having authority over the victim, or when the minor has been put in contact with the perpetrators of the act by the use of a telecommunication network for the dissemination of messages intended for the general public. Indecent assault performed on a minor over fifteen years old is punishable by two years' imprisonment and a €300,000 fine when committed by an ascendant relative or by any person having authority over the victim.⁵⁹
- Corruption of a minor: Encouraging or attempting to encourage the corruption of a minor is punishable by five years of imprisonment and a €75,000 fine. These penalties are raised to seven years' imprisonment and a fine of €100,000 when the minor is less than fifteen years old; when the minor has been put in contact with the perpetrators of the act by the use of a telecommunication network for the dissemination of messages intended for the general public, or when the conduct occurs inside a scholastic or educational establishment or, at a time when students are entering or leaving, in the vicinity of such an establishment. The same penalties are applicable to the conduct of an adult who organizes meetings involving sexual exhibitions or relations in which a minor assists or participate.⁶⁰
- Sex tourism: A French national or a person habitually residing in France who while abroad commits one of the following offenses may be prosecuted in France: sexual assault, indecent assault, child pornography, corruption of a minor, or sex with a minor against remuneration. French law applies even if the offense committed is not punishable under the legislation of the country where the offense took place, and prosecution is not conditioned on a complaint from the victim, next of kin, or official report from the authorities of the country where the offense was committed. The offense need only be brought to the attention of the French judicial authorities. These provisions apply even though the defendant acquired French nationality subsequent to the conduct imputed to him or her.⁶¹

1998 Law Increasing Protection for Minors against Sexual Predators

Law 98-468 of June 17, 1998, reinforcing the prevention and punishment of sexual offenses and increasing protections for minors against sexual predators, establishes a social and judicial follow-up of sexual offenders and strengthens the rights of minor victims of sexual offenses.⁶²

The Law obliges a sexual convict to submit to surveillance and assistances measures and, in some cases, to mandatory medical treatment designed to prevent a relapse.⁶³ The trial court may impose some

⁵⁹ *Id.*, arts. 227-25, 227-26 & 222-27.

⁶⁰ *Id.*, art. 227-22.

⁶¹ *Id.*, arts. 222-22 & 227-27-1.

⁶² Law 98-468, June 17, 1998, J.O., June 18, 1998, at 9255.

⁶³ CODE PENAL, art. 131-36-1.

or all the measures listed in the Law for up to ten years when the offense is classified as a *délit* and twenty years when a *crime* was committed.⁶⁴ The follow-up period starts when the convict has served his sentence. Failure to carry out the obligations set by the court may result in an additional term of imprisonment, two years maximum in the case of a *délit* and five years in the case of a crime. The convict is informed of these consequences by the trial court at the time of his sentencing.⁶⁵

In addition, several provisions of the Law aim at improving the reparation of the moral and physical injuries suffered by minors who have been the victims of sexual predators. They include:

- The public prosecutor may request a medical-psychological evaluation in the early stage of the investigation to better appreciate the extent of the damage inflicted on the minor and to establish whether treatment is necessary.⁶⁶ The costs of treatment are fully covered by national health insurance;
- Hearings are videotaped in order to limit their number, since such hearings are very trying for the minor;⁶⁷
- The statute of limitations for civil actions resulting from torture, cruel acts, violence, or sexual violence was increased from ten years to twenty years;⁶⁸
- The statute of limitations for sexual offenses starts to run from the time the victim reaches the age of eighteen, as opposed to the time of the commission of the offenses;⁶⁹
- Hazing has become a criminal offense and is punishable by a six-month term of imprisonment and a €7,500 (about U.S. \$10,280) fine. These penalties may be doubled in cases where the victim was particularly vulnerable.⁷⁰

Sale, Trafficking, and Kidnapping of Children

The Penal Code contains provisions on trafficking of person,⁷¹ kidnapping,⁷² concealment and confinement of children,⁷³ and the substitution of one child for another.⁷⁴ Trafficking is defined as the recruitment, transport, accommodation, or reception of a person in exchange for remuneration or any other consideration, or for the promise of remuneration or other consideration, in order to place that

⁶⁴ There are three grades of criminal offenses under French law: *crimes*, *délits*, and *contraventions*. *Crimes* (the gravest offenses) include, for example murder, armed robbery, serious drug offenses, and rape. *Délits* are the largest group of offenses and include sexual violence, theft, fraud, and assaults among others. *Contraventions* are punishable only by a fine.

⁶⁵ CODE PENAL, art. 131-36-5

⁶⁶ CODE DE PROCEDURE PENALE, art. 706-48.

⁶⁷ *Id.*, art. 706-52.

⁶⁸ CODE CIVIL, art. 2270-1

⁶⁹ CODE DE PROCEDURE PENALE, arts. 7 & 8.

⁷⁰ CODE PENAL, arts 225-16-1 & 225-16-2.

⁷¹ *Id.*, art. 225-4-1.

⁷² *Id.*, arts. 224-1 to 224-5.

⁷³ *Id.*, arts. 227-5 to 227-11.

⁷⁴ *Id.*, art. 227-13.

person at the disposal of an identified or unidentified third party so as to allow the commission against that person of the offense of procuring, sexual assault, the exploitation of begging, or living or working conditions inconsistent with human dignity, or to compel that person to commit any such offense. Trafficking is punished by ten years' imprisonment and a €1,500,000 (about \$U.S. \$2,055,000) fine when committed against a minor.⁷⁵

The Code also punishes anyone who encourages parents to abandon their children or who serves as an intermediary in the placement or adoption of children. When this conduct is committed habitually or for profit, the penalties are doubled.⁷⁶

Procuring and Child Prostitution

Procuring is punished with ten years' imprisonment and a fine of €1,500,000 where it is committed with respect to a minor.⁷⁷ If the minor is under fifteen, the penalty is increased to fifteen years' imprisonment and a €3,000,000 (about U.S. \$4,110,000) fine.⁷⁸ The prostitution of minors is prohibited. Any minor who prostitutes him/herself is considered in danger and falls under the protection of the competent juvenile justice judge.

In addition, soliciting; accepting; or obtaining, in exchange for remuneration or a promise of a remuneration, relations of a sexual nature with a minor who engages in prostitution, even if not habitually, is punished by three years' imprisonment and a fine of €45,000 (about U.S. \$61,650).⁷⁹ The penalty is increased to five years' imprisonment and a €75,000 fine where the offense is committed habitually or against more than one person, the person was put in contact with the offender by the use of a public communications network, the offense was committed by a person abusing the authority conferred upon him by his position, or the offender involuntarily put the life of the person in danger or committed violence against this person.⁸⁰ The penalty is increased to seven years' imprisonment and a fine of €100,000 where the offense was committed against a minor under the age of fifteen.⁸¹

Child Pornography

Taking, recording, or transmitting a picture or representation of a minor with a view to circulating it, where that image or representation has a pornographic character, is punished with five years' imprisonment and a fine of €75,000. The same penalty applies to offering or distributing such a picture or representation by any means, and to importing or exporting it, or causing it to be imported or exported.⁸² The penalties are increased to seven years' imprisonment and a fine of €100,000 where use was made of a public communications network in order to circulate the image or representation of a

⁷⁵ *Id.*, art. 225-4-2.

⁷⁶ *Id.*, art. 227-12.

⁷⁷ *Id.*, art. 225-7.

⁷⁸ *Id.*, art. 225-7-1.

⁷⁹ *Id.*, art. 225-12-1.

⁸⁰ *Id.*, art. 225-12-2.

⁸¹ *Id.*

⁸² *Id.*, art. 227-23.

minor.⁸³ Possessing such an image or representation is punished by two years' imprisonment and a fine of €30,000 (about U.S. \$41,100).⁸⁴

The offenses described above are punished with ten years' imprisonment and a fine of €500,000 (about U.S. \$685,000) where they are committed by an organized gang. These provisions also apply to the pornographic images of a person whose physical appearance is that of a minor, unless it is proved that the person was over eighteen on the day his picture was taken or recorded.⁸⁵

VII. Juvenile Justice

Juvenile offenders are governed by an Ordinance of February 2, 1945, on Juvenile Offenders which has been amended several times. The Ordinance sets forth the principles applicable in this area, in particular, the priority of the educational approach over punishment and the necessity of special courts and procedures.⁸⁶

Criminal Responsibility

There is no specific legal age under which a juvenile cannot be prosecuted. The sole criterion is that of moral discernment, which may vary depending upon the maturity of the child and the nature of the offense committed. The Penal Code provides:⁸⁷

Minors capable of discernment are criminally responsible for the *crimes, délits* and *contraventions* of which they have been found guilty, and are subject to measures of protection, assistance, supervision and education according to the conditions laid down by specific legislation.

This legislation also determines the educational measures that may be imposed upon minors aged between ten and eighteen years of age, as well as the penalties which may be imposed upon minors aged between thirteen and eighteen years old, taking into account the attenuation in responsibility resulting from their age.

Penalties

Penalties, however, are adapted to the age of the child. The Penal Code distinguishes five categories:⁸⁸

- Children without discernment: there is no criminal liability. The juvenile justice judge may, however, consider that the child is in danger or that the conditions of his education are gravely compromised and order an educational or assistance measure;
- Children under ten with discernment: the child may be found criminally responsible before a juvenile justice court. He/she cannot receive either a criminal penalty or an educational sanction. Educational sanctions are a new tool introduced in 2002. They fall between educational measures

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*, art. 227-23.

⁸⁶ Ordinance, Feb. 2, 1945, on Juvenile Offenders, CODE PENAL, Appendice, at 1707.

⁸⁷ CODE PENAL, art. 122-8.

⁸⁸ GUY RAYMOND, DROIT DE L'ENFANCE ET DE L'ADOLESCENCE 381-385 (Litec, 2006).

and criminal sanctions. The judge may only order an educational, protection, or assistance measure.

- Children from ten to thirteen: the judge may order the following educational sanctions: confiscation of the object used in the commission of the offense, ban on associating with the victim or the accomplices, ban on going to the place where the offense took place, compensation of the victim, and mandatory civic education. In the event of non-compliance with these sanctions, the judge may order placement in an institution. The sanctions will appear on the child's criminal record.
- Children from thirteen to sixteen: the criminal penalties incurred are half the ones stipulated for adult offenders. The juvenile justice court may combine criminal penalties with educational measures.
- Children from sixteen to eighteen: they may benefit from the same penalty reduction than children from thirteen to sixteen receive, but in their case, this reduction is optional.

Prosecution

When an offense committed by a minor is brought to the attention of the public prosecutor, he/she may decide to instigate criminal proceedings or use alternative procedures, in particular where the offense has limited consequences for both the victim and the society. They include admonition with compensation of the victim, conditional closure of the case with the obligation to compensate the victim, or instruction to undergo treatment or punitive mediation.⁸⁹

Juvenile Justice Courts

The juvenile justice courts consist of the juvenile justice judge, the children's tribunal, and the *Cour d'assises des mineurs*. The juvenile justice judge deals with contraventions and *délits*. He may only order educational measures. The children's tribunal is comprised of one juvenile justice judge and two non-professional judges with an interest in the field of childhood. It has the same jurisdiction as the juvenile justice judge but, in addition, the tribunal deals with *crimes* perpetrated by minors under sixteen. It may decide to send the juvenile to a specialized institution or sentence him. The *Cour d'assises des mineurs* is comprised of three professional judges and nine jurors. It adjudicates the most serious offenses perpetrated by minors over sixteen.⁹⁰

Recent Legislation

The French Parliament recently adopted Law 2007-297 of March 5, 2007, on Prevention of Delinquency, that primarily targets young offenders. It emphasizes the role of local authorities, in particular mayors, in the fight against crime. Security and Crime Prevention Councils will be created in cities with more than 10,000 inhabitants; each will be presided over by the mayor or his designated representative. In addition, Councils for the Rights and Duties of Families, also chaired by the mayor, will be established to give official admonitions to minors for any disorderliness, or impose "parental

⁸⁹ *Id.*

⁹⁰ Ordinance, Feb. 2, 1945, on Juvenile Offenders, CODE PENAL, Appendice, at 1707.

supervision” on parents the Councils consider are “failing in their duties.” Mayors may notify the juvenile justice court of families and minors in difficult social and/or psychological situations.⁹¹

Finally, Parliament presently is debating a draft law on minor and adult repeat offenders. If passed, the law would set automatic minimum sentences for repeat offenders (minors and adults) higher than the minimum penalties already set forth for each offense. The courts, however, would still be able to sentence a repeat offender to a lesser sentence than the automatic minimum sentence where the circumstances of the offense, the personality of its author, or the rehabilitation guaranties justify it. Rehabilitation guarantees are guarantees that the offender gives to show that he will be able to be part of society again. The draft law also stipulates that minors sixteen and older would be treated as adults when repeating one of the gravest offenses listed in the law.⁹²

VIII. Concluding Remarks

As a general rule, children in France enjoy all the rights and liberties enshrined in the 1989 UN Convention on the Rights of the Child. The state plays an important role in the social welfare and protection of children, along with local authorities. The ombudsman for children and several governmental and non-governmental organizations and associations closely monitor the children's welfare. They regularly identify problem areas and make recommendations to the President of the Republic or to the government for improving the legislation in force.

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⁹¹ Law 2007-297, Mar. 5, 2007, on Prevention of Delinquency, J.O., Mar. 7, 2007, at 4297.

⁹² Projet de loi renforçant la lutte contre la récidive des majeurs et des mineurs, LEGIFRANCE, http://www.legifrance.gouv.fr/html/actualite/actualite_legislative/exp_lutte_recidive_majeurs_mineurs.htm (last visited Aug. 13, 2007).