

# **Juvenile Criminal Law and Restorative Justice: Highly Damaging Interpretations and Confusion**

Robert Cario

*Emeritus Professor of Criminology*

*University of Pau and Pays de l'Adour*

*Founding President of the French Institute for Restorative Justice (IFJR)*

*CNAM, PS DR3C/ES DR3C*

## **ABSTRACT**

Restorative justice in France has become increasingly popular over the last 25 years. Nevertheless, there has been much confusion and rather damaging interpretations of what it is and how it should be implemented in juvenile criminal law. Measures that are not in fact restorative justice measures are being implemented, causing problems for its transformational potential. Confusion and disagreement surrounding the difference between penal and restorative mediation, the nature of control exercised by judicial authority, the role of lawyers in restorative justice, and the lack of a clear budget makes it harder for restorative justice to be truly effective. This is the case not only within the confines of the law, but also going beyond the law, looking at the long-term consequences of crime.

**Keywords:** Restorative justice, Criminal justice system, French national law, Juvenile justice, confusion and consequences

# **Derecho Penal Juvenil y Justicia Restaurativa: Interpretaciones y confusiones muy dañinas**

## **RESUMEN**

La justicia restaurativa en Francia se ha vuelto cada vez más popular en los últimos 25 años. Sin embargo, ha habido mucha confusión e interpretaciones bastante perjudiciales sobre qué es y cómo debería implementarse en el derecho penal juvenil. Se están implementando medidas que en realidad no son medidas de justicia restaurativa, lo que genera problemas por su potencial transformador. La confusión y el desacuerdo en torno a la diferencia entre mediación penal y restaurativa, la naturaleza del control ejercido por la autoridad judicial, el papel de los abogados en la justicia restaurativa y la falta de un presupuesto claro hacen que sea más difícil que

la justicia restaurativa sea verdaderamente efectiva. Este es el caso no sólo dentro de los límites del derecho, sino también más allá de la ley, analizando las consecuencias a largo plazo del delito.

**Palabras clave:** Justicia restaurativa, Sistema de justicia penal, Derecho nacional francés, Justicia juvenil, confusión y consecuencias

## 青少年刑法与恢复性司法： 极具破坏性的解释和混淆

### 摘要

过去25年，恢复性司法在法国越来越受欢迎。然而，对于恢复性司法是什么以及应如何在青少年刑法中实施恢复性司法，存在许多混乱和相当有害的解释。正在实施的措施实际上不是恢复性司法措施，这为其转型潜力带来了问题。围绕“刑事调解和恢复性调解之间的区别”的混淆和分析、司法当局行使的控制性质、律师在恢复性司法中的作用、以及缺乏明确的预算，使得恢复性司法难以真正发挥作用。这不仅在法律范围内如此，而且在法律之外也如此，着眼于犯罪的长期后果。

关键词：恢复性司法，刑事司法制度，法国国家法律，青少年司法，混淆与后果

---

**A**fter decades of denial and acerbic criticism, restorative justice has become so popular that its philosophy and sole objective have sometimes been distorted—dialogue between those who have committed a crime and those who have suffered from it. Reappearing in the mid-70s in Anglo-Saxon countries, the measures it promotes have surreptitiously taken root on the Old Continent, mainly around mediation between people linked by the same offence. The very first international symposium on restorative justice, held in 2002 at the National School of Judiciary (ENM, Ecole Nationale de la Magistrature), was instrumental in introducing restorative justice to France.<sup>1</sup> It should also be remembered that the first “experiment” in France involving encounters between prisoners and victims took place in 2010, at the Maison Centrale de Poissy. By the end of 2023, more than 300 restorative programs had been completed since its creation in 2013. These were integrated training programs in restorative justice that were a part of a

<sup>1</sup> On the history of the introduction of Restorative Justice, V. R. Cario, *La justice restaurative en France. Une utopie créatrice et rationnelle*, Ed. L'Harmattan, 2020, pp. 51 et seq.

tripartite agreement between the French Institute for Restorative Justice (Ifjr), the National School of Prison Administration (Enap) and the National Institute for Victim Support and Mediation (now France-victimes).<sup>2</sup>

Yet the Law of August 15, 2014 clearly laid down the conditions by which dialogue between the protagonists, their loved ones and their communities of belonging can be established, with the hope of a path, always differential, towards a horizon of appeasement.<sup>3</sup> The decision to enshrine restorative justice in Law has led some to fear it could be used as an instrument of criminal law, in particular. However, the operation of the criminal justice system in France, which is often suspicious of measures that can be put in place without the magistrates taking the initiative, made this necessary—all the more so as prevailing populism is irradiating the socio-criminal response by encouraging ever more repression. To get out of these sterile debates, the maximalist approach is preferred to the minimalist approach, which is likely to better contain the many detractors, on the one hand, and maintain control by the judicial authority for the most serious offences, on the other, without prejudging developments outside criminal justice, particularly in the field of prevention. Fortunately, the provisions of the Directive of 15 October 2012 (currently being revised) must be transposed in national French law.

It is worth recalling them again and again, in light of the provisions of Article 10-1 of the Code of Criminal Procedure (C.pr.pén., Code de procédure pénale): full information on the progress of the restorative process; acknowledgement (even partial or in the absence of denial) of the facts by the parties concerned; voluntary and constant participation by the parties concerned in the process, and in the process itself; the voluntary and constant participation of each person (with the possibility of withdrawing from the restorative process at any time); the confidentiality of discussions; the facilitation of measures by people (professionals from the criminal justice system, volunteers) specially trained in a specific methodology, based on the essential preparation of potential participants. To date, the tools of the relational approach<sup>4</sup> consolidate such preparation, namely: attentive (not active) listening, exploration of each person's expectations (through open, not closed, questions), scripting of the eventual restorative encounter (in the broadest sense). To be of general application from its date of entry into force (October 1, 2014), concerning both adults and minors at the time of the events, it would take seven years for restorative justice to be integrated into juvenile criminal law, by Article L13-4 of the Code of Juvenile Criminal Justice (CJPM, Code de la justice pénale des mineurs)—which explicitly refers to Article 10-1 of the Code of Criminal Procedure.

2 V. [www.justicerestaurative.org](http://www.justicerestaurative.org)

3 V. P. Mbanzoulou, Les rencontres détenus-victimes : une expérience française, *In Cahiers de la sécurité*, 2013–23, pp. 83-90.

4 V. not. S. Charbonneau, C. Rossi, La médiation relationnelle. Rencontres de dialogue et justice réparatrice, Ed. L'Harmattan, 2020, pp. 77 et seq.

### ***Pseudo-objectives***

If creativity is to serve restorative justice, it must not, under any circumstances, distort its substance or form. Yet this is exactly what is happening, given the way the law is being interpreted and the many erroneous practices at work in juvenile criminal law. Of course, the same is sometimes true of adult criminal law.<sup>5</sup> In this sense, restorative measures are in no way aimed at forgiveness, nor are they part of any religious proselytizing whatsoever. In the same way, these measures have no direct therapeutic ambition, but they do produce certain therapeutic effects, a more general sense of well-being. Consequently, we cannot apply programs to participants that are likely to “transform” them or lead them to view their expectations through virtual tools. All the more so as most of them are undoubtedly relevant, but for the sole benefit of offenders in the context of their prison treatment. The desire to introduce restorative justice measures that are not restorative justice measures has led to the emergence of some curious associations. Some refer to the triptych of “restorative” justice: assistance and reparation, penal mediation, restorative justice. The term “justice réparatrice” used in Quebec, like “justice restauratrice” in Belgium, relates in every respect to the French expression adopted by the 2014 Law of “restorative justice”: extrajudicial act, same protocols, same measures, same methods. Even more regrettably, the Circular Budget of May 15, 2023, refers to the “restorative justice duo”: penal reparation and mediation (Art. L112-8 Cjpm). Why create a special text on restorative mediation to distinguish it from penal mediation, when Article L13-4 of the Cjpm refers very explicitly to Article 10-1 of the Cpr.pén.<sup>6</sup> How can specialists in juvenile justice continue to cause such confusion? Because restorative justice measures do not count as legal costs? Out of a desire to focus solely on criminal justice responses? Is it pure ideology? Out of ignorance of the protocol and procedures of a restorative measure? Fear of being deprived of some of the tasks assigned to players in the criminal justice system?

### ***Consequences vs. repercussions***

Words are very important in restorative justice. We need to distinguish between the consequences of a crime and its repercussions. Consequences concern the past of the offence committed. It’s up to the criminal judge to deal with them: punishment for one, compensation for the other. As for repercussions, most of them are not directly and immediately linked to the crime. They focus on the future of the perpetrators and victims, their families and members of their respective communities. More or less profound and long-lasting, repercussions often concern aspects of the daily lives of the people concerned. They may be personal (tendency

---

5 R. Cario, *Grandeurs et vicissitudes de la justice restaurative en France*, Ed. L’Harmattan, 2021, pp. 67 et seq.

6 V. J. Filippi, *Droit pénal des mineurs et justice restaurative*, Ed. du Septentrion, 2021, p. 295 et seq.

to isolate, loss of self-esteem), family (difficult communication with family members when they do not consider the facts established), school (children exposed to domestic violence dropping out of school), professional (avoidance of public transport, reduced efficiency at work, even loss of job), social (risky behavior), cultural (pronounced loss of interest in the media in general, frequentation of places where works of various kinds are broadcast), and more generally societal, as crime insidiously calls into question the beliefs that animate all human beings: the surrounding world is benevolent, it makes sense because it is well-ordered, everyone is part of it and contributes to it harmoniously. The repercussions of crime, however, profoundly and sometimes permanently disrupt these beliefs: the world becomes hostile, generating chaos and injustice, and “I was unable to prevent this from happening.”

### ***The right to information and guidance***

Today, those subject to the law have a genuine right to information (10-2, D1-1-1 C.pr.pén.), to which is added, consecutively, a right to referral (without filter on the part of the person providing the information) to specially trained facilitators (not in charge of monitoring the minor(s) concerned), provided that the conditions of Article 10-1 (Art. L 13-4 of the Cjpm automatically refers to it for minor offenders) are met. In the light of the expectations expressed by the participants, they will decide together whether the restorative measure should be completed. This applies to all stages of the proceedings, including the execution of sentences. As participation in a restorative measure is free, the risk of participants being revictimised remains exceptional, and is all the more limited as the facilitators take great care to ensure that this does not happen. In this sense, the fact that participation is free can be seen in a number of ways: there is no reduction in the penalty, no specific sentence adjustment, and no additional compensation. Potential participants and those involved in a restorative encounter can leave the process at any time, without any consequences for their criminal or civil situation. All offenses are eligible, as the law does not distinguish between crimes, serious offenses and serious misdemeanors. Of course, the objective seriousness of the offences committed is important, but it is also relevant to take into account the subjectivity of feelings and repercussions in the case of less serious offences. Only the circulars (March 15, 2017; June 25, 2021, which only have interpretative value) and a few documents from the National Directorates introduce regrettable confusion. On a more positive note, it is now possible to activate a restorative measure in cases of dismissal, acquittal, or discharge and, above all, when the facts constituting the offence are time-barred.

### ***Judicial control***

Another surprising confusion concerns the nature of the control to be exercised by the judicial authority or, at its request, the prison administration. Is it a control of

legality, opportunity or conformity? The first has no *raison d'être* in restorative justice.<sup>7</sup> The second is contrary to the very spirit of Articles 10-1 C.pr.pén. and L13-4 Cjpm. The subjectivity of such a control, *contra legem*, of the Authority which avails itself of it, clashes with the objectivity of the legislative text. Logically, therefore, it can only be a conformity check. It is only when the five conditions set out in Article 10-1 C.pr.pén. are not met that a refusal to participate or to implement the planned measure can be issued by the competent authority. Failure to comply with this simple but essential compliance check, which is flouted by incomprehensible objections from the judiciary (in the broadest sense), even going so far as to impose a “veto” in the case of minors who have been the victims of assault (particularly sexual assault), diverts the application of the law and consequently hinders the right of those subject to trial to benefit from a restorative justice measure under the conditions set out in article 10-1 of the Criminal Code.<sup>8</sup> On November 23, 2023, the “Independent commission on incest and child sexual abuse” (CIIVISE, Commission indépendante sur l'inceste et les violences sexuelles faites aux enfants) submitted its report on the activities carried out during its three-year mandate. Among some excellent proposals, one of them leads to the exclusion of restorative “injustice” when considering victims who are minors (defined, under international conventions, as minors under 18), even though criminal convictions are exceptional, unlike the majority of cases that are closed, or time barred. Such a position is a sign of real bad faith, given the Commission's failure to hear from specially trained practitioners in the field who have been implementing a wide range of restorative measures since 2010, and the fact that the bibliography does not refer to any of the major references available in France.

Another difficulty is likely to arise in two situations that professionals in the field frequently encounter. Firstly, there is a high turnover of prosecutors specializing in cases involving juvenile delinquents. Many of them refuse to validate the partnership agreement signed by their predecessor. This is imperative for the continuity of the public justice service. On the other hand, the new magistrate will, if he or she so wishes, join the current steering committee.

Secondly, where several magistrates are involved, the disagreement of one or more of them should not prevent the implementation of the planned restorative encounter, in the best interests of the minor concerned, whenever the conditions of Article L 13-4 of the CJPM (referring to article 10-1 C.pr.pénale) are met.

Similarly, as restorative justice measures are not procedural acts, no author-

---

7 See *contra* S. Jacquot, Justice réparatrice, In E. Dieu, S. Jacquot, Justice restaurative, Bilan et Perspectives, 2021, Pub. Fondation Jean Jaurès, 2021, which considers, p. 10, that “[...] no restorative justice measure can be implemented without the approval of the judicial authorities [...]”

8 *Comp.* E. Durand, Suffit-il de quelques échanges pour restaurer l'humanité commune? In LeMonde.fr, Tribune du 15 avril 2023; La justice restaurative pour les mineurs, pub. Min. Justice, 2021, p. 12; *V contra*, Jeanne Herry's magnificent and authentic film *Je verrai toujours vos visages (I'll Always See Your Faces)*.

ity can oppose their implementation. The same applies to the nature of the offence. Article 10-1 uses the generic term “offence,” leaving no opportunity for those involved in the criminal justice system to exclude certain offences, such as domestic violence, sexual violence or acts of terrorism.

### ***Role of lawyers***

There is a real divergence among commentators as to the role they can play in the implementation of a restorative process. For some, their presence is required at all times, from the moment they are approached by a client until the end of the potential encounter, with reference to Article L12-4 of the Cjpm, which makes it compulsory for a minor, whether prosecuted or convicted, to be assisted by a lawyer. For others, the presence of a lawyer during meetings between participants is not at all desirable, as it is not expressly provided for in the texts relating to restorative justice. This is the only logical interpretation, since restorative justice measures, as already emphasized, are extra-judicial acts, not procedural acts. An exception could be made in the case of restorative conferences, at which lawyers attend as mere participants, chosen by those directly affected by the crime (in the broadest sense) as persons worthy of trust. Nevertheless, lawyers can be very useful in advising their clients on their right to benefit from a restorative measure and, if the latter so wish, direct them to the program’s facilitators. There is also nothing to prevent them from becoming restorative justice facilitators, provided they are specially trained. This raises the question of remuneration, for which there is currently no budget. The same applies to professionals from justice-approved services, as well as trained volunteers who are not part of the criminal justice system. In the case of Penitentiary probation service (SPIP, Service pénitentiaire d’insertion et de probation) or Judicial protection of youth (PJJ, Protection judiciaire de la jeunesse) staff, there is an urgent need to set aside dedicated working time for them when they take part in a restorative measure as trained facilitators.

### ***Restorative measures vs. judicial educational measures (MEJ/P, Mesures éducatives judiciaires et Mesures éducatives judiciaires probatoires)***

An even more serious confusion stems from the lack of distinction between the provisions of Article L13-4 Cjpm and those of article L118-2 of the same code. Since the publication of the Law of August 15, 2014, a lively, sterile debate has been underway between some of the doctrine and the Protection judiciaire de la jeunesse (PJJ) (both at the level of its Management and its field actors). After 39 reforms to the fine ordinance of February 2, 1945, everything seemed to be back in order with the adoption of the Code of Criminal Justice for Minors, whose entry into force date has been postponed, on several occasions, to September 30, 2021. Article L13-4 (also introduced into the general provisions of the Cjpm) stipulates that “*the victim and the perpetrator of the offence may be offered restorative justice in accordance with article 10-1 of the Code of Criminal Proce-*

*dure, during any proceedings concerning a minor and at all stages thereof, including during the enforcement of sentences, provided that the facts have been acknowledged.”* This right to restorative justice can only be implemented “*if the minor’s degree of maturity and capacity for discernment allow it, and after obtaining the consent of the legal representatives*” (para. 2). However, Article L112-8 maintains, within a “Reparation Module,” not only the traditional activity of penal assistance or reparation but adds penal mediation between the minor and the victim, the former with the agreement of the victim concerned, the latter at the request or with the agreement of the latter.

Several remarks are necessary. Firstly, it should be remembered that judicial educational measures are pronounced by the competent authority as a sanction (Art. 111-1 Cjpm). What’s more, a report on their implementation is regularly sent to the “Juge des Enfants.” What about confidentiality? Restorative justice measures are in no way judicial educational measures. Nor are they an alternative to prosecution or a complement to another measure ordered by the competent magistrate. They are an extrajudicial, autonomous act, having nothing to do with criminal procedure, in particular with the Preliminary Article. They cannot be pronounced by a magistrate, as restorative measures do not constitute a decision relating to public action. Nevertheless, there is a real risk of confusion in their respective applications. The potential drift towards the pure and simple assimilation of measures under Art. L13-4 by Art. L112-8 would be truly counter-productive.<sup>9</sup> The reference to Articles D112-28 (assistance or reparation activities) and D112-29 (penal mediation) is inoperative. The fact that the terms used to define these two judicial educational measures are surprisingly close to those that have long characterized restorative measures in no way detracts from their punitive nature. Indeed, the restorative emblem seems likely to lead field workers—out of sheer opportunism based on their reluctance to move towards a posture of specially-trained facilitator, or even out of fear of being deprived of monitoring “their” minor, or of being “judged” by the latter with regard to the relational methodology implemented in restorative workshops (mainly through the strategy of attentive listening specific to restorative workshops)—to reject any restorative program.

Secondly, assessing the concepts of maturity and discernment, as set out in Article L13-4 Cjpm, has always been delicate. Maturity is a state of the person, evaluated according to age. It is considered to be acquired at adulthood, according to the most widely accepted definitions. Maturity implies a high degree of reliability in judgment and reflection. Immaturity, on the other hand, attests to great weakness in the face of all the temptations presented to a person. The notion of discernment, essential in juvenile criminal law, corresponds more clearly to an ability to judge right and wrong, to act with intelligence and willpower. More

---

9 V. *Contra* J. Filippi, La justice restaurative des mineurs en France : entre tendance maximaliste et minimaliste, In Cahiers de la sécurité et de la justice, Hors série “Cahier de la recherche,” 2021, pp. 37-47, spe p. 45.

generally, discernment leads to an understanding that the planned act constitutes an offence, and to a willingness to commit it nonetheless. It also implies that the minor perceives all the consequences from a processual point of view. These notions of maturity and discernment go beyond the simple acknowledgement of the facts, an indispensable condition for the implementation of restorative workshops, whatever the measures adopted. Once again, it is important to emphasize that restorative measures are not procedural acts and are subject to their own specific conditions. In these senses, the Circular of March 15, 2017, clearly affirms that participation in a restorative measure has no bearing on the determination of the perpetrator's guilt, proof of which must be provided by the Public Prosecutor's Office. Moreover, guilt (the condition for attributing an act to a person) must be distinguished from discernment, which makes it possible to attribute the act to the offender in order to establish his or her criminal responsibility, essential for the pronouncement of a judicial educational measure or sentence.

Thirdly, when minors of at least 13 years of age admit to the acts of which they are accused, should the agreement of their legal representatives be required? Insofar as Article L13-4 Cjpm explicitly refers to Article 10-1 C.pr.pén., it is up to trained, impartial organizers to ensure that its conditions are met, in particular the recognition, even partial, of the facts by the minor concerned. The formal agreement of the legal representatives is therefore not necessary, as the restorative measure is not a procedural act. This is all the more true when the request for a restorative measure is made on the minor's own initiative, or when the proposed measure is in the minor's best interests. On the other hand, if the minors concerned so wish, or if their legal representatives so desire, the latter can take part in the proposed restorative measure, after preparation by the facilitator(s) in charge of the restorative measure. The Ministry of Justice's Methodological Guide follows the same line of thinking, reminding us that, insofar as the participants' consent must be obtained, in accordance with the provisions of Article 10-1 C.pr.pén., it is necessary to involve the holders of parental authority and inform them, well in advance of the potential implementation of a restorative workshop, of its characteristics. If the legal guardians agree, and the minor and his or her guardians so wish, the facilitators should meet with them to clarify their role in the restorative process: as listeners but not participants. The agreement of the other protagonist is necessary, under the same conditions of participation of his/her legal representatives. In the event of refusal on their part, an interview with them should also be envisaged, to find out why. Without specifying the details, the legislator has added to the presumption of discernment for minors of at least 13 years of age, that of minors under 13 years of age in Art. L11-1, paragraph 2. Simple presumptions can be overturned, after expert appraisals, at the sovereign discretion of the magistrate concerned. Nevertheless, in the case of minors under the age of 13, it is the educator in charge of the minor's follow-up who implements the restorative measure, in contradiction with the imperative need, reiterated in all official documents, to

prohibit the professional in charge of the minor's follow-up from precisely leading the restorative encounter in which he or she intends to participate.

Lastly—and most importantly—it seems highly appropriate to emphasize that support for restorative measures “may continue beyond the timeframe set by the judicial measure [...]” to enable “[...] those involved to finalize their approach.” But why attach the restorative measure to a judicial educational measure, given the autonomy of the former? This possibility of extending the restorative measure (as defined in Article L13-4 of the Cjpm) beyond judicial follow-up should now apply to adults taken into account by the Probation services (Spip).

It is also important not to confuse “discussion groups” with “restorative measures,” as suggested in Snepap's “Document de fond.” In this sense, the “Parrainages de désistance” (reserved for offenders only) or the “Parrainages de résilience” (reserved for victims only) are simply discussion groups. Nor can an annual meeting of these two discussion groups be considered a restorative measure. Indeed, the fundamental principles of restorative justice—based on a rigorous methodology and protocol, thorough preparation of potential participants by specially trained facilitators, and the participation of volunteer community members where appropriate—do not seem to be respected, particularly in view of the available documentation.

### ***Funding for restorative measure***

To date, no specific budget has been earmarked. Although the benefits of restorative measures are universally desired, their funding is drowned in more general budgets, at the discretion of the authorizing officers. As a result, all departments of the Ministry of Justice (“Protection judiciaire de la jeunesse,” “Administration pénitentiaire,” “Aide aux victimes”) must make significant contributions. Insofar as prevention and the judicial handling of criminal cases concern each of us citizens, specific subsidies must be granted to the national organizations that implement them throughout France (metropolitan and overseas). Other ministries should be called upon to finance restorative justice (mainly Health, Solidarity, Interior, Education, Youth and Culture), given the profound and varied repercussions of crime, and the scientifically proven benefits of restorative justice.<sup>10</sup> How else can we interpret the provisions of the Penitentiary Code, which came into force on May 1, 2022, clearly and very appropriately enshrining restorative justice in its preliminary title: “[...] The public prison service [...] contributes to the implementation of restorative justice measures [...]” (Art. L1, para. 3). In the same spirit, the circular of March 15, 2023, states that “effective consideration of the victim is the fourth objective of the reform of juvenile criminal justice.” Of course, the “Guide méthodologique. Justice restaurative” (Restorative Justice Methodology Guide)

---

<sup>10</sup> C. Rossi, R. Cario, Les bienfaits, [www.thyma.fr](http://www.thyma.fr); See also the national surveys carried out by the IFJR ([www.justiceres restaurative.org](http://www.justiceres restaurative.org)).

offers financing options, but the promoters of restorative programs suffer in the field from the hazards of obtaining concrete funding. The example of the budgetary circular of May 15, 2023, is particularly enlightening. While inviting the Protection judiciaire de la jeunesse, which has an additional budget of €24.7 million at its disposal, to encourage, in particular, the development of restorative justice services, it indicates in the dedicated credits available only reparation and mediation measures (MEJ). Yet the implementation of restorative measures requires considerable human and financial resources. The confusion referred to above will make arbitration tricky, to the detriment, no doubt, of restorative justice.

Is it coherent to leave each Service free to allocate funds to the measures they intend to develop? Is it normal, for example, for the IFJR to be reduced to appealing to the generosity of our fellow citizens through a participatory donation campaign to open a branch in the North-West, where there is none? It's incomprehensible that there should be such an inequality between France's major regions.

In conclusion, it should be pointed out that the above observations in no way overshadow the richness of the general provisions of the Code of Juvenile Criminal Justice, most of which are in line with the fundamental principles derived from the spirit of the fine Ordinance of 1945. Nor do the remarkable missions carried out by the actors of the Protection judiciaire de la jeunesse (Youth Judicial Protection). In this article, we have highlighted the highly damaging interpretations and confusions that have arisen in the implementation of restorative justice in juvenile criminal law. This essential innovation, contained in Article L13-4 of the Cjpm and logically in line with Article 10-1 of the Cpp, nonetheless calls for a number of remarks designed to support the development of restorative justice measures, while respecting its philosophy and the measures it promotes.

From an institutional point of view, the creation of an independent National structure is inevitable, along the lines of the "Fédérations socio-judiciaires" (Citoyens et justice) or "Aide aux victimes" (France-victimes), with equivalent funding. The "Comité national de justice restaurative" (National Committee of Restorative Justice) can in no way ensure this mission of consultation and harmonization of programs with the "restorative justice referents" of the courts dedicated to juveniles in delinquency situations and the Restorative Justice Services, which remain wishful thinking to date. Made up of representatives of the Ministry of Justice, it does not offer the necessary guarantees of independence, or even competence in this particular field. The French Institute for Restorative Justice (IFJR) is in a position to promote it. A pioneer in the rational introduction of restorative justice throughout France for many years, it has also produced a large number of documents on information and public awareness, as well as on the operationalization of restorative measures: a model partnership agreement, training for facilitators, a repository of practices, an implementation protocol, specifications for each measure, a specific methodology, support and supervision of programs, national

surveys, etc., most of which have been included in recent official documents. The creation of a national structure of this kind will undoubtedly prevent most of the abuses previously observed.

Enshrined in the law and definitively applicable, restorative justice must be specially financed to meet the expectations of those for whom the penal response is deemed insufficient, in view of the repercussions of the crime, which persist and seriously affect the protagonists of the crime and/or their loved ones. This is all the more true given the exponential growth in requests to participate in restorative justice measures, spurred on by the media.

From this same institutional point of view, the proposal to benefit from this right of access to restorative justice should be systematized prior to any prosecution. Following the example of many foreign legislations, such a practice would, once the legal conditions have been met, eliminate the questions of “why” and “how.” It would still be up to the competent magistrate to decide whether or not to initiate public proceedings, whenever he or she deems it necessary.

From an operational point of view, in order to be rigorous—and not rigid as some claim—and to avoid any revictimization of the protagonists of the encounter, the protocols established by the IFJR must be scrupulously respected. This applies above all to the preparation of potential participants, whatever the measure envisaged. In this sense, only a thorough preparation, according to a specific methodology, can offer the protagonists the genuine choice of whether or not to consider the possibility of a restorative encounter. In fact, the restorative program belongs to the participants alone, who decide whether to enter, remain in (or leave) the program, and whether to hold the encounter face-to-face or by other means (mail, telephone, video), in accordance with the conditions set out in Article 10-1 Cpp (or L13-4 Cjpm). The multi-disciplinary support provided by the animators (in the broadest sense of the term) then becomes the vector of a potential path towards a horizon of appeasement,<sup>11</sup> which differs according to the initial expectations of those concerned. Realistically, however, many programs for juvenile offenders underestimate the training required for facilitators, neglect the preparation of potential participants, fail to respect the number of encounters, and fail to involve voluntary community members in the measures that require them. This is also true when it comes to adults.

Between 5 and 10% of the funding earmarked for restorative measures should be earmarked for scientific, differential and longitudinal evaluation. It is imperative that restorative encounters, whatever their nature, be evaluated throughout their course, beyond their conclusion, in the light of a specially constituted control group. Only good and promising practices should be disseminated

---

11 V. P. Mbanzoulou, *Les rencontres détenus-victimes*, in *Les cahiers de la sécurité et de la justice*, op. cit, p. 83 et seq.

throughout the country, while those assessed as not corresponding either to the restorative philosophy or to the methodology it presupposes should absolutely not be renewed.

Restorative programs, available in a variety of forms, belong to the participants: the minor offender, the victim—whether a minor or an adult—as well as to persons specially involved in one of the available measures (their respective relatives and/or, where applicable, “trustworthy” persons, legal representatives). They can be set up at any stage of the proceedings, including during the enforcement of sentences, also in the event of dismissal, acquittal, discharge or prescription. More generally, they should be activated in the event of any conflict, independently of any criminal judicial intervention. So how can we confuse adherence to an obligation imposed by the judge on the minor offender, in the form of a judicial educational measure (provisional or as a sanction) and voluntary, free choice and informed participation in a restorative measure, whatever its nature, independent of any judicial decision?

Without reverting to the legalistic interpretation of the law favored by jurists, we need to apply the law in its entirety, and nothing but the law. Like all the laws of the Republic, their application is imperative, not optional. However, when it comes to restorative justice, it’s important to go beyond the law, because while dealing with the consequences (in the strict sense) of committing an offence (punishment and compensation) is a matter for the competent criminal judge, the repercussions, with no direct and immediate link to the facts, must be taken into account by restorative justice, so that the work of justice can be accomplished, with everyone convinced, as citizens of the Republic, that “it’s not because things are difficult that we don’t dare. It’s because we don’t dare that they are difficult.”<sup>12</sup> The tremendous commitment of those working in the field who are involved of restorative justice measures, without taking any time off from their main professional activity, augurs well for the long-term success of restorative justice in our country.

---

12 V. Seneca, *Letters to Lucilius* (104, 26), *Mille et une nuits* Ed. p. 77.