The Criminal Liability of Minors in France

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"Such is the life of men, a few joys quickly erased by unforgettable sorrows. There's no need to tell children."

Marcel Pagnol, French academician (1895–1974)
Le château de ma mère (1957).

Marcel Pagnol authorizes us to lie by omission to children in order to preserve the innocence and carefreeness of their childhood. Minors do not have all the resources, or even sufficient capacity, to face up to the countless vicissitudes of life. They need to be able to face the future with a minimum of serenity. It was this need for protection that helped lay the foundations for the principles of juvenile criminal responsibility. However, as criminal law is a matter of public order, this protection is ambivalent, since it is aimed both at the minor who committed the act and, of course, at society as a whole. In criminology, the questions of criminal responsibility and its basis have been extensively debated.[1] Proponents of deterministic theories considered that the perpetrator was predestined to commit an offence either because of his physical characteristics[2] or because of the influence of his social environment.[3] These analyses were not compatible with criminal responsibility based on free will and have always been greeted with profound hostility by jurists. Nevertheless, Enrico Ferri went so far as to propose a change in the basis of criminal responsibility, so that it would no longer be based on free will, but rather on the risk that the offender, in its generic sense, poses to society.[4] Although this proposal did not succeed, it did contribute to the emergence of what were known at the time as penal substitutes, which were nothing more than the equivalent of the security measures we still know today. Enrico Ferri was always keen to chase down the dangerous[5] state. One of the main aims pursued by determinists was to exclude the offender from conventional so-

1 A. Bauer, *Dictionnaire amoureux illustré du crime*, ed. Plon - Gründ, 2024, p. 72 et seq. - P. Morvan, *Criminologie*, 4th ed. LexisNexis, 2022, n° 51 et seq. - R. Gassin, S. Cimamonti, Ph. Bonfils, *Criminologie*, 7th ed. Dalloz, 2011, n° 202 et seq.

2 C. Lombroso, *L'Homme criminel*. Etude anthropologique et psychiatrique, Félix Alcan éditeur, 1887.

3 E. Ferri, *La sociologie criminelle*, 1893. Published in 1881 under the title *Les nouveaux horizons du droit pénal*, republished in 2004 with a presentation by Raymond Gassin by Dalloz in 2004.

4 P. Morvan, *ouv. préc.* n° 63 - R. Gassin, S. Cimamonti, Ph. Bonfils, *ouv. préc.* n° 221.

5 P. Bouzat, Le centenaire d'Enrico Ferri, *RSC* 1957, p. 1.

 doi: 10.18278/ijc.12.1.3

ciety. Offenders had not chosen to become delinquents, they were delinquents.[6] It's as if humanity were made up of delinquents on one side and honest people on the other. What a utopia! In 1890, the work of Gabriel Tarde, a French magistrate, brought about a more rational debate.[7] Although his theories remained causalist in nature, focusing on the causes of crime, he was the first to reintroduce the offender into society as a professional. His concept of criminal responsibility is particularly interesting, as he examines its generating element, which for him is none other than guilt. Man can only assume criminal responsibility if he feels guilty. To do so, he must have succeeded in building his personal identity by testing his ability to resist both internal and external influences and must have succeeded in integrating the values recognized and protected by society. He refers to this as social similarity. According to him, the more a person's personal identity is constructed, the more he or she is able to feel guilt and therefore be responsible for his or her actions.[8] This criminological aside highlights the need to maintain a specific system of criminal responsibility for minors.

Are minors capable of deciding, choosing and thus assuming the consequences of their choices? Under civil law, the answer to this question is in principle negative, except in a few special cases where the law or custom allows the minor to consent alone.[9] Criminal law, on the other hand, admits the criminal responsibility of minors in an attenuated form, provided they are capable of discernment. While Aristotle elegantly described discernment as the eye of the soul,[10] the notion is generally presented, in a very Manichean way, as a person's ability to differentiate between good and evil.[11] Criminal law considers a minor to be capable of discernment when he or she has understood and intended his or her act, and is capable of understanding the meaning of the criminal proceedings to which he or she is subject.[12] Since the Apaches at the dawn of the twentieth century,[13] the two world wars have largely contributed to the decimation of young people. Recognition of the specific nature of the criminal responsibility of minors gradually gained ground[14] before being enshrined as a fundamental principle recognized by the laws of the

6 On the theories of the Positivist School: A. Bauer, *ABC de la criminologie*, éd. du Cerf, 2016, p. 99.

7 G. Tarde, *Les lois de l'imitation*, 1890, 2thed. 1895.

8 G. Tarde, *La philosophie pénale*, ed. A. Storck, 1890, p. 84 et seq. republished by Cujas in 1972, Chapter III: Théorie de la responsabilité, p. 67 et seq.

9 Ph. Bonfils and A. Gouttenoire, *Droit des mineurs*, 3théd. Dalloz, 2021, n° 1016 et seq.

10 Aristotle, *On the Soul*, translation by R. Bodéüs, GF Flammarion, 2018.

11 S. Jacopin, Présomption(s) et minorité en droit pénal. Entre fiction(s) et réalité(s), quels repères, *RSC* 2020, p. 27.

12 Art. L. 11-1 al. 3 CJPM.

13 A. Bauer, *Dictionnaire amoureux illustré du crime*, op. cit. p. 10 - A. Bauer and Ch. Soullez, *3 minutes pour comprendre, les 50 plus grandes affaires criminelles de notre histoire*, ed. Le Courrier du Livre, 2019, p. 64.

14 F. Archer, La réforme du droit des mineurs délinquants, *Dr. pénal* 2011 étude 24.

Republic by the Constitutional Court.[15]

The very existence of a system of criminal responsibility for minors, albeit a specific one, is proof of legal recognition of a degree of free will in them **(I)**. It would then be to raise the subject to a higher level if we were to analyze the consequences of the presence of this notion of free will in minors, in particular, in the light of the Juvenile Criminal Justice Code **(II)**.

I. Recognition of a Degree of Free Will in Juvenile Offenders

If the law recognizes the possibility of seeking criminal liability for a minor child, it is because it accepts that the latter can exercise a degree of free will in relation to his or her actions. The question of the basis for this assumption therefore becomes more acute. Indeed, although the ordinance of February 2, 1945[16] did not contain any precision on this essential point, case law, and then the legislator, have preferred to retain discernment in this quest. However, the International Convention on the Rights of the Child favors a threshold of criminal minority. After outlining the perplexities encountered when faced with the formulation of a choice **(A)**, we will see how the Code of Criminal Justice for Minors has positioned itself **(B)**.

A. The Perplexities of Making a Choice

The Ordinance of February 2, 1945, contained no specific provisions on the grounds on which a minor child could be held criminally liable. Under this text alone, it was possible to hold an infant liable for having, for example, scratched a third party. Jurisprudence was established in the decision handed down by the Criminal Division of the Court of Cassation, known as *the Laboube* decision, on December 13, 1956.[17] In this case, the Court took a position in favor of assessing the discernment of a minor child as a criterion of criminal responsibility.

On November 20, 1989, the United Nations General Assembly in New York unanimously adopted the International Convention on the Rights of the Child,[18] which France ratified in 1990.[19] Article 40 of this text states in its third paragraph: "*States Parties shall promote the adoption of appropriate laws, procedures, authorities and institutions for children alleged as, accused of, or recognized as having infringed the penal law, and in particular : To establish a minimum age below which*

15 C. Const. August 29, 2002, no. 2002-461 DC, *JO* Sept. 10, 2002; *D.* 2003, p. 1127, obs. L. Domingo and S. Nicot; *AJDI* 2002, p. 708; *RSC* 2003, p. 606, obs. V. Bück.

16 Ord. n° 45-174 of Feb. 2, 1945.

17 Cass. crim. 13 déc. 1956, n° 55-05.772, *Bull. crim.* n° 840, *D.* 1957, p. 349, note M. Patin ; J. Pradel et A. Varinard*, Les grands arrêts du droit pénal général*, 12thed. Dalloz, 2021, no. 43.

18 On this text: Ph. Bonfils and A. Gouttenoire*, op. cit*. n° 44 et seq.

19 Law no. 90-548 of July 2, 1990 authorizing ratification of the Convention on the Rights of the Child, *JO* July 5, 1990.

children shall be presumed not to have the capacity to infringe the penal law; To take measures, whenever possible and desirable, to deal with such children without resorting to judicial proceedings, it being understood, however, that human rights and legal safeguards must be fully respected." The binding nature of this wording is open to debate. States parties must therefore "*endeavor*" to establish a threshold of criminal minority. The least that can be said is that, prior to the Code on Juvenile Criminal Justice, France had not made much effort in this direction. The law of September 9, 2002,[20] amending Article 122-8 of the Penal Code to include only the notion of the child's discernment, to the exclusion of any reference to his or her age,[21] may even be seen as a deliberate attempt to disregard the aforementioned provision of the Convention.

It may be noted that the various stages in the development of juvenile criminal law prior to codification did attempt to impose an age threshold. The Varinard commission[22] proposed the age of 12 as a presumption of capacity for discernment. The 2009 preliminary draft juvenile criminal justice code[23] set the age at 13, thus aligning the age at which a minor's criminal responsibility can be sought with the age of access to punishment. However, Madame Taubira's 2015 proposal was to maintain the reference to discernment alone.[24] In the end, all these failed attempts at reform led only to piecemeal amendments to the Ordinance of February 2, 1945[25] without calling into question the absence of a threshold for criminal minority in our country. We therefore had to wait for the Juvenile Criminal Justice Code to see France "*endeavor*" to establish a minimum age below which children would be presumed not to have the capacity to infringe criminal law.[26]

B. The Ambivalent Solution Proposed by the Juvenile Criminal Justice Code

Popular wisdom likes to remind us that to choose is to sacrifice. In the present case, it is possible to qualify the rigor of this statement. Article L. 11-1 paragraphs 1 and 2 of the Juvenile Justice Code stipulates that "*when they are capable of discernment, minors, as defined in [A]rticle 388 of the Civil Code, are criminally liable for crimes, misdemeanors or contraventions of which they are found guilty. Minors under the age of thirteen are presumed not to be capable of discernment.*

20 Law no. 2002-1138 of Sept. 9, 2002 on the orientation and programming of the justice system, *JO* Sept. 10, 2002.

21 J.-F. Seuvic, Droit pénal des mineurs, *RSC* 2002, p. 867.

22 *Adapter la justice pénale des mineurs: entre modifications fondamentales et innovations raisonnables, 70 propositions*, Doc. Fr. Dec. 2009 (proposal no. 9).

23 F. Archer*, art. préc.*

24 E. Gallardo, Présentation du projet de loi relatif à la justice pénale des enfants et des adolescents, un avant-projet de réforme, et après?, *RPDP* 2015, p. 832.

25 E. Vergès, Le nouveau parcours pénal des mineurs, *RSC* 2020, p. 129.

26 Ph. Bonfils, Réforme de la justice pénale des mineurs : une codification dans l'urgence? - Présentation synthétique du nouveau texte, *Lexbase Pénal* : dossier spécial n° 1 du 14 nov. 2019.

Minors of at least thirteen years of age are presumed to be capable of discernment." This text reconciles the consideration of discernment with a presumed threshold of criminal minority set at thirteen. Before the age of thirteen, the absence of discernment is presumed, but after the age of thirteen, the capacity to discern is. Despite the choice made by many countries, it does seem artificial to institute an age threshold without any reference to whether the minor has the capacity to discern. Age remains a criterion which does not always correlate with the minor's degree of maturity.[27] It should also be noted that there is no consensus at European level between the countries that have opted for the[28] age threshold. In the past, the judge assessed discernment. With the Code de la justice pénale des mineurs, it's the same,[29] except that he is now helped by a presumption attached to the age threshold of thirteen. The nature of this presumption immediately raises questions. An analysis of other provisions of the Code de la justice pénale des mineurs shows that it is a simple presumption.[30] The judge will therefore retain his or her discretionary power, based on discernment. Indeed, in view of this presumption, it is perfectly possible to prove the capacity for discernment of a thirteen-year-old minor. The change from the previous situation is therefore hardly perceptible. '122-8 of the French Penal Code still links a minor's criminal responsibility to his or her capacity for discernment. The purpose of introducing this presumption based on an age threshold is therefore more to comply with France's international commitments under the International Convention on the Rights of the Child. By introducing this reference to the age of the perpetrator, it would appear that France has "endeavored," as required by the Convention, to establish a minimum age below which children will be presumed not to have the capacity to infringe the penal law. It should also be noted that the Convention itself refers to a presumption.

Despite the fact that France continues to take discernment into account, it now seems to be more in line with the[31] Convention than in the past. Although it should be emphasized that only the introduction of an irrebuttable presumption

27 S. Jacopin, *art. préc.*: "There are major discrepancies between minors; some are more mature and act with full knowledge of the facts, while others are still just children."

28 E. Gallardo, La nouvelle responsabilité pénale des mineurs délinquants: une perte de spécificité? *Lexbase Pénal,* special issue no. 1, Nov. 14, 2019 - S. Jacopin, *art. préc.*

29 Ph. Bonfils, Première approche du code de la justice pénale des mineurs, *AJ Pénal 2019*, p. 476 - Ch. Lazerges, Cohérence et incohérences dans l'ordonnance n° 2019-950 du 11 septembre 2019 portant partie législative du code de la justice pénale des mineurs, *RSC* 2020, p. 175.

30 J.-Y. Maréchal, *Cours de droit pénal*, 7th éd. coll. CRFPA, Enrick B éditions, 2024, p. 258 - E. Gallardo, *art. préc.* - S. Jacopin, *art. préc.*

31 B. Le Dévédec, Mineurs auteurs d'infractions sexuelles : les révolutions du Code de la justice pénale es mineurs sur le discernement et la césure pénale, *Enfances & psy*, n°92, June 2022, p. 109. *Contra* : Ch. Lazerges, De l'ordonnance du 2 février 1945 relative à l'enfance délinquante à l'ordonnance du 11 septembre 2019 portant partie législative du code de la justice pénale des mineurs, *Lexbase Pénal* : dossier spécial n° 1 du 14 nov. 2019.

would have made it possible to meet international commitments[32] in full, the text invites signatory countries to make efforts towards the objective set. The Juvenile Criminal Justice Code thus brings the situation closer to the international text than it had previously been.[33] As expressed by the French Ministry of Education on the school reports of average pupils: "Efforts are being made, but we can do better...." In practice, however, it is perilous to refrain from examining the discernment of minors, especially as this question also arises for adults under the provisions of Article 122-1 of the French Penal Code.

It is therefore on the basis of an analysis of the minor's capacity for discernment, which is presumed from the age of thirteen, that he or she can be held criminally liable. Then there is the question of society's penal response. The age threshold of thirteen reappears, but in a different context. This time, it is the age at which a minor can be sentenced, and therefore a threshold of criminal capacity.[34] Although numerically identical, this threshold should not be confused with the previous one used for capacity of discernment. In fact, the age of thirteen was already set by the Ordinance of February 2, 1945, to allow a minor to be sentenced.[35] Detecting the presence of a minor's free will on the basis of his or her capacity for discernment will have consequences for the social reaction[36] which must now be analyzed, as they also have their own specific features.

II. The Consequences of Free Will in Juvenile Offenders

How do we respond to juvenile offenders? Once they have been found guilty and therefore criminally liable, society, whose values have been flouted, must react without further deteriorating the situation. The peculiarity lies precisely in the young age of the persons concerned, which reveals a personality in the making. We must therefore be able to punish without obscuring the future of these minors. While awareness of this need is not new, it has gradually grown stronger, leading to the formulation of fundamental principles of juvenile criminal justice: the primacy of educational over repressive measures **(A)**, and the reduction of criminal responsibility for juvenile offenders **(B)**.

A. The Primacy of Education over Repression

Although it's true that the law of July 22, 1912,[37] already recognized the

32 J. Bigot, Le mineur en conflit avec la loi reste-t-il un enfant à protéger? *AJ Pénal 2019*, p. 479 - Ch. Lazerges, Cohérence et incohérences dans l'ordonnance n° 2019-950 du 11 septembre 2019 portant partie législative du code de la justice pénale des mineurs, *prec.*

33 S. Jacopin, *art. préc.*

34 S. Jacopin, *art. préc.*

35 Art. 2 ord. n° 45-174 du 2 fév. 1945.

36 On this concept, see in part. R. Gassin, S. Cimamonti, Ph. Bonfils, *op.* cit. n° 560 et seq.

37 E. Pierre, La revanche des juristes ou comment entraver l'application de la loi du 22 juillet 1912,

specific nature of juvenile criminal justice by creating the juvenile court and a threshold of criminal minority set at thirteen years of age, the roots of the amplification of this need can be found in the preamble to the decree of February 2, 1945, which the report to the President of the Republic on the Juvenile Justice Code[38] keeps up to date. The extract is eloquent: "*There are few problems as serious as those concerning the protection of children, and among them, those relating to the fate of children brought before the courts. France is not rich enough in children for it to have the right to neglect everything that can make them healthy beings*." Its first merit is to recognize the minor offender as being in a situation of danger, by linking child protection with the fate of children brought to justice. This postulate is concretely reflected in Article L. 421-1 of the Juvenile Justice Code, which stipulates *in fine* that referral to the authorities responsible for the administrative or judicial protection of children by the public prosecutor can be considered a sufficient response in terms of public action. The second merit of this passage is that it emphasizes the need to ensure that these children are healthy, and that every effort is made to ensure that they do not get bogged down in delinquency. When we look at punishment and, more generally, the penal response, as Durkheim did, to consider it above all as a social reprimand that strengthens the bonds of the collective conscience,[39] it can be accepted that the main vector for the commission of an offence is a lack of education.[40] Society's reaction must therefore be an opportunity to reaffirm social values and the sanctity of the law, which cannot be transgressed with impunity. If punishment serves only to frighten, its effects are limited and it becomes ineffective on repeat offenders. So, by prioritizing education over repression, the social reaction makes it possible to show a form of disapproval, but above all, to provide the means to correct the behavior by transmitting new social references. A juvenile who causes problems is a juvenile who is experiencing difficulties that he or she is unable to resolve on his or her own. The commission of an offence by a minor can be a symptom of social maladjustment and, sometimes, of suffering. In such cases, it is important to choose a penal response that prioritizes what is useful for the minor's recovery, rather than primarily punishing the seriousness of the offence. Article L. 11-2 of the French Juvenile Criminal Justice Code is very explicit on this point, stating that "*decisions taken with regard to minors are aimed at their educational and moral rehabilitation, as well as at preventing recidivism and protecting the interests of victims*." A reading of this text certainly confirms the primacy of educational over repressive measures, but also the need to combat recidivism and to take into consideration the interests of victims. The concrete

Revue d'histoire de l'enfance "*irrégulière*" 2015, p. 101.

38 Report to the President of the Republic on Ordinance No. 2019-950 of September 11, 2019 on the legislative part of the juvenile criminal justice code, *JO* Sept. 13, 2019.

39 E. Durkheim, *L'éducation morale*, course given at the Sorbonne in 1902–1903, Librairie Félix Alcan, 1934.

40 S. Jacopin, *art. préc.*

expression of this emphasis on education rather than repression can be seen in our law, which prohibits coercive interim measures and penalties in general for minors under the age of thirteen. The Juvenile Criminal Justice Code, like its predecessor, the Ordinance of February 2, 1945, offers a number of original legal responses that give concrete form to the principle of the primacy of education. Admittedly, the numerous amendments to the Ordinance of February 2, 1945, had contributed to the loss of coherence in the[41] systems, but the Code of Criminal Justice for Minors attempts to re-establish greater rationality. There are now two educational measures: judicial warnings and judicial educational measures[42] which are divided into four modules,[43] followed by penalties. However, a number of difficulties remain, as the content of some provisional measures is very similar to what would have been pronounced following a judgment recognizing the minor's guilt.[44] The same applies to certain alternatives to prosecution.[45] How do you explain to a child, whose guilt may not yet have been established, that he or she must submit to obligations similar to those imposed on a convicted minor? How can we convince him that this is in the best interests of his education? How can we explain the survival of the content of certain educational sanctions, so decried,[46] through the obligations or prohibitions that can accompany a judicial educational measure from the age of ten?[47] The Code of Criminal Justice for Minors therefore does no more than apparently abolish educational sanctions. The latter were created in 2002[48] to impose harsher penalties on minors aged ten and over, who were therefore not yet eligible for sentencing. The list of these sanctions, although rarely applied,[49] had been progressively extended. The Act of March 14, 2011,[50] curiously added to the list of sanctions a ban on minors going to and from public places between 11 p.m. and 6 a.m. without being accompanied by a legal representative, for a maximum period of three months, renewable once. The law had succeeded in turning com-

41 Ch. Lazerges, De l'ordonnance du 2 février 1945 relative à l'enfance délinquante à l'ordonnance du 11 septembre 2019 portant partie législative du Code de la justice pénale des mineurs, *art. préc.*

42 C. Marie, La nouvelle mesure éducative judiciaire : la diversité sous l'unité, *Lexbase Pénal* : dossier spécial n° 1 du 14 nov. 2019.

43 Insertion, repair, health, and placement modules.

44 V. not. Art. L. 323-1 CJPM. Provisional judicial educational measures may be pronounced at any stage of the procedure before the sanction is pronounced.

45 Art. L. 422-1 CJPM.

46 C. Marie, *art. préc.* - Ch. Lazerges, Cohérence et incohérences dans l'ordonnance n° 2019-950 du 11 septembre 2019 portant partie législative du code de la justice pénale des mineurs, *prec.*

47 Art. L. 112-3 CJPM.

48 Law no. 2002-1138 of Sept. 9, 2002 on the orientation and programming of the justice system, *JO* Sept. 10, 2002.

49 In 2018, 2,495 educational sanctions were handed down compared with 30,875 educational measures and 25,989 sentences, *Les chiffres-clés de la justice* 2018.

50 Loi n° 2011-267 du 14 mars 2011 d'orientation et de programmation pour la performance de la sécurité intérieure, *JO* 15 mars 2011.

mon sense into a sanction. What will happen when the ban expires? The minor will then consider that he or she can return to the public highway alone during this time slot, since he or she is no longer subject to a sanction. It's hard for parents to fight a message sent by the judicial institution itself. It is indeed logical that when the time limit for which the sanction was pronounced expires, it should no longer apply. If the ridiculousness of this provision had reached its peak, we can only be very surprised to find it included in the obligations or prohibitions that can be pronounced in support of a judicial educational measure in the Code of Criminal Justice for Minors. This measure now lasts for a maximum of six months.[51]

It is when the numerous educational measures alone, when combined, do not seem sufficient, and taking into account the personality of the offender and the circumstances of the offence, that a sentence can be considered under a special mitigation regime due to minority.[52]

B. Reducing Criminal Liability

The aforementioned principle of the primacy of education over repression naturally leads to the use of punishment as a last resort, accompanied by special reasons. Despite this choice, the sentence must necessarily have an educational purpose.[53] However, the reality and effectiveness of this objective may be questioned for certain sentences, to such an extent that the Code of Criminal Justice for Minors and, before it, the Ordinance of February 2, 1945, provide a list of sentences, security measures and modes of execution forbidden to minors[54] which are exclusively oriented towards repression and the protection of society, without any utilitarian dimension for the convicted offender. To facilitate the achievement of educational goals, legislation has progressively authorized the cumulation of sentences with one, or even several, educational measures. The Juvenile Criminal Justice Code today supports this approach, subject to certain reservations,[55] but it is not without its drawbacks. Indeed, while it is undeniable that this combination of measures encourages the convicted offender to follow the path of re-education and consolidates the educational dimension of the sentence, it can also have the effect of disrupting the reference points linked to the very nature of the penal response.[56] If the decision is made to combine sentences, what meaning is given to the educational measures that accompany them? There is a real risk that it will be

51 Art. L. 112-2, 7° CJPM.

52 Art. L. 121-5 et seq. CJPM.

53 M. Brenaut, Le droit de la peine dans l'ordonnance n°2019-950 du 11 septembre 2019 portant partie législative du Code de la justice pénale des mineurs, *Lexbase Pénal* : dossier spécial n° 1 du 14 nov. 2019.

54 Art. L. 121-1 CJPM.

55 C. Marie, *art. préc.*

56 Ph. Bonfils, Réforme de la justice pénale des mineurs : une codification dans l'urgence? Summary presentation of the new text, *prec.*

assimilated to a modality of the sentence, making the educational aspect, central though it is, hardly perceptible to the minor.[57] However, the legal regime of mitigated criminal responsibility applicable to minors, set out in the Code of Juvenile Criminal Justice, may help to distinguish between the two. The Code halves the maximum *quantum* of custodial sentences incurred by an adult and sets a ceiling of 7,500 euros for fines. Age will play an important role in its operation. The age threshold is 13, which could be confused with the threshold of presumption of discernment. This is not a threshold of criminal responsibility, but a threshold of criminal capacity.[58] From the age of 13, therefore, minors can be sentenced. Between the ages of 13 and 16, minors benefit from the legal reduction of sentence, formerly known as the "mitigating excuse of minority." In practical terms, this means that the minor will be subject to a custodial sentence whose maximum corresponds to the *quantum* set for adults, divided by two. If the sentence is life imprisonment, the minor is liable to a maximum of 20 years' imprisonment. Minors aged 16 and over also benefit from this favorable regime, but it is no longer automatic, as the criminal court may, by reasoned decision, decide to deny it to them. However, life imprisonment is still not incurred, and in such cases the maximum sentence is 30 years' rigorous imprisonment. This reduction does not apply to other sentences, such as community service or probation. The criminal court thus regains its full power to individualize criminal penalties.

In the light of the above, it might be tempting to claim that the Juvenile Criminal Justice Code does little to innovate when it comes to sentencing. However, it is important to qualify this statement immediately, as the juvenile court judge can now pronounce three types of sentence in chambers, whereas the Order of February 2, 1945, limited his power to pronouncing educational measures, reserving the right to pronounce a sentence to a collegiate criminal court, the juvenile court or the juvenile assize court. This is an important change, which seems to be justified by the spirit of speed that drives the Juvenile Criminal Justice Code. The fact remains, however, that the educational dimension of the sentences that can be handed down by the juvenile judge alone, subject to special justification, is real. These include confiscation, probation and community service.

Imposing a sentence can cast a shadow over a minor's future, which fully justifies the need for a special statement of reasons, combined with the exceptional nature of the sentence. The fact that the criminal trial[59] has been elevated to the status of a principle may also help to limit sentencing. Caution is called for, however, as the time limits imposed by the texts do not seem to be in line with the

57 Ch. Lazerges, Cohérence et incohérences dans l'ordonnance n° 2019-950 du 11 septembre 2019 portant partie législative du code de la justice pénale des mineurs, *prec.*

58 Cf. *above*.

59 N. Beddiar, La césure du procès pénal des mineurs, *AJ Pénal 2019*, p. 483.

concrete realities[60] and the meagre resources available to juvenile criminal justice[61] which, combined with the numerous exceptions provided for the application of this system, supposedly based on principle, risks compromising the educational effectiveness of its objective. Time will tell. Successful education is certainly a long and winding road, strewn with pitfalls, but it certainly deserves an investment commensurate with its ambition and the stakes it represents.

60 Ch. Lazerges, De l'ordonnance du 2 février 1945 relative à l'enfance délinquante à l'ordonnance du 11 septembre 2019 portant partie législative du Code de la justice pénale des mineurs, *prec.*

61 C. Delanoë Daoud, M. Duverney Pret, I. Roth, "une justice des mineurs plus réactive pour une réponse éducative plus efficace," *AJ Pénal 2019,* p. 491 - C. Marie*, art. préc.*