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ANNUAL  
ACTIVITY REPORT  
2021

In the eyes of the law, we are all equal

**Défenseur des droits**  
RÉPUBLIQUE FRANÇAISE

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EDITORIAL

# BRINGING PEOPLE CLOSER TO THEIR RIGHTS

In just ten years, the Defender of Rights has received around one million complaints. This includes 115,000 in 2021 alone, a level never reached before. All such complaints reveal access paths to rights impeded by blockages, shortcomings or discrimination, which the Defender of Rights endeavours to clear up and denounce. To make sure that such blocked paths again become paths to rights.

This year, the Defender of Rights institution, established by the Organic Act of 29 March 2011, celebrated its tenth anniversary. A young age for an institution of the Republic, but that has not prevented it from acquiring a solid reputation and expertise. And yet, the challenge was great: to bring together four institutions with different competences and powers, and then to take on new competences, new missions, and new expectations over time.

The Defender of Rights has fully met this challenge of unification by succeeding in embodying and carrying out all the tasks entrusted to it with the same determination, giving them a common identity of listening, dialogue, and legal rigour. The year 2021 was largely marked by those features, which have become stronger over the years.

Firstly, our listening capacities have been increased, with the creation of the anti-discrimination platform and the recruitment of new territorial delegates - bringing their number to 550. At a time when counters are becoming rare in public services, when automatic terminals are multiplying, when telephone advisers are becoming musical answering machines, the possibility of being listened to and taken into consideration sometimes seems like a privilege.

However, it is a requirement to ensure equality and continuity of public service, which is what our delegates, lawyers and telephone counsellors strive to do every day.

I wanted us to develop this approach of taking into account the people concerned even further in the context of our mission to promote rights, particularly in the preparation of our reports. The annual report on the rights of the child, devoted to mental health and well-being in 2021, is thus largely informed by the consultation with children that we conducted, just as the report "*Travellers: breaking down barriers to rights*" was greatly enriched by the consultations conducted with the people concerned. We also sought the opinion of complainants in order to contribute to the assessment of the "mandatory preliminary mediation" experiment in the area of social benefits. And it is also in order to listen to those primarily concerned that I have made a point of regularly going out into the field, whether in detention centres, with public service employees, in schools, nursing homes, in camps where foreign nationals live or at non-profit facilities, etc.

After listening, the search for dialogue is another essential hallmark of the Defender of Rights as the heir to the Ombudsman of the Republic. Above all, our interventions aim to restore dialogue when it has broken down, make it constructive when it gets bogged down, make it a way out of an impasse: for the woman who received more aid than she should have, to whom the Social Security fund applied a repayment plan without considering her resources and expenses; for the young man whose rental application was rejected because of his origin; for the woman whose complaint was not considered "serious enough" to be

submitted; for the child whom the town hall refused to enrol in the school canteen because he lives in a social hotel.


Another feature of this identity, forged over the years, is the rigour that characterises the work of the Defender of Rights' lawyers: rigour of investigations, analyses, and arguments. That rigour has led us to be largely confirmed in our comments by the decisions of the courts. In terms of security ethics, the soundness of our recommendations was recognised by three important decisions handed down respectively by the Constitutional Council - on the former Article 24 of the "Global Security" bill - by the Paris Court of Appeal - on the identity checks carried out on young people in 2017 at the Gare du Nord train station - by the Council of State, finally, concerning the "kettling" technique during demonstrations.

But it is not enough to investigate and make recommendations with rigour, it is also necessary to act with determination, even obstinacy. This is what the Organic Act allows us to do, thanks to the various powers it confers on the Defender of Rights. In order to put an end to a dysfunction, discrimination or any other infringement of a right in one of our areas of competence, the formulation of individual recommendations is sometimes insufficient or ineffective. In such cases, we can mobilise a large number of other tools, including: issuing general recommendations, proposing a reform of the legislative or regulatory texts, transmitting an opinion to the public authorities, publishing a report, conducting a study, carrying out a communication campaign, referring the matter to another competent authority in order to conduct an investigation, etc.

We have mobilised all these levers during the year 2021, whether it be on the subject of nursing homes, infringements of the right to education, particularly in French Guiana, the rights of disabled people, the protection of whistleblowers, the closure of ticket offices in railway stations, etc.

Our role is not limited to dealing with the complaints we receive: our ambition is to dry up the source of the complaints. Our commitment is to ensure that public services get back to contact with users and facilitate access to rights, that discrimination is combated by a broad public policy, that the security forces regain the trust of the citizens, that all children see their rights respected, that citizens can be whistleblowers without being worried.

**Claire Hédon**  
The Defender of Rights



STATISTICS

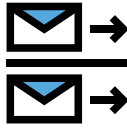
# 2021, IN FIGURES

## ALMOST 200,000 REQUESTS FOR INTERVENTION OR ADVICE



**114,898**

**claims filed**  
in 2021



**18.6%**

**increase in claims**  
between 2020  
and 2021



**84,599**

**calls**  
to telephone  
platforms  
**+21.3%**



**21%**

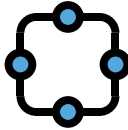
**overall increase**  
**in demand**  
in 2021

## PERMANENT CONTACTS WITH THE PUBLIC AND CIVIL SOCIETY



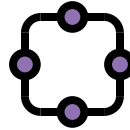
**59**

**partnership**  
**agreements**



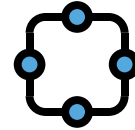
**3**

**advisory colleges**  
22 qualified persons



**7**

**joint**  
**committees**



**2**

**liaison**  
**committees**



**96,335**

**Twitter followers**



**31,336**

**Facebook subscribers**



**3,860**

**Instagram followers**



**44,847**

**LinkedIn subscribers**



**5,468,772**

**YouTube views**



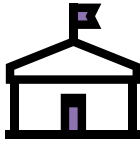
**3,157,357**

**cumulative views**  
**on websites**

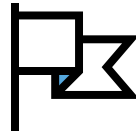


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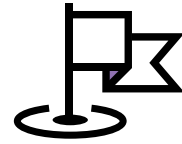
## A TEAM AT THE SERVICE OF RIGHTS AND FREEDOMS



**231**  
agents



**550**  
delegates  
present throughout  
the territory



Over **870**  
centres  
throughout the territory

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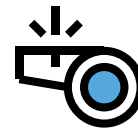
## RECOGNISED EXPERTISE



Over **80%**  
of out-of-court settlements  
are successful



**1**  
opinion to the public  
prosecutor's office



**10**  
own-initiative  
referrals



**298**  
decisions with  
recommendations



**175**  
decisions making comments  
before the courts



In **82%** of cases,  
court decisions confirm  
the comments



**2**  
special reports  
made public in cases where  
the injunction of the Defender  
of Rights has not been  
complied with



**17**  
opinions  
to the Parliament



**114**  
reform proposals  
from the various  
productions

## STATISTICS

## GENERAL STATISTICS

## OVERALL TRENDS IN CLAIMS RECEIVED SINCE 2020

CASES RECEIVED	2020	2021	FROM 2020
Head office	25,048	29,489	17.7%
Delegates	71,846	85,409	18.9%
<b>TOTAL</b>	<b>96,894</b>	<b>114,898</b>	<b>18.6%</b>

## BREAKDOWN ACCORDING TO THE FIELD OF COMPETENCE OF THE DEFENDER OF RIGHTS

AREAS	2020	2021	CHANGE
Relations with public services	76,529	90,835	18.7%
Defending the rights of the child	3,270	3,425	4.7%
Combating discrimination	5,807	7,096	22.2%
The ethics of security	2,364	2,508	6.1%
Orientation and protection of whistleblowers	61	89	45.9%
Miscellaneous information and guidance	12,937	15,835	22.4%

It should be taken into account in the presentation that the sum is not equal to the total number of claims received (multiqualification).

The activity statistics for 2021 now include requests for information and guidance received by the delegates in the different fields of competence. In order to allow for a consistent comparison, the 2020 data has been updated using the same method and therefore differs from the previous annual report.

### THEMATIC BREAKDOWN OF CLAIMS HANDLED BY THE INSTITUTION IN 2021

• Protection and social security	22.1%
• Immigration law	17.1%
• Traffic law	11.6%
• Justice	8.5%
• Public services	6.2%
• Private goods and services	5.2%
• Taxation	3.7%
• Private employment	3.2%
• Civil service	3.1%
• Housing	3.1%
• Privacy	2.8%
• Environment and urban planning	2.5%
• Security ethics	2.2%
• National education/higher education	2.2%
• Health	2.1%
• Child protection	1.7%
• Network operators	1.3%
• Public liberties	1%
• Regulated profession	0.4%

### METHOD OF REFERRAL TO THE HEAD OFFICE BY COMPLAINANTS

• Online form	74.2%
• Mail	25.8%

### METHOD OF REFERRAL TO DELEGATES BY COMPLAINANTS

• Physical reception	52.2%
• Email	23.8%
• Telephone	13.4%
• Mail	10.6%



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## PART 1

# WHERE ARE THE PUBLIC SERVICES?

With the tens of thousands of complaints it receives every year on this subject, the institution of the Defender of Rights is an attentive and concerned observer of the evolution of public services, and particularly of the way in which exchanges with their users are organised. For several years now, it is particularly in the area of communication between the administration and the user that a large number of infringements of rights have been occurring. Lack of response, unreasonable delays, difficulty in contacting the official responsible for the file, inability to make an appointment at a counter and, when one does, of completing a procedure... Beyond the application of the regulations 'on the merits', it is often the failings of the relationship that are at the root of users' lack of understanding, impatience, exasperation and even anger – and also, very concretely, of infringements of their rights that can be very harmful to them.

Of course, digital transformation is at the heart of this development. In view of the publication of the follow-up report "Digitisation of public services: three years on, where do we stand?" in February 2022, the teams of the Defender of Rights devoted a large part of 2021 to identifying the difficulties that users had with online procedures.

Digital technology, which also facilitates access to public services for many people, is not in itself synonymous with estrangement or difficulties. It only has this effect because it comes up against other developments that concern the principles and organisation of public services, and which lead to the situations we are experiencing.

For several decades, various waves of state reforms have been accompanied by a redefinition of the idea of 'performance' of public administrations and services. Most often conducted in the name of a dual objective of reducing expenditure and improving service delivery, the General Review of Public Policies (RGPP, from 2007 to 2012), the Modernisation of Public Action (2012-2015) and the Public Action 2022 programme (AP22, 2017-2022) have had concrete consequences on the organisation of many services that are in direct contact with users.

In various sectors, public transformation programmes have significantly affected the way in which certain rights are accessed: the "Next-Generation Prefecture" plan (2015) led to the digitisation of many procedures relating to immigration law, identity papers, driving licences or registration certificates; successive management and objective agreements (COG) impose productivity targets on social protection organisations which weigh on the availability of staff for beneficiaries or insured persons. Often thought of through the prism of optimisation, efficiency or simplification<sup>1</sup>, the policies of modernisation or public transformation have undoubtedly had effects on access to rights for all, of which the Defender of Rights is a direct witness.

Between the closure of institutional counters, the opening of "France Services Spaces" and the development of online procedures, the entire topography of public service "places", whose historical importance is well known, is being called into question.

### **DIGITISATION: RISKS THAT CONCERN EVERYONE**

In addition to the difficulties identified in the context of complaints, which are increasingly numerous on this subject, the Defender of Rights sees the acceleration of the digital transformation of the administration as the source of a profound change in the relationship with the user. Compared to the initial work carried out on this subject in 2018-2019, several developments are noteworthy: firstly, an awareness on the part of the public authorities, who no longer demand a total transition of administrations to digital,

given the persistent difficulties for a significant part of the population (over 10 million people) with electronic communications; secondly, the long health crisis period has exacerbated the issues of digital exclusion, particularly due to counter closures, work from home and distance education; lastly, in parallel with the implementation of inclusion policies and the labelling of France Services Spaces, and despite the awareness mentioned above, new procedures are being rolled out in an exclusively digitised manner, creating the same type of difficulties for users.

Some of these problems are concentrated on audiences that are particularly estranged from the digital administration. As the institution's report, "Digitisation of public services: three years on, where do we stand?" published in early 2022:

- Older people still use the Internet less frequently than the rest of the population;
- Young people are less comfortable with the digitised administration than one might believe;
- Persons with disabilities still are not faced with accessible public services;
- Protected adults and prisoners have not seen their situation improved;
- Foreign nationals are even more massively prevented from carrying out procedures that are absolutely necessary for their daily lives and respect for their fundamental rights;
- Socially-uninsured persons experience digital procedures as a sometimes insurmountable obstacle, while access to social rights is vital for them.

But beyond these specific audiences, any person can, one day, encounter an incomprehensible blockage when faced with an online form, be unable to reach an agent, or fail to resolve a problem. There are several examples of these difficulties and the complaints addressed to the Defender of Rights and its delegates on this subject, which are described in Part E of this activity report.

The digital transformation of public services, together with a reduction in the number of agents present at the counter, has resulted in a systemic transfer to the user of tasks and costs that were previously borne by the administration. The user is gradually being asked to take responsibility for training, getting help and equipping themselves. We are thus witnessing the reversal of one of the three principles of public service, adaptability, which is becoming a quality expected of users in order for them to be able to access their rights, rather than a requirement incumbent on the public services themselves. The user is thus transformed into a "co-producer" of the public service in spite of themselves and must meet the "standards" set by the administration: understanding the issues at stake in the process, the administrative language, and not make any mistakes at the risk of finding themselves in a situation where they cannot access their rights. Ultimately, users are being asked to do more, so that the administration can do less and save resources.

This shift in burden also weighs on all the stakeholders who support people in difficulty: family or close relatives, social workers, digital mediation workers, who find themselves having to carry out, in place of the public service, the acts that ensure the link between the user and this public service - which can, for its part, become entrenched, sheltered behind digitised procedures and more or less qualified intermediaries.

Undermining the principle of equal access to public services and often based on "simple, unformalised administrative practices"<sup>2</sup>, with an unstable legal basis, this forced digitisation endangers our social cohesion and our sense of belonging to a common nation.

In view of this, the Defender of Rights reminds us that the development of digital access to administrative procedures can constitute progress if, and only if, it is accompanied by essential guarantees for all users, particularly the systematic maintenance of alternative access and the possibility of sufficiently close, competent and available support.

The digital transformation of administrations is only sustainable if it is part of a much broader and more demanding ambition: that of an administration that is fully accessible to all, and invested with the responsibility of ensuring that everyone has access to their rights.

### **RENEWED EXPECTATIONS, CONTRASTING SATISFACTION**

How can we know the state of the population's needs to which public services must be adapted? How can the expectations of users be gathered - not only as individuals who use this or that service, but also as taxpayers who, through taxation, contribute to the funding of such services, and therefore, in the broadest sense, as citizens who have a say in the priorities to be assigned and the resources to be granted to public administrations?

We can refer to certain opinion surveys, including the Barometer of the Paul Delouvrier Institute, which has been polling the French on their relationship with public services for the past twenty years. The latest edition<sup>3</sup> shows, in a significantly stable way over the history of the Barometer, an 'average satisfaction' with all public services, at 73%, and an 'average positive opinion' of these services, at 51%, which has been rising steadily and significantly over the last 8 years (36% in 2013).

But beyond the averages, we can observe certain dissatisfactions that reveal, in a way, the expectations with regard to such public services.

## **WHAT TOOLS ARE THERE TO EVALUATE PUBLIC SERVICES?**

As part of the recent reforms to "modernise" public services, various instruments have been deployed to measure the results of public action and user satisfaction. After having emerged in various forms, these initiatives are now gathered on the "Public Services +" portal, where the "experiences", positive or negative, reported by users are listed, as well as the "results" (processing times, call handling rates, etc.) of the various services, at the local level, and the presentation of several simplification initiatives in progress.

In addition, there is the "Observatory of the quality of online procedures", which provides a picture of the 250 most frequent procedures, their accessibility, their speed, and the degree of satisfaction expressed by users once the procedure has been completed, via the "I'll give my opinion" button.

While the attention paid to the user and the concern for objectivizing the accessibility of procedures can only be welcomed, two reservations must nevertheless be raised.

While a small majority of respondents (54%) said that "generally speaking, public services in France act professionally and efficiently", in detail, almost all responses were very mixed: 47% of respondents consider that public services "do not show understanding for honest mistakes made by users", 52% say that they "do not propose solutions in case of mistakes made by users", 56% say that they "do not have a constructive attitude in case of disputes", and 64% say that they do not know how to "recognise their possible mistakes".

The main expectations concern availability and support: 46% want public services to "respond to their requests within the time limits announced and inform them of the progress of their case" and 41% want them

On the one hand, these tools only allow the identification of individual experiences and therefore cannot perceive the structural, collective or even redistributive effects of the action of public services. On the other hand, the users who have the easiest access to these experience-gathering arrangements are obviously those who are most comfortable with digital technology and with the administration in general. They are therefore not sufficient to take stock of all the difficulties that users and non-users may encounter.

In order to contribute to enlightening public action on such difficulties, the Defender of Rights has initiated a dialogue with the Interministerial Department of Public Transformation (DITP) and the Interministerial Department of Digital Affairs (DINUM) on the occasion of the Delegates' Convention organised in autumn 2021. The aim is to share the findings of complainants in the field who have problems accessing public services, particularly digitised services, and who do not have the reflex or the possibility to report it on public platforms.

to "be contactable by telephone or in person, and to facilitate online procedures" (54% for the over-65s).

These aspirations are consistent with the difficulties identified in the complaints addressed to the Defender of Rights and its delegates: for a significant number of procedures, the institution is contacted following the lack of a clear or prompt response from the administration, or the inability to get in contact with an official.

## **PUBLIC SERVANTS IN SEARCH OF MEANING**

At the other end of the relationship between users and public services, public employees, whatever their status (civil servant, contract worker, temporary worker, trainee, etc.) are directly affected by this transformation of the way in which services are provided. In many cases, the digitisation of procedures has been accompanied by a significant reduction in the number of staff responsible for processing files and meeting the public, and by a reorganisation of the work of the remaining staff. This is one of the reasons why this type of transformation is frequently feared by public employees and the trade unions that represent them, who see it as a source of work intensification and a deterioration in the ability to deal with difficulties.

In parallel, other reforms, such as the Act No. 2019-828 on the transformation of the public service of 6 August 2019, are helping to change the framework in which public servants carry out their multiple jobs, including those who remain in direct contact with users or who deal directly with individual files. The increasing use of contractual workers, individual contractors and even civic services in certain sectors of the administration is also bound to transform relations with users. By way of illustration, the National Centre for the Territorial Civil Service indicates, in its "panorama of professions"<sup>4</sup>, that the main hiring difficulties are currently concentrated in "user relations" professions.

In recent years, several initiatives have examined the effect of these transformations on the working conditions of public servants; a survey in which more than 4,000 public servants took part highlighted a "loss of meaning"<sup>5</sup> at work, partly linked to the difficulties encountered in carrying out one's duties. How can we fail to understand that a feeling of absurdity is spreading among civil servants when we observe, for example, that in order to simply access the prefectural counters and apply for a residence permit, in several Departments, foreign nationals are now required to take their case to the administrative court so that it can order the prefect to grant them an appointment?

When dealing with complaints about public services, the Defender of Rights regularly contacts the heads of such services, both at the local and national levels, and its regional delegates are in frequent contact with the staff in charge of the users' files, whose commitment and goodwill are evident. In many cases, whether in social services, government services or other services, the reasons given for the difficulties relate to human resources. Mentioned are services with reduced staffing levels (in the face of a large inflow of cases), with weakened statuses (temporary staff to be replaced regularly, who do not have the time to be properly trained in the complexities of the service), or even user relations missions delegated to external service providers (in call centres, for example), who can only deliver standardised information to users, and not intervene directly in their situation.

Although it is not the task of the Defender of Rights to recommend the organisation of public services, it can only warn of the risk of an irreversible deterioration in the relationship with the user, and therefore also of the risk of lack of access to rights, if the trend towards the closure of counters and the precariousness of agents in contact with users continues.

## **A "CULTURE OF RIGHTS" TO BE REAFFIRMED IN PUBLIC SERVICES**

The "public service" state at the end of the 19th century and the "welfare state" after the Second World War were built on declarations of rights, first and foremost the 1789 Declaration of the Rights of Man and of the Citizen for civil and civic rights, and the preamble to the 1946 Constitution, which proclaims a series of "rights-credits" of a social nature.

To be effective, such rights must be supported by public institutions (or bodies with equivalent functions) that ensure that everyone has access to cash or in-kind benefits and services.

It is therefore "in the name of rights" that the great public services of our country were established. However, it seems to us, as we receive complaints, that many users of public



**FRANCE SERVICES: A NEW FACE FOR  
PUBLIC SERVICE?**

"France Services" is a label awarded by the central government, together with a grant of €30,000 per year, granted to spaces (houses or buses) that meet a set of specifications consisting of a reception and support service, provided by at least two people, for users seeking to carry out procedures relating to nine major institutions (the Post Office, family allowances, health insurance, old-age insurance, mutualité sociale agricole, the employment office, public finances, the Ministry of Justice, the Ministry of the Interior - excluding procedures applicable to foreign nationals).

Since 2020, more than 2,000 spaces have been certified – some new, others pre-existing, for example in the form of public service centres –, notably supported by local authorities or associations. The Defender of Rights recommended, in 2019, the installation of generalist reception points where agents from each of the major administrations would be present. This is not the case with the France Services spaces, where the receptionists assist users with their online procedures without belonging to the major public service networks and without having access to the "business tools" of the various services. At best, they have contact channels (via the "Administration plus" tool) linking them to partner organisations to report difficulties.

During the field visits to various France Services spaces organised by the Defender of Rights and its teams, the receptionists' assessment of the availability of partner organisations was very mixed. The risk is that France Services agents will encounter the same difficulties as users, faced with an administration that has become unreachable...

Furthermore, although the words "French Republic" appear at the entrance to France Services spaces, marking the presence of the central government in the territories, it is important to emphasise that the agents who are in contact with the public in these structures are not necessarily public agents. Some are municipal or departmental employees, but others are hired by the structures that run the France Service spaces with employment statuses that are much more vulnerable than those of the civil service, and who have access to the same interfaces for all procedures as the users themselves.

Clearly, such structures meet the needs of a population weakened by the massive digitisation of administrative procedures and the closure of many public offices. But care must be taken to ensure that the promise of effective access to the public service, i.e., to an official responsible for handling individual cases, is kept for all. This promise will not be fulfilled with the establishment of a mere support service. It is against this objective of real accessibility that the "France Services" programme must be evaluated, in complete independence.

services no longer feel that they have rights, nor that they have the right to claim them.

As mentioned above, the digitisation of procedures places the user in a position of responsibility: it is up to them to adapt, to bring themselves up to the level of information, skills and autonomy that the administration expects of them. Basically, they perceive this obligation to take responsibility for accessing their rights as primary. In order to benefit from specific support, which is necessary for access to the service, the user in difficulty must precisely communicate their difficulties, they must identify themselves as "deficient" in relation to the standard of the ideal user.

In this context, the administration introduces a kind of conditionality for access to rights – digital conditionality<sup>6</sup>, of course, but more broadly conditionality linked to a certain behaviour expected of the user (seeking and accepting a certain type of job, formalising a "personal project", regularly declaring all available resources). This is characteristic of the "contractual" approach, now common to many welfare benefits, underpinned by the idea that assistance to vulnerable people should be "give and take".

The risk we see emerging today is that rights are coming "second" to the user's ability to comply with the technical requirements of the service. This was shown in particular by the sociologist Clara Deville, who was awarded the Defender of Rights thesis prize in 2020 for her work on the difficulties of access to the RSA for vulnerable people in the Libourne region<sup>7</sup>, who are forced by social welfare organisations to use digital technology, despite having to go to an agency, to carry out basic and vital procedures.

Such analyses make it possible to read the phenomenon of "non-use" (which, ten years after an initial study, has recently been established to concern approximately one third of potential recipients of the active solidarity income (RSA)<sup>8</sup>) not only as a lack of information on rights or on the procedures for claiming them, but also as the result of a failed encounter, despite real attempts, between the user and his rights, due, among other things, to the "cost", in all senses of the word, that the procedure to be carried out represented for them.

In addition to such difficulties, in some situations, there is the fear of an audit and sanction, when claiming rights from a public service. Here again, the studies devoted to the interactions between vulnerable audiences and the public institutions whose mission it is to take care of them highlight surveillance practices, linked both to the digitisation of procedures and to the reporting obligations that weigh on recipients of social benefits<sup>9</sup>.

While the automation of certain decisions to open up entitlements (in the area of RSA or back-to-work allowances, for example) can speed up the payment of benefits, the use of artificial intelligence to explore recipients' data to identify the risk of fraud can lead to audits that target certain specific populations and increase situations of non-use<sup>10</sup>.

To sum up, public services, particularly those with a social protection mission, because of the procedures applicable to access them and the procedures they implement to analyse their users' situation, now place a great deal of emphasis on the user's "duties" towards the administration, much more than on the rights to which they are entitled. In the light of history,

## **THE PROMISES OF THE "PROACTIVE" ADMINISTRATION**

In order to combat the phenomenon of non-use, while continuing efforts to "simplify" administrative procedures, several initiatives have been taken in favour of spontaneous notification of eligibility for certain rights by the administration, and even automated access to certain benefits.

Some of these approaches are based on what is known as "outreach": a key word that has become essential in the policies implemented in the name of access to rights and public services, designed in particular as a response to the failures of digitisation, "outreach" covers a wide range of practices, from grassroots approaches carried out by social workers in contact with the vulnerable public, to the identification of certain situations of non-use by cross-checking public data.

In this sense, the Act No. 2022-217 of 21 February 2022 on differentiation, decentralisation, deconcentration and various measures to simplify local public action, has recently extended the possibilities for administrations to exchange data to facilitate access to rights. From now on, Article L. 114-8 of the Code on relations between the public and the administration provides that

"administrations may exchange with each other the information or data strictly necessary to inform persons of their right to a possible benefit or advantage (...) or to allocate to them said benefits or advantages".

Although it is stipulated that "the information (...) thus collected (...) may not subsequently be used for other purposes, in particular for the detection and punishment of fraud", the text does not specify the mechanisms put in place to prevent such data sharing from being used for this purpose. Moreover, it is not planned at this stage that these new provisions will be evaluated in terms of the impact they may have on access to rights for all.

Finally, it is questionable whether automating the calculation and payment of certain benefits will have a lasting effect. On the one hand, automation does not exclude all malfunctions, as the Defender of Rights has been able to observe since the introduction of the energy voucher or the new calculation of housing benefits. On the other hand, it means running the risk of going even further in the erasure of public services, in the loss of their interpersonal dimension, which is nevertheless fundamental in the role that these services play in favour of the social link and the feeling of legitimacy that each and everyone can feel when claiming and asserting their rights.

this is a worrying reversal, as it is a question of the trust we can place in institutions whose main tasks are to implement and enforce people's rights. Of course, access to such rights may be subject by law to certain conditions (length of contribution for retirement pensions, level of income for social assistance, etc.), but such conditions cannot be interpreted in moral terms, or even

extended to considerations of the quality of behaviour expected of the user, without the spirit of the law being profoundly affected.

In the years to come, the Defender of Rights will continue to be vigilant on this issue and to remind people, whenever necessary, of the rights that are the basis of the organisation of our public services.



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## PART 2

# TERRITORIAL PRESENCE: ONE INSTITUTION, HUNDREDS OF FACES

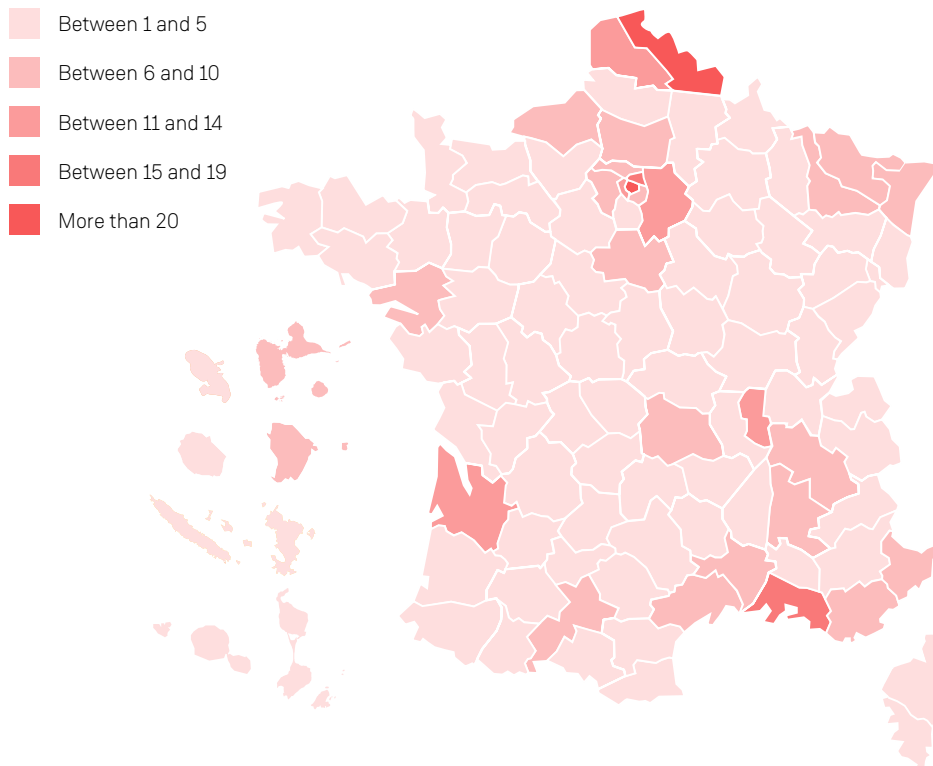
550 volunteer delegates, experienced men and women, have chosen to give their skills, energy and time to the people who contact the Defender of Rights. Their commitment reflects great values of solidarity, humanity and a willingness to put themselves at the service of those who need their help the most. The volunteer delegates bring the institution to life and make it grow by being as close as possible to the concerns of complainants.

In order to guarantee access to rights for all, the volunteer delegates provide a free local service, dedicated to welcoming and listening to all those who encounter difficulties in asserting their rights, particularly those who are isolated, in a vulnerable situation or who are estranged from public services.

They are present in more than 870 reception points in mainland France, in the French overseas territories and for French people abroad. They provide an essential territorial network for handling complaints and are striving to diversify their locations to increase their visibility among young and vulnerable people.

With this in mind, an office dedicated to the fight against discrimination has been opened in Marseille, an office in third-party places managed by Gers Solidaire to welcome the most vulnerable people, and an office dedicated to children's rights at the Maison des adolescents de l'Hérault.

### NUMBER OF DELEGATES PER DEPARTMENT



Throughout the territory, work is under way to approach less institutional locations such as third-party places, social organisations and urban policy districts, via local contacts and associations. The aim is to raise awareness of the Defender of Rights' tasks at the local level and to enable beneficiaries to be referred to the delegates.

The 13 regional heads of units, spread throughout mainland France and the overseas territories, have been in place since 2019 to support the delegates and meet the institution's deconcentration objective. Essential to the territorial organisation of the institution, they play a key role in linking the network of delegates and the staff at head office. They coordinate the processing of cases in line with the institution's guidelines, develop actions to promote equality, publicise and represent the institution in the regions, and provide day-to-day assistance to the delegates. Indeed, the increasing complexity of the complaints handled by the territorial network requires specific legal expertise, which the heads of units are able to provide.

This may involve confirming the admissibility of a referral, examining the possibilities for intervention by the institution according to the nature of the disputes, or issuing an opinion before the case is sent to the head office.

Finally, the heads of regional units contribute to the hiring and training of territorial delegates.

They are responsible for the life of the network (creation and renewal of territorial delegations, location of the offices), and participate in the local development of the platform launched by the Defender of Rights *antidiscriminations.fr*.

They coordinate, in conjunction with the delegate leaders, the collegial work and the meetings with the territorial administrations, local elected representatives, non-profit networks, and civil society.

## **SPECIAL DAY ON FRANCE BLEU STATIONS THROUGHOUT FRANCE**

On the occasion of a "Special Defender of Rights Day" in December 2021, 44 spokespersons of the Defender of Rights (delegates, heads of regional units, assistants to the Defender of Rights) spoke live and simultaneously throughout France on the 44 local France Bleu stations to present the institution, its missions and its territorial network to listeners. Claire Hédon appeared on the national channel to close this special operation.

The aim was to make the institution and its service posture better known, but also to highlight its proximity, through the local roots of the delegates and the situations they deal with on a daily basis.

As a result of these broadcasts, 35.5% of the participating delegates noted an increase in the number of calls to their offices and 25% an increase in the number of appointments at their offices.

### **FOCUS ON...**

#### **THE ACTIVITY OF THE NETWORK IN REUNION AND FRENCH GUIANA**

The situation of the overseas territories requires special attention and a detailed knowledge of local contexts. For this reason, the Defender of Rights has a head of unit and eight delegates for Reunion and Mayotte, and a head of unit and eighteen delegates for the Antilles and French Guiana.

The overseas territories are not a uniform whole. Each department and community has its own specific characteristics, which make the local understanding of the Defender of Rights' tasks unique. The reasons for referral and the difficulties encountered by overseas citizens were equally important in 2021.

758 complaints from Reunion were processed in 2021, and 70% of the cases brought before the Defender of Rights were resolved through amicable settlement.

French Guiana has suffered particularly acutely from the consequences of the health crisis, and has experienced longer periods of lockdowns and restrictions. Nevertheless, activity remained strong with an increase in the number of referrals of around 19%.

In these two territories, the situations dealt with were quite similar.

In the area of relations with public services, the majority of complaints concerned relations with the family allowance fund, the general social security fund and the immigration department of the prefecture. Most complainants faced long delays or no response from the administration. The proportion of referrals concerning failures of public services was much higher in French Guiana than elsewhere: they represented more than 93% of cases. The geographical configuration of French Guiana means that the inhabitants are very far from public services. In addition, the poor quality of the Internet network, the lack of digital equipment and the higher rate of illiteracy make it difficult to use digitised administrative procedures.

In order to remedy these difficulties, regular meetings were organised at the initiative of the regional head of unit between the delegates and the administrations concerned. They have made it possible to appoint representatives of the Defender of Rights in those organisations.

In the area of discrimination, the most frequently cited criteria were disability, health status, age, origin or place of residence.



The referrals concerned public employment, private employment and goods and services in equal measure. There was a marked increase in complaints related to sexual harassment cases, including retaliation against victims for reporting the incident.

Concerning children's rights, the majority of complaints concerned the difficulty of accessing support for pupils with disabilities, situations of school violence suffered by children and refusal of access to the canteen because of an allergy or disability.

In the area of security ethics, the complaints handled locally by the delegate referees mainly concerned the refusal to take a complaint or inappropriate comments.

### PROMOTIONAL ACTIONS

On the island of Reunion, the actions of the Defender of Rights have enjoyed good visibility and the institution is well identified by the stakeholders in the territory. In 2021, although the number of interventions decreased due to the health crisis, some 20 awareness-raising and training activities were carried out by the regional head of unit with a varied audience. For example, company managers, civil servants, private sector employees, social workers and associations were trained on sexual harassment, gender equality, discrimination in employment, disability and reasonable accommodation. In addition, action was taken with prisoners in the context of citizenship courses aimed at raising awareness of the role and competences of the institution.

In French Guiana, the creation of a floating office on board a travelling France Services canoe has made it possible to bring the Defender of Rights' missions directly to the inhabitants. This unprecedented participation was part of a dynamic to strengthen the institutional network on the Guyanese territory, in parallel with other projects such as partnerships with local media.

## THE NATIONAL CONVENTION OF DEFENDER OF RIGHTS' DELEGATES

On 16 and 17 September 2021, the fifth Convention of Defender of Rights delegates was held at the Cité des Sciences et de l'Industrie in Paris. This privileged time of exchange, rich in sharing and conviviality, took on a particular resonance after 18 months of pandemic. Staff members and delegates of the institution had the pleasure of discussing the tasks and challenges facing the Defender of Rights. The event was also an opportunity to celebrate its 10 years of existence in the defence of rights and freedoms.

Round tables and conferences punctuated these two days of work between reflections and avenues of improvement on the subjects at the centre of the delegates' daily concerns, the institution's orientations and

priorities, the issues and challenges to be met in an environment of social, economic, climatic and technological change.

The topics discussed were numerous but equally important: the fight against the non-response of public services, intervention in prisons, young people and their rights, the future of mediation, relations with the Departmental Councils on the defence and promotion of children's rights. More cross-sectoral social issues were also discussed: social ties and subjectivity, territorial inequalities, artificial intelligence, climate change and global imbalances.

## ACCOUNT OF A NEW DELEGATE

"In 2021, I started to think about my *"life after work"*, because retirement was just around the corner. How to stay active and useful?

I had a nice meeting with William, the territorial delegate of the Defender of Rights. He was stepping down and wanted to find a successor whom he could train as well as possible before leaving. He introduced me to the institution and the role of the delegate. I immediately wanted to get involved, I felt that I was going to like this role. I also feared that I didn't have the necessary background, especially legal skills.

I had to redo my CV and apply, which is an exciting exercise after so many years.

I attended five on-call sessions with complainants with William before training at the Paris head office.

The cases were extremely varied: out of 35 referrals, only two dealt with the same subject. I was able to observe the delegate, his way of doing things, of reformulating, summarising and then dealing with each case with precision.

He introduced me to the various local contacts and informed anyone who approached him of the identity and contact details of his successor.

Throughout, I was protected and supported, and I benefited from the special attention of the delegate and the regional head of unit, who enabled me to take up my duties as delegate in the best possible conditions, at the service of complainants."





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## PART 3

# THE IMPACT OF THE INSTITUTION IN ITS RIGHTS PROTECTION AND PROMOTION MISSIONS

The scope of competence of the Defender of Rights is set out in [Organic Act No. 2011-333](#) of 29 March 2011. It is essentially based on five pillars: the protection and promotion of the rights of the child; the fight against discrimination and the promotion of equality; the respect of ethics by the security forces; the respect of the rights of users of public services, and the protection and guidance of whistleblowers.

In order to carry out these missions of protection, promotion of rights and access to rights, hundreds of lawyers and project managers at the Paris head office, the regional head of units, their project managers and the 550 territorial delegates strive to deal with all the individual situations submitted to them. On the basis of this work, the promotion mission enables the widest possible dissemination of knowledge of the law and rights to all, the general public, specific groups, professionals, etc. To this end, the agents and delegates mobilise all the powers conferred by the law, with the aim of restoring people's rights.

The situations dealt with by the institution may fall under several missions. They are consistent with each other, and inseparable, as evidenced by the situations addressed during the state of health emergency.

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## 2021, A NEW YEAR OF HEALTH CRISIS

### 1. NEW REFERRALS ON THE MANAGEMENT OF THE EPIDEMIC

#### REFUSED AID UNDER THE COMMON AGRICULTURAL POLICY (CAP)

In spring 2020, a farmer who no longer had a computer went to the Chamber of Agriculture to make his CAP declaration. Due to the closure of the agency to the public, the staff being locked down due to the Covid-19 epidemic, the person concerned had a telephone conversation with a person in charge of CAP declarations within the Departmental Directorate for the Territories and the Sea (DDTM), who was able to register his declaration by telephone. When he noticed in November 2020 that no payment had been made, he approached the DDTM, which informed him that his declaration could not be validated due to the absence of his electronic signature.

The Defender of Rights, after investigation by its services, considered that the DDTM official should have informed the interested party, either orally when he was contacted to draw up the declaration, or by letter, within the legal time limits for validation provided for by Community regulations. The complainant was penalised by being required to apply for CAP aid online when he should have been able to benefit from an alternative by post, which would have avoided any dispute with the administration.

After the intervention of the Defender of Rights with the Minister of Agriculture, it was decided to pay the farmer concerned, by way of a settlement, an amount equivalent to the

CAP aid that he should have received for the 2020 campaign. The Defender of Rights took note of this by [decision 2022-017](#).

#### KEY POINT OF CHILDREN'S RIGHTS: SCHOOLING CONDITIONS

Without expressing an opinion on the validity of health policies, the Defender of Rights' staff noted in 2021, through the investigation of complaints, the persistent and particularly worrying effects on children of a long-term health crisis. The Defender of Rights devoted a section to this in her [annual report](#) on "Children's mental health: the right to well-being", and has repeatedly called on public authorities to be more vigilant with regard to the rights of children in general. In particular, she stressed the absolute need to always put their best interests above all other considerations and expressed her concern whenever that did not appear to be the case.

The difficulties raised in the referrals were numerous: the wearing of masks at school, the lack of educational continuity in the event of temporary suspension from school due to a Covid-19 contact, the limitation of the right of access to leisure activities (sport, music), the infringement of the right to health and the right of expression of children entrusted to child protection regarding the modalities of their vaccination, or the severing of links between the child and their incarcerated parent, etc.

The Defender of Rights' staff also endeavoured, as far as possible, to establish a dialogue with professionals in the field, in order to restore children's rights and find an amicable solution to the difficulties raised.

This is the case, for example, of a school's refusal to allow a child not to wear a mask, despite medical certificates, including one drawn up by the doctor in charge of the school board, attesting that she could not wear it all the time (particularly because of a lesion in her mouth), and even though the legislation allowed for medically justified exceptions. Following the intervention of the institution's agents with the head of the school and the technical advisor for school medicine of the school board, the school agreed to the implementation of a new protocol for this student, authorising the wearing of a visor in February 2021.

### **POLICE CHECKS DURING LOCKDOWN**

A complainant from Senegal was placed in quarantine for 10 days upon arrival in France. During this period of strict lockdown, she was checked 3 times by the police.

Before the end of this period, the services of the primary health insurance fund (CPAM) contacted her to inform her that as she was coming from a "safe" country, a mistake had been made. The duration of the quarantine in this case was limited to 7 days. However, the police came back to check her for a 4<sup>th</sup> time on the 10<sup>th</sup> day. At the time of the check, she was not in her room, and tried to explain to the officers the CPAM's instructions. Nevertheless, she was fined €1,000 for not complying with the quarantine.

An engineering student, not on a scholarship, funded by family support, she could not afford to pay the fine. She contacted the delegate of the Defender of Rights, who referred the matter to the public prosecutor (OMP) in order to explain the situation.

Within a month of the referral, the public prosecutor wrote directly to the complainant to inform her that he was closing the case on her fixed-rate fine.

### **THE SHORTCOMINGS OF THE VACCINE PASS**

The Defender of Rights was informed of several difficulties related to the implementation of the vaccine pass by the health insurance. Given the rights attached to the presentation of the pass, those difficulties were highly detrimental to users.

For example, one insured person was mistakenly given another user's pass on her ameli.fr account, while another found that the document contained the wrong first name, putting her in a difficult situation when travelling abroad and presenting her identity papers. Computer glitches were also observed, resulting in the failure to record the correct vaccination status of the insured. One of them had received three doses of the vaccine, had a valid health pass, but appeared as "unvaccinated" on the digital tool for health professionals. Faced with this anomaly, the nurse who administered the third dose could not validate the patient's vaccination status, which was necessary for updating the pass.

In these different situations, the mediation carried out by the services of the Defender of Rights with the national health insurance fund or the primary health insurance funds made it possible to find a rapid solution to the disputes by sorting out the situation of the users. The effectiveness of the institution's action when it is petitioned should not obscure the significant infringements of rights suffered by those who have not been able to benefit from it.

### **THE VACCINATION OBLIGATION**

Many health facilities have suspended staff for non-compliance with the vaccination requirement even though they were out on sick leave. After receiving several dozen complaints, the Defender of Rights issued Framework Decision No. 2021-291 on 15 November, concluding that this practice constituted discrimination based on health status. In Decision No. 458353 of 2 March 2022, the Council of State also considered

that the suspension measure could "only come into effect from the date on which the sick leave of the agent in question ends", confirming the analysis of the Defender of Rights.

## 2. COMPLAINTS THAT HAVE LED THE DEFENDER OF RIGHTS TO ISSUE OPINIONS TO PARLIAMENT

The referrals received since the beginning of the health crisis have testified to the diversity of the concrete difficulties faced by individuals or professionals in the face of the multiplication of restrictions on freedoms and, in particular, in the face of the rollout of the health pass and then vaccination pass.

From the very beginning of the health crisis, the Defender of Rights recognised that the exceptional crisis situation related to the Covid-19 pandemic required exceptional measures. Nevertheless, she has consistently called on the authorities to ensure that, in this context, measures that may infringe on the rights and freedoms of individuals - in particular the freedom of movement - must be clear, intelligible, strictly necessary, proportionate and appropriate to the health risks involved, and appropriate to the circumstances of time and place. They should also be surrounded by sufficient safeguards to ensure that individuals are protected against the risk of abuse and arbitrary application.

It must be noted that the measures taken, the right balance of which was difficult to identify, were not always drawn up in consultation with the competent public authorities and within a reasonable timeframe allowing for in-depth discussions. Note the frequent and worrying reference to regulatory power or even to flexible law ("frequently asked questions" on ministry websites) on fundamental and structural issues, whereas parliamentary intervention is a requirement of the rule of law, the principle of the balance of institutional powers and democratic oversight.

The intermediate measure that succeeded the state of health emergency with Act No. 2021-689 of 31 May 2021 did not really put an end to this state of health emergency which, since 2020, has already been declared and extended several times. This transitional regime is still applicable until 31 July 2022.

In her Opinion to Parliament No. 21-06, the Defender of Rights regretted that such an important provision as the one providing for the implementation of the "health pass" was presented by the Government in the form of an amendment in the National Assembly during the discussion in the Law Commission. This procedure did not provide the information and guarantees on form and substance that an impact study and an opinion from the Council of State would have provided.

In its three opinions to Parliament (No. 21-06, No. 21-11 and No. 22-01), the Defender of Rights questioned the proportionality of most of the provisions proposed in the successive bills in the year 2021 on the management of the health crisis.

With the Act of 31 May 2021, the individual measures of quarantine and isolation that were taken constituted a strong infringement of personal freedom and the right to respect for privacy and family life. In order to safeguard the rights and freedoms of the persons concerned and not to leave too much discretion to the administration, the Defender of Rights requested that criteria be established for assessing the suitability of the accommodation that would meet the health requirements, to take into account the personal situation of the person and to find, if necessary, a solution that would make it possible to reconcile their private and family life with the objectives of public health protection.

Only a few months later, Act No. 2021-1040 of 5 August 2021 reinforced the restrictions on access to public transport and many goods and services for unvaccinated people, many of whom were people in vulnerable situations with difficult access to vaccination and whose rights were then considerably reduced.

These restrictions on freedoms, which are also imposed on minors, without the proportionality of the measures taken to the risks incurred being clearly established, led the Defender of Rights to call on the public authorities on several occasions to take better account of the specific situation of minors and their best interests. The lockdowns, the constant wearing of masks, including outdoors, the limited social interaction, the difficulty of learning, the imposition of the health pass for adolescents aged 12 to 18 years old for access to leisure and culture have undermined the proper development of children, their rights to education and to a normal private and family life, and in a significant number of cases, their health. The Defender of Rights, responsible for upholding children's rights, has called for a comprehensive review of the impact on children's rights of all measures taken since the beginning of the crisis.

The Defender of Rights paid particular attention to the situation of the most vulnerable children, taken in and monitored by child welfare or judicial and youth protection services, in group homes or in foster families, as well as children whose parents were in conflict and for whom the issue of vaccination may have posed particular difficulties, especially conflicts of loyalty that are particularly difficult to manage for adolescents.

More generally, the Defender of Rights has warned of the risks inherent in the introduction of procedures for the generalised control of people's situation with regard to Covid-19 and therefore potentially their identity, which are now devolved to private persons.

All these concerns were largely confirmed by the introduction of the vaccine pass at the very beginning of 2022.

The risk that exceptional measures would become permanent has proved to be true. They have been extended over time and progressively strengthened, becoming particularly restrictive measures with, in particular, the substitution of a vaccine pass for the health pass for many activities of daily life: leisure activities, restaurants and pubs, fairs, seminars and trade shows or interregional transport.

The fears expressed by the Defender of Rights over the course of 2021 have been confirmed. While recognising the importance of vaccination in the fight against the pandemic, the Defender of Rights deplored the progressive erosion of our freedoms and the cohesion of society. At the same time, social inequalities and vulnerability have only increased.

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## **AN INSTITUTION DEDICATED TO THE RIGHTS OF EVERY CHILD**

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**ERIC DELEMAR**  
**DEPUTY DEFENDER OF RIGHTS,  
CHILDREN'S DEFENDER**

Children lived through the whole of 2021 under the sign of the Covid-19 pandemic, and now more than two school years punctuated by the various protocols, social distancing, in a particularly anxiety-provoking climate. Together with the Defender of Rights, we have been regularly informed of the consequences of this crisis for children: learning difficulties, attention problems for primary school children, isolation, depressive problems for many adolescents whose development is hindered at a time when they are building their identity, which requires social interaction, otherness, access to leisure and culture.

In our annual children's report entitled, "Children's Mental Health: The Right to Well-Being", presented in November, we showed that the failure to address mental health problems and the resulting lack of rights are a barrier to children's development and best interests that two years of Covid-19 helped to aggravate.

In my travels throughout the country, my meetings and exchanges with children, I can see, each time, their desire to be connected, their desire to understand the society in which they live and grow up. When you take the time to listen to them, children express themselves with strength and authenticity.

The major consultation organised by the Defender of Rights brought together more than 600 children who, through their exchanges, debates and productions, participated in the reflections that concern them most. In this period of pandemic, the institution, with the strength of its extensive network and diverse field of action, has been able to integrate the interests of the child into its modes of operation, its organisations and its decision-making processes.

Through our referrals, we have also noted unbearable violations of the rights of the most vulnerable children: children with disabilities, children entrusted to the child welfare system, but also all those children living in very vulnerable situations, in deplorable housing conditions, which we are well aware of, and which are a long way from other highly sectorised rights such as the right to health or education.

Throughout the year, the Defender of Rights has issued opinions to Parliament on the importance of protecting children from the consequences of the health crisis and the need for proportionate decisions. We were pleased to note the decision of the Constitutional Council to prohibit school headmasters from having access to the vaccination status of children through the CPAM or the school doctor.

The voice of children is still considered by too many institutions and adults as secondary or negligible, whereas it is well known that whenever their expression is sought, and their voice is listened to, children are better protected, particularly against all forms of violence.

At the hearings of the Independent Commission on Sexual Abuse in the Church (ICSAE), parliamentarians, and during the Conferences on Justice, the Defender of Rights and myself have each time indicated that the liberation of the word of adult victims was a great step forward, and that from now on it should no longer be only former children who can express themselves, and that children are currently being subjected to ill-treatment and violence that our society can no longer accept. Welcoming and collecting the word of child victims must be a priority.

It is up to us to defend the rights of children, so that they become subjects of law and no longer objects of rights, as required by their best interests as defined and protected by the International Convention on the Rights of the Child.

This is the task that I work on every day with the entire institution of the Defender of Rights.

**Éric Delemar**

## 1. THE ANNUAL REPORT ON THE RIGHTS OF THE CHILD - CHILDREN'S MENTAL HEALTH

On the occasion of 20 November 2021, the World Children's Day, the Defender of Rights and her deputy, the Children's Defender, published their annual report on the rights of the child: "Children's mental health: the right to well-being".

The institution called for the decisive importance of good mental health for children to be fully appreciated and for a broad approach to mental health to be adopted, in line with the World Health Organisation, in relation to physical health and the environment in which the child lives, such as the family and school environment, emotional relationships, living conditions, social networks, etc.

The many referrals handled by the institution repeatedly stress the lack of care professionals and suitable structures, but also the difficulty for professionals to take a comprehensive approach to a child's situation. These difficulties are particularly acute for the most vulnerable minors: minors with disabilities, victimised minors, unaccompanied minors, minors in vulnerable families, etc.

The Defender of Rights and the Children's Defender asked the Government to consider children's mental health as a public policy priority and formulated 29 recommendations to the public authorities in which they particularly emphasised the urgent need to develop early childcare facilities, support for parenthood, the resources granted to the maternal and child welfare service (PMI) network in the country, and training in rights against school bullying.

### BREAKDOWN BY TYPE OF COMPLAINT

• Early childhood education - Extracurricular schooling	28.3%
• Child Protection	27.5%
• Health - Disability	18.5%
• Relations - Family justice	13.4%
• Foreign minors	8.3%
• Criminal justice	3.2%
• Adoption and reception of the child	0.8%

### BREAKDOWN BY AGE OF CHILDREN

• 0 - 6 years	23.8%
• 7 - 10 years	23.9%
• 11 - 15 years	29.5%
• 16 - 18 years	22.8%

### BREAKDOWN OF COMPLAINTS BY COMPLAINANT

• Mother	35%
• Father	15.5%
• Non-profits	14%
• Parents	8.8%
• Children	4.8%
• Socio-medical services	2.2%
• Grandparents	2%
• Other	17.7%

The privileged position of the staff and delegates of the territorial network of the Defender of Rights enables them to convey the institution's message more directly to children, who are a special audience. The actions and interventions at the local level make young people aware of their rights and the missions of the Defender of Rights, while involving them in participatory activities.

The day after its publication, the report was presented in Montpellier by the Defender of Rights at a colloquium attended by the Hérault teen centre, the Director of Education, the Town Hall, the psychiatric centre of the university hospital, the regional health agency and the Directorate for Judicial Youth Protection. More than 200 people were present.

In the Grand Est region, the Children and Youth Rights Centre (Maison des droits de l'enfant et des jeunes - MDEJ) in Metz was inaugurated on 26 November in the presence of Éric Delemar. The MDEJ offers children, young people, the adults who accompany them and professionals working with children the opportunity to benefit from local information on their rights and obligations, referral to qualified professionals and organisations and a wealth of legal documentation. It is based in particular on the Defender of Rights' Educadroit programme, the aim of which is to make available interactive educational resources and courses, which enable young people to start a process of questioning and reflection.

This children's rights centre is also the place to discuss cross-border issues, and particularly the difficulties that children and their families may encounter when attending school or receiving social or medico-social support in another country while the family is resident in Moselle. During this inauguration, the French, Luxembourg, Belgian and Rhineland-Palatinate children's defenders signed a declaration of intent which aims to better inform families and train professionals to better respond to these cross-border realities.



## 2. TO TAKE INTO ACCOUNT THE SPECIFIC NEEDS OF EACH CHILD DURING THEIR EDUCATION

Referrals relating to the rights of the child reveal that the needs of the child are not systematically assessed on an individual basis in order to provide the most appropriate response and support for the minor. Caught up in their often busy daily lives, professionals and administrations are not always able to put the best interests of the child above all other considerations in their practices.

### THE NEED TO CONSIDER THE CHILD'S WORD IN DIFFICULTIES WITH THE TEACHER

The Defender of Rights was contacted by the parents of several pupils about disturbing comments and behaviour by one teacher.

In decision No. 2021-053, the Defender of Rights concluded that the management of the events by the services of the education authority and the school headmaster had violated the best interests of the children concerned and their right to be heard, and she recommended that the academic director of the national education services take the children's word into account in order to better understand the overall situation, their well-being and the school climate in which they live on a daily basis.

She recommended that children's words should be listened to in a caring and attentive way, offering if necessary to hear them or to have them heard by a qualified professional in a neutral listening place and in a way that is adapted to their age and development.

The Defender of Rights also recommended that a meeting with parents be organised as soon as possible, so that their children and families can be heard and the principle of violence-free education in schools can be reaffirmed in a constructive, peaceful dialogue.



The school administration replied to the Defender of Rights that it had proposed to parents and children who so wished that a psychologist, whose competence with children is recognised, could hear them in a caring and attentive setting outside the school premises. A meeting with the parents was also proposed with a view to renewing a constructive, peaceful dialogue. Finally, the school management told the Defender of Rights that the school headmaster would be supported by a professional from the education authority to help them better understand tense situations.

### **THE DELETERIOUS EFFECTS OF SEPARATING TWINS AT SCHOOL WITHOUT PRIOR ASSESSMENT**

The Defender of Rights received a complaint from parents regarding the separation of their twin daughters, who were assigned to separate classes at the beginning of their school year in the middle section. In particular, the parents denounced the school's systematic practice of separating the twins at the start of the school year in the middle section, without any support for the families and children concerned, as well as the school's management of the problems their daughters had developed following their separation (anxiety, bedwetting, nightmares), which were attested to and supported by the psychologist in charge of monitoring the children.

In decision No. 2021-008 adopted after the opinion of the college for the defence and promotion of children's rights, the Defender of Rights concluded that by considering, as a matter of principle, that keeping the twins in two separate classes was the most appropriate response, without demonstrating the carrying out and efficiency of an individual and concrete assessment of the situation and needs of each of them, and without having heard the children's views, the director of the nursery school had infringed their rights and their best interests.

The Defender of Rights recommended that the Government ensure that in all decisions that may affect children and influence their schooling and behaviour, the best interests of each child be made a primary consideration, including:

- By systematically analysing their individual needs in advance, in consultation with parents and professionals;
- By assessing the overall impact of this decision;
- By periodically reviewing it in the light of the changing needs of the children;
- By taking into consideration verbal and non-verbal elements according to their degree of psychological maturity at the time the decision is made.

In response to these recommendations, the director of the nursery school, accompanied by the departmental services of the National Education Ministry, indicated that the twins had been brought together in the same class in the large section and that in future she would ensure that decisions that could affect the children and influence their schooling and behaviour would be analysed beforehand in consultation with their parents and the professionals who work with them, without any pre-established rules. The decision of the Defender of Rights was circulated to her departments by the Minister of National Education, Youth and Sports for wide dissemination in the field.

## **PERSISTENT DISCRIMINATION IN EXAMS FOR "DYS" CHILDREN**

The staff of the Defender of Rights continued to observe frequent refusals by the authorities responsible for organising examinations to grant accommodations and adaptations consistent with the needs of the student with a disability. Despite recent regulatory changes (Decree No. 2020-1523) intended to regulate such discriminatory practices, difficulties persist. The Defender of Rights made comments (decision No. 2021-167) on the occasion of a petition for interim relief filed with the administrative court by parents against the partial refusal by the director of the examination service to adjust the conditions for the national diploma examination (DNB) for their child with a disability.

The Defender of Rights argued that refusing this child certain school arrangements for the DNB exam, even though they were consistent with those he had benefited from during his schooling, was tantamount to gutting the fundamental freedom of the right to schooling and an adapted school education in the light of the constitutional requirement to protect the best interests of the child, and France's international commitments. This refusal did not meet the child's needs and discriminated against the right of the disabled child to reasonable accommodation in schooling, which is necessary to re-establish equal treatment with other children. By simply referring to the opinion of the doctor of the Commission for the Rights and Autonomy of Disabled Persons (CDAPH), without giving reasons, this refusal did not comply with the terms of the legislation in force.

In a reasoned order dated 3 June 2021, the administrative court, considering that the urgency condition was met in view of the imminent holding of the brevet exams and recalling the legal foundations of equal access to education for children with disabilities, considered that the only accommodation granted to the child was not sufficient in this case to compensate for his disability. The administrative court therefore instructed the director of the examination service to grant the child a third time, the cloze dictation

and the exemption from the evaluation of the presentation on the scientific subjects.

When a similar situation was subsequently referred to them, the lawyers of the Defender of Rights in charge of investigating the case used this precedent to obtain from the examination service a sympathetic re-examination of the situation of a young girl, who has dyslexia and dysgraphia, and the granting of the requested accommodations in view of the national diploma exams (RA-2021-023).

## **SUPPORT FOR A DISABLED CHILD AT SCHOOL**

The Defender of Rights was contacted by the mother of a boy in the fourth grade with a disability who, despite a decision by the Departmental Council to provide 18 hours of support at school, received only 6 hours of support per week at the beginning of the school year.

The delegate of the Defender of Rights contacted the Directorate of National Education Departmental Services (DSDEN) to explain the situation. It was agreed that this was not suitable for the child's needs in relation to his disability. The DSDEN therefore made a specific hiring in order to ensure the child's 18 hours of weekly support.

## **BARRIERS TO CHILD REARING**

At a hearing held by a member of parliament on a mission, the Defender of Rights presented one of the inventories of the obstacles that still exist for effective access to the right to schooling for all children based on French territory. Large numbers of children still face unlawful denial of schooling on one or more discriminatory grounds.

The criteria of residence, origin and/or particular vulnerability resulting from their economic situation are frequent barriers to access to education for many children: children living in hotels or social accommodation, in emergency centres for asylum seekers, Traveller or Roma children living in camps and shanty towns, and unaccompanied minors.

Disability also still hinders many children's access to school. The Defender of Rights constantly recalls the obligation to ensure continued access to education in ordinary schools, with the presence of appropriate human assistance, or the support of the Departmental Homes for Disabled Persons (MDPH) in establishing and monitoring the implementation of comprehensive support plans.

Lastly, children facing multiple disruptions in their lives are all too often left out of school, whether they are minors in conflict with the law and in the care of the judicial youth protection service or children entrusted to the child welfare services. The situation in overseas France is particularly worrying and the health crisis, as elsewhere in the country, has only served to reinforce the difficulties of access to education for children.

#### **STUDY ON THE RIGHT TO EDUCATION IN FRENCH GUIANA**

The Defender of Rights, in partnership with UNICEF, supported a study on access to and quality of schooling in French Guiana, entitled "French Guiana, the challenges of the right to education (Guyane, les défis du droit à l'éducation)", carried out by researchers from the association Migr'En Soi and published in July 2021. As a result, access to schooling is characterised by the inadequacy of the territorial network of school infrastructure and a lack of adequacy between the location of schools and the places where the need for schooling is significant and growing. In addition, a certain number of practices (illegal demands for administrative documents, refused access to the counter, refusal of schooling without any other alternative, non-access to essential services related to education, etc.), lead to absenteeism, dropping out of school and a phenomenon of high dropout rates after year 10.

On the quality of the school, the study notes a structural lack of permanent teachers, leading to the massive use of untrained contract teachers, often confronted for the first time with classes where the pupils' mother tongue is not French. The publication of the study enabled the Defender of Rights

to reaffirm the need to ensure effective implementation of compulsory education, especially for children living in isolated and remote areas.

She also reaffirmed the need to ensure access to a daily meal as well as school transport for all pupils, and recommended the establishment of an action plan for access to school for children in isolated towns.

#### **INEQUALITIES IN ACCESS TO THE SCHOOL CANTEEN**

The complainant is the mother of a 3 year old child who has a form of disability characterised by hyperactivity and language delay. Although the Commission for the Rights and Autonomy of Disabled Persons (CDAPH) had indicated that the child should benefit from the assistance of a Counsellors for Students with Disabilities (AESH), including during meal times, the child's school excluded him from the school canteen from the first days of the new school year, as no such Counsellor had been found in time. The town hall services indicated that no agent wished to accompany the child during the lunch break, on the pretext that he would not eat the food offered.

At the request of the complainant, a meeting was held showing the child's progress and integration despite the disability. However, the mother was again refused admission to the canteen.

The delegate of the Defender of Rights initiated an amicable settlement with the town hall, stating that, if the facts were proven, the decision to deny a disabled child the right to access school meals would be discriminatory.

In response, the municipality intensified the search, which was eventually successful. An AESH Counsellor was recruited to accompany the complainant's son outside and during meals.

### 3. RAISING CHILDREN'S AWARENESS OF DIGITAL RIGHTS AND ISSUES

#### SCHOOL BULLYING AND CYBERBULLYING

At the hearing of the Senate's information mission on school bullying and cyberbullying the Defender of Rights showed that, despite the law establishing the right to bullying-free schooling in 2019, the referrals she continues to receive reveal the persistence of this problem throughout the country.

The referrals received by the institution highlight the difficulties encountered in implementing ministerial instructions and tools in the field, particularly the anti-bullying protocol. Despite the increasing number of tools developed at national level to prevent or combat bullying in schools and made available to them, some schools and supervisory authorities are still not making sufficient use of them.

This issue was raised locally through the territorial network in Mayenne, where the children's rights delegate spoke at a conference on school bullying organised by the Departmental Union of Family Associations (UDAF). The conference took place in the presence of national education staff, representatives of the city of Laval, parents, a therapist, and several school bullying advisers.

#### THE EDUCADROIT PROGRAMME

As every year, the annual activity report shows the richness of the activities of the Educadroit programme in favour of raising awareness of children and young people about law and their rights. 50 loans from the "Draw me the law" exhibition were used to promote children's rights in schools, extracurricular activities or during *ad-hoc* events. 25 awareness-raising sessions on the programme were also organised for some 380 professionals.

The programme has expanded throughout the country. In Nouvelle-Aquitaine, for example, a workshop was led by the head of the regional branch of the Defender of Rights for a class of fifth graders at the Apprentis d'Auteuil, based on the videos "What is the law?" and "Under 18s, what rights?" .

Following the publication at the end of 2020 of the eleventh key point of the Educadroit programme, entitled "Digital world: what rights?", the Defender of Rights has joined forces with the French Data Protection Authority (CNIL), the CSA and the Hadopi (which became the Audiovisual and Digital Communication Regulatory Authority on 1 January 2022) to create an educational kit, which brings together all the resources designed by these institutions for the education of digital citizens. "You can learn to be digitally responsible!" The "Digital life" section explores each of the major themes of digital life, such as rights on the Internet, protection of privacy online, respect for creation and the reasoned and civic use of screens.

Some resources are aimed directly at parents, to help them help their children understand the challenges of digital citizenship, while others are more specifically dedicated to learning professionals (teachers, educators, educational staff, etc.).

Posted on 18 January 2021 on the websites of the four independent administrative authorities mentioned above, the teaching kit is accompanied by a video animation as well as a presentation video of the tool by the chairs of the four authorities. It was widely

## PROMOTING CHILDREN'S RIGHTS AT THE LOCAL LEVEL

The regional units are mobilised throughout the year to promote children's rights.

For example, on the occasion of the Night of the Law, which was held on 4 October 2021 throughout France, the intermunicipal structure of Seine-Saint-Denis organised

a screening-debate for young people in the area, in partnership with the Departmental Council for access to the law and Écran Nomade. The delegate of the Defender of Rights, invited to participate in the debate, presented the institution, its missions of defence and promotion of children's rights as well as useful resources.

disseminated and a presentation conference was held at the Educatec-Educative educational innovation fair in Paris from 24 to 26 November 2021.

## YOUNG RIGHTS AMBASSADORS

Despite the health situation, the Young Rights Ambassadors (JADE) programme, the only civic service scheme dedicated to raising awareness of rights by and for young people, has once again this year raised awareness of the rights of nearly 50,000 children in mainland France and in the overseas territories. This civic service scheme, which welcomed its 15<sup>th</sup> class of 98 young volunteers in 2021, continues to contribute to the development of knowledge and understanding of children's rights and the fight against discrimination with fun and participatory activities for children and young people. Knowing one's rights is essential to assert them.

This is why the JADE Young Rights Ambassadors, trained by the services of the Defender of Rights and its partners, intervene with children and young people, whether in schools, extracurricular activities, or through so-called specialised interventions with hospitalised children, children with disabilities, children growing up under the protection of child welfare or placed under the judicial protection of young people, or unaccompanied minors, with a view to making their rights more effective.

## TERRITORIAL PRESENCE OF JADE YOUNG RIGHTS AMBASSADORS IN 2020-2021

**100** JADE Young Rights Ambassadors, **23** departments, **2** metropolitan areas

**PARIS METRO REGION (974)** **24** JADE: 16 children, 8 equality

**LA RÉUNION (974)** **12** JADE: 8 children, 4 equality

**MAYOTTE (976)** **6** JADE: 4 children, 2 equality

**ISÈRE (38)** **6** JADE child

**GRENOBLE METROPOLIS (38)** **4** JADE equality

**METROPOLIS LYON (69)** **4** JADE child

**RHÔNE (69)** **4** JADE children

**SEINE-MARITIME (76)** **4** JADE child

**LA MAYENNE (53)** **4** JADE equality

**LOIRE-ATLANTIQUE (44)** **4** JADE equality

**MAINE-ET-LOIRE (49)** **4** JADE equality

**HAUTE-GARONNE (31)** **4** JADE equality

**LOIRE (42)** **4** JADE child

**GARD (30)** **4** JADE equality

**CÔTE-D'OR (21)** **4** JADE child

**BAS-RHIN (67)** **4** JADE child

**GUADELOUPE (971)** **2** JADE child/equality

On Reunion Island, 10 JADE Young Rights Ambassadors started their mission in November 2021, for 9 months in the 4 zones of the island. During the school year, 5,848 children and young people were made aware of the issue in 39 schools and at two events for the general public. Interventions on discrimination involved 2,500 children. In French Guiana, the president of the Departmental Council has agreed to fund the programme. Its effective implementation throughout French Guiana is an important issue.

Claire Hédon took part in an intervention with JADE Young Rights Ambassadors in a secondary school in Yvelines in May 2021. Together with Coraline and Leïla, she presented the institution and made the young people aware of discrimination and the legal means available to them.

### **GENDER EQUALITY IN SCHOOLS**

The complainants' son attends secondary school in a private learning institution under contract. He showed up one morning with a pierced ear. The supervisor prohibited him from entering the school and sent him home. The parents, shocked that their son was left on the street, went to the school for a meeting with the headmaster.

During the meeting, they were told that the school life contract they signed forbade boys from wearing jewellery in their ears. The headmaster said he would only tolerate the student if he covered his piercings with plasters, stating that "wearing this type of ornament was a clear expression of sexual orientation". The solution did not suit either the young man or his parents, who found the terms of the rule discriminatory.

In the days that followed, the child was strongly affected by the event and struggled to return to school. The parents then referred the matter to the delegate of the Defender of Rights.

The delegate requested a second meeting with the school principal. Despite initial tensions, it was finally accepted that the school life contract contained rules that were sexist. The various references to different treatment of girls' and boys' clothing were finally removed.



In response, the municipality intensified the search, which was eventually successful. An AESH Counsellor was recruited to accompany the complainant's son outside and during meals.

## 4. PROTECTING THE MOST VULNERABLE CHILDREN

### THE RECEPTION OF CHILDREN IN PSYCHIATRIC WARDS

As a result of tensions on child psychiatry hospitalization services, or the lack of supply in certain territories, children find themselves hospitalized in general adult psychiatric wards. These referrals expose minors to poor care, as general psychiatry teams are not always trained in child psychiatry. Above all, they are threats to their safety, with risks inherent in the presence of adult patients.

The Defender of Rights was informed of the situation of a 13-year-old girl hospitalised in a psychiatric ward for children and adults. The girl's mother reported the sexual assault of her daughter by an adult patient on the ward.

After the investigation by her office, the Defender of Rights concluded that there were failures in the public service which resulted in serious violations of the rights of the child and the rights of the user of the public service, both by the health care institution and by the health care authorities at the regional and national level. The Defender of Rights issued a decision in which she made several recommendations (decision No. 2020-008).

She recommended that the health care institution organise the care of adolescents hospitalised in a child psychiatric ward in such a way as to respect the best interests of the child and their right to be protected from all forms of violence. She recommended that the regional health agency (ARS) require systematic feedback on any hospitalisation of a child in an adult psychiatric ward, especially for children under 16 years old.

As a derogation, with regard to common law medical services, and due to the high risk of infringement of the rights of the child,

the Defender of Rights recommended that the Minister of Solidarity and Health include a legislative provision to the effect that a child under 18 years of age may not be admitted to an adult psychiatric unit; and in the event of exceptional psychiatric treatment of children in an adult unit, to ensure that this is medically justified and that appropriate arrangements are put in place to guarantee the child's right to protection and safety. The Defender of Rights recommended that the Minister strengthen the provision of child psychiatric care throughout the country.

### OPINIONS TO PARLIAMENT ON CHILD PROTECTION

The Defender of Rights has twice expressed her opinion on the Child Protection Bill during the parliamentary debates (opinions No. 21-08 and No. 21-15).

The situations referred to the institution show that the difficulties encountered in child protection lie less in the gaps in the law than in its application in the field by the various actors. While emphasising the progress made in this text on certain points - on maternal and child protection (PMI), on the safety of children entrusted to the care of institutions with better control of the personnel involved and harmonisation of the evaluation of worrying information, or on the strengthening of the status of family assistants, for example - the Defender of Rights regretted that it does not meet the needs of child protection, nor the expectations of the field and the ambitions expressed at the launch of the national strategy for child protection.

Generally speaking, there is still a great need for greater consultation and better coordination of child protection actors from different professional fields: education, medical, social and medico-social. It remains difficult to see how the governance reform envisaged by the bill will provide operational solutions in this respect.

The Defender of Rights was particularly concerned about several provisions of the bill. While she welcomes the principle of prohibiting the accommodation of minors in hotel or leisure facilities, she is concerned about the exceptions provided for in the same text.



Her recommendation remained the total prohibition of hotel placement for all children, or in any other structure that does not fall under the guarantees provided by the Code of Social Action and Families (CASF), including in the context of temporary emergency reception.

Concerning the specific provisions for unaccompanied minors (UAMs), the Defender of Rights noted the inconsistency of inserting into a bill that claims to protect children, provisions that deal more with migration control than with the necessary improvement of their protection.

The provisions of the bill were not intended to discriminate between the different audiences of child welfare (ASE). Setting unaccompanied minors against other at-risk children would constitute a profound infringement of the principle of universality of children's rights and non-discrimination, as set out in the CRC.

Concerning, for example, the extension of protection measures for children placed in care during their minority until they are 21 years old, the exclusion from support measures for young adults of all young adults aged 18 to 21 years who were not in the care of child welfare during their minority, as is the case for unaccompanied minors, was not acceptable.

## **SUPPORT FOR UNACCOMPANIED MINORS**

The complainant is an unaccompanied minor of Ivorian origin. He was taken into care by child welfare (ASE) at the age of 16, and trained as a coachbuilder, which he passed. Fulfilling all the conditions for obtaining a residence permit under the exceptional admission to residence for young adults, he submitted an application when he turned 18.

In response, he twice received expired residence permits, due to administrative failures on the part of the prefecture, which resulted, despite the validity of his application, in his being placed in unlawful immigrant status, and in the loss of his vocational training contract for lack of a receipt.

The delegate contacted the prefecture to explain the seriousness of the situation. The next day, the administrative services notified the delegate that the case had been dealt with urgently and that a valid residence permit had been fast-tracked. The documents were then quickly sent to the complainant and his employer, sorting out his situation.

## **REPATRIATION OF FRENCH CHILDREN FROM SYRIAN CAMPS, AN OBLIGATION OF THE CENTRAL GOVERNMENT, ACCORDING TO THE COMMITTEE ON THE RIGHTS OF THE CHILD**

The Defender of Rights intervened before the UN Committee on the Rights of the Child as a third-party intervener in the proceedings and as an independent national monitoring mechanism for the implementation of the CRC. In 2021, she sent comments in which she noted the multiple violations of the rights of French children held in the camps of Roj, Ain Issa and Hol, in Rojava, Syria, and the positive obligation of the French central government to protect them, by organising their return to France and their care by the competent services. These comments were a continuation of the decision and recommendations the Defender of Rights adopted in 2019, which remained without effect, and its third-party intervention in 2020 at the European Court of Human Rights, which is also petitioned.

Petitioned with three communications, the UN Committee on the Rights of the Child, which is responsible for monitoring compliance with the International Convention on the Rights of the Child (CRC), issued an important decision on 23 February 2022, in line with the comments filed by the Defender of Rights, indicating that France has the positive obligation and the authority to protect such children from an imminent risk to their lives and from inhuman and degrading treatment, reported and described by multiple sources for years, by taking urgent measures to repatriate them.

The Defender of Rights has asked the French authorities what action they will take in response to the Committee's decision.

#### **FRANCE OBLIGED TO COMPLY WITH THE EUROPEAN COURT OF HUMAN RIGHTS' MOUSTAHI V. FRANCE DECISION**

France is obliged to comply with the final judgment, *Moustahi v. France* of 25 June 2020, in which the European Court of Human Rights (ECHR) found several violations of the European Convention on Human Rights, due to the administrative detention of two children, their deportation from Mayotte to the Comoros and the conditions of their return, after their arbitrary attachment to an adult.

On 9 June 2021, the Committee of Ministers of the Council of Europe found that the judgment had not been fully executed and postponed the examination. In view of this new examination of the case, the Defender of Rights sent comments to the Committee (decision No. 2022-023).

Despite the *Moustahi v. France* ruling, the Defender of Rights noted the persistence of illegal practices against minors in Mayotte: arbitrary attachment of minors to third parties; modification of their dates of birth for the purposes of administrative detention and removal from the territory, etc. She sent the Committee of Ministers her findings and analyses, based on individual complaints and situations reported by the Defender of Rights' delegate in Mayotte and by a non-profit working in the Pamandzi detention centre. She also noted that remedies are still not effective, as several children have been

removed from Mayotte, in disregard of their fundamental rights.

Taking into account these comments, on 9 March 2022 the Committee of Ministers asked the French Government to provide updated information by November 2022 and will resume consideration of this case in June 2023. In particular, the Committee of Ministers stressed the need to appoint legal representation for unaccompanied minors, to provide information on the practices in question, and on concrete measures to ensure that all authorities in Mayotte (particularly the prefecture) comply with the requirements of the Court and Council of State ruling: before any removal, verify the identity of the minors, the exact nature of their links with the adults to whom they are attached, and the effective conditions of their care upon return.

## **5. OUR ALLIANCE NETWORKS**

### **THE "DEFENCE AND PROMOTION OF THE RIGHTS OF THE CHILD" PANEL**

The Defender of Rights chairs the panel that assists her in the exercise of her remit in the defence and promotion of children's rights (Article 11 of the Organic Act on the Defender of Rights).

Mr. Éric Deleamar, Deputy Defender of Rights, Children's Defender, is the vice chair of this panel.

The six-member panel met on four occasions (see appendix) and was consulted on several projects concerning school (decision No. 2021-008 on the separation of twins in nursery school or decision No. 2021-283 concerning a child whose family is housed in a social hotel), collective catering (decision No. 2021-067 concerning the discriminatory nature of tariffs), or the crèche (decision No. 2021-017 relating to the health condition of a child).

In addition, the decision concerning the difficulties encountered by a young man after his integration into a football club (decision No. 2021- 004) was the occasion for a more general reflection on the situation of young people in high-level sports.

Members of the panel also contributed to the work on the annual children's rights report on mental health.

### **THE CHILD PROTECTION JOINT COMMITTEE**

Created in 2012, the child protection agreement committee is a permanent body for dialogue between the institution and non-profits working in the field of child protection and children's rights. It is composed of 18 members (non-profits, federations, collectives, non-profit unions, qualified persons, etc.) and meets twice a year.

At the two meetings held in 2021, the Defender of Rights wanted to hear from members about the consequences of the health crisis on children's rights and the infringement of the right to education. The exchanges with the members allowed the Defender of Rights to become aware of the difficulties and concerns of the non-profits in the field, thus making it possible to feed the actions of the Defender of Rights institution and to identify emerging problems that might require an intervention by it.

For example, the Defender of Rights has been alerted to the difficulties encountered by children entrusted to the child welfare system, whose right to education is struggling to be fully effective, as well as to the increase in the phenomenon of school dropouts.

### **TRAINING FOR THE PROMOTION OF CHILDREN'S RIGHTS WITHIN THE NATIONAL EDUCATION SYSTEM**

The Defender of Rights and the Children's Defender spoke at a plenary conference organised by the Institute for Higher Studies in Education and Learning (Institut des hautes études de l'éducation et de la formation - IH2EF) for future school heads and inspectors of the National Education of the Simone de Beauvoir class. In particular, the importance of taking into account the best interests of the child in all decisions affecting them, as well as the need to promote a positive school climate, were highlighted.

### **THE OMBUDSMAN ASSOCIATION – PROTECTING THE RIGHTS OF FUTURE GENERATIONS**

The Defender of Rights and the Delegate General for Mediation participated in the conference "Protecting the rights of future generations: what role for Ombudsmen?" This meeting brought together the members of the Association des Ombudsmans et Médiateurs de la Francophonie (AOMF) on 12 and 13 July 2021. The institution of the Defender of Rights is a member of the AOMF and serves as its General Secretariat.

This conference concluded with the adoption of the [Monaco Declaration](#) which calls for continued awareness of "*the urgent need to act to limit as far as possible the irreversible nature of the damage caused today to the environment and ecosystems, in order to preserve the conditions of habitability of the planet, which is the indispensable prerequisite for the protection and maintenance of the effective exercise of fundamental rights, including the right to life and health*".

The mediators committed themselves to developing reflection on the specificity of the protection of future generations, "*aiming to overcome the conflicts that may exist between the defence of common goods and the protection of fundamental rights, in order to promote harmonious action for the protection of the environment and human rights, which form an indivisible whole*".

Furthermore, the mediators invited States and governments to reflect on the establishment of a relevant legal framework allowing for a better consideration of the protection of the rights of future generations, and to consider granting a specific competence to generalist ombudsmen and mediators to ensure that the interests of future generations are taken into account and defended, or alternatively to establish specialised ombudsmen or mediators with this competence. These reflections meet the work carried out in France on the possibility of creating a "Defender of the environment and future generations", on the model of the Defender of rights.

#### **ENOC'S STATEMENT FOLLOWING THE CHANNEL TRAGEDY**

The Children's Defenders from France, Belgium (Wallonia-Brussels and Flanders) and Luxembourg have adopted, together with the European Network of Ombudspersons for Children (ENOC), a joint declaration following the tragic shipwreck in the English Channel on 24 November 2021 involving 27 migrants, including at least 5 children.

For years, children's rights institutions have been denouncing serious violations of the basic rights of migrant children, whether they are by themselves or in families. They deplore the fact that such children's most basic rights are violated on a daily basis.

The many repressive or security measures they are the target of, particularly those that tend to restrict their mobility, constitute unspeakable violations of the rights of all children in the world. The Council of Europe's Commissioner for Human Rights, Dunja Mijatovic, recently recalled that "*Member States (must) take a stand against pushbacks at borders and clearly oppose attempts to legalise this illegal practice*". The regular obstruction of humanitarian aid offered by non-profits on the ground exhausts exiled children, reinforces their uprooting, thwarts any prospect of integration and fuels the circle of misery in which they find themselves. Seeing no other prospect than escape, such lost children expose themselves to all sorts of dangers.

## **C**

### **A PILLAR FOR COMBATING DISCRIMINATION AND PROMOTING EQUALITY**

**GEORGE PAU-LANGEVIN**

#### **DEPUTY OMBUDSMAN IN CHARGE OF THE FIGHT AGAINST DISCRIMINATION AND THE PROMOTION OF EQUALITY**

During the year 2021, the institution remained very active on the issue of discrimination.

Launched at the beginning of 2021, the anti-discrimination.fr platform is an innovative service that makes it easier to report discrimination to our institution. One year on, this platform appears to be a success, as it has allowed more than 11,000 people to express their views on the unwarranted treatment they have been subjected to. The number of reports to the Defender of Rights for discrimination increased by 22.2%, and the number of referrals for discrimination increased significantly. The criterion of origin is invoked much more frequently than in traditional referrals, coming first with disability, which is closer to the reality as it may be felt.

The work carried out to list on the platform the non-profits and organisations that work on discrimination in all territories should encourage exchanges and coordination in an area that is too often the poor relation of public policies.

Our network, with the regional heads of unit, the project managers and the delegates responsible for discrimination, must continue to work in close collaboration with the partner non-profits of the anti-discrimination.fr platform, so that a better understanding of each other in the field can improve the synergy of our actions.

In addition, several important publications were devoted to the situation of elderly people in cities or in nursing homes, as well as to the difficulties encountered by Roma

and Travellers. The 14<sup>th</sup> Barometer, carried out regularly with the International Labour Organisation (ILO), focused this year on young people and highlighted the discrimination they suffer in access to employment, with both a strong awareness of being treated unfairly, and little recourse to change this situation or have it condemned.

The year was marked by our desire to develop the role of the anti-discrimination fight at all levels. Our previous findings, particularly those set out in the report "Discrimination and origins: the urgent need for action (Discriminations et origines : l'urgence d'agir)" published in 2020, remind us of the low visibility of the national policy to combat this phenomenon, which makes a new impetus necessary.

With deconcentration and more frequent recourse to mediation for certain cases, our institution is in a position to better respond to the expectations it may have raised in this area, which are legitimate, given the harmfulness of the attack on our republican pact that discrimination constitutes.

**George Pau-Langevin**

#### MAIN GROUNDS OF DISCRIMINATION IDENTIFIED IN THE CONTEXT OF REFERRALS TO THE INSTITUTION

DISCRIMINATION CRITERION	TOTAL	PRIVATE EMPLOYMENT	PUBLIC EMPLOYMENT	PUBLIC SERVICE	GOODS, SERVICES, HOUSING	EDUCATION/ TRAINING
Disability	19.9%	3.50%	4.30%	4.30%	3.90%	3.90%
Health condition	16.3%	4.20%	4.70%	4.50%	2.00%	0.90%
Origin/race/ethnicity	15.2%	5.30%	2.70%	2.70%	3.50%	1.00%
Nationality	5.6%	0.70%	0.30%	3.40%	1.10%	0.10%
Trade union activities	5.5%	2.60%	2.30%	0.30%	0.20%	0.10%
Age	4.8%	1.60%	0.80%	0.90%	1.10%	0.40%
Gender	4.6%	1.80%	1.30%	0.70%	0.70%	0.10%
Economic vulnerability	3.8%	0.40%	0.10%	1.40%	1.80%	0.10%
Marital status	3.8%	0.70%	0.70%	1.00%	1.20%	0.20%
Pregnancy	3.2%	2.00%	0.80%	0.30%	0.00%	0.10%
Other criteria*	17.3%*					
<b>TOTAL</b>	<b>100%</b>	<b>26.4%</b>	<b>20.3%</b>	<b>24.2%</b>	<b>21.2%</b>	<b>7.9%</b>

\*Other criteria: Physical appearance/Bank account/Place of residence/Religious beliefs/Sexual orientation/Gender identity/ Political opinion/Patronymic/Morals/Genetic characteristics/Loss of autonomy.

## 1. IMPROVING RECOURSE IN THE FACE OF DISCRIMINATION: THE CREATION OF A DEDICATED PLATFORM

The [Antidiscrimination.fr](https://antidiscrimination.fr) platform, created on 12 February 2021 at the request of the President of the Republic and with the support of the Minister Delegate to the Prime Minister, in charge of Gender Equality, Diversity and Equal Opportunities, is a new system for accessing rights that aims to combat discrimination by offering remedies to those who are victims.

Designed, supported and managed independently by the Defender of Rights, this system also mobilises non-profits, trade unions and the competent central government services. It includes a telephone number, 3928, a website with a chat room and a directory listing partner organisations by department, type of support and criteria or area of discrimination, which enables users to identify the organisation best suited to their situation.

The platform offers victims a first level of support provided by the institution's lawyers: listening, analysis of the situation in terms of the law, answering questions, referral to the institution's various services or its network of partners. The platform also offers educational resources (videos, testimonies, quizzes, etc.) to enable everyone to better understand discrimination and its definitions.

It is aimed at all victims of discrimination and is particularly relevant to people who have difficulty exercising or enforcing their rights. From this perspective, the role of civil society partners is central to mobilising people who are not using services, whatever the reason.

In December 2021, only ten months after its creation, the platform had received 14,000 requests, including 11,000 calls to 3928 and more than 3,000 chats, 1,500,000 visits to the website, and more than 1,200 partner non-profits and institutions throughout the country.

In less than a year of activity, it has doubled the number of calls for discrimination cases addressed to the institution and increased the number of referrals on this subject by 22.2%.

Two communication campaigns were carried out. In the spring of 2021, the institution turned to radio, web radio and social networks to make the platform known. Radio spots were broadcast nearly 1,000 times on stations such as Skyrock, Nova, RMC, Fun radio, etc. At the end of 2021, aimed primarily at 16-35 year olds, the second campaign was rolled out with visuals, audio and video formats, aimed at facilitating use and demonstrating the usefulness of the platform to young people.

These communication actions generated more than 1.7 million clicks to the platform and 10 million listens to the audio spots on the web. Finally, throughout the year, several SEO campaigns were carried out in order to position the platform as an immediate and unavoidable recourse for Internet users to whom the institution can offer support.

In order to develop awareness of the platform and to launch a dynamic with local anti-discrimination actors, the Defender of Rights and her deputy, George Pau-Langevin, in charge of the fight against discrimination and the promotion of equality, have increased the number of encounters throughout the country. In September in Lille, for example, an information meeting was organised with non-profits and local authorities, which led to the involvement of new non-profits in the approach, their listing in the platform's directory and the setting up of dedicated offices for the Defender of Rights.



## AWARENESS-RAISING AND PROMOTIONAL ACTIVITIES IN THE FIELD

In the wake of the creation of the *antidiscrimination.fr* platform in 2021, six regional units of the Defender of Rights have been reinforced with anti-discrimination officers. In conjunction with the head of the regional unit and the delegates, these project managers organise the local implementation of the *antidiscrimination.fr* platform. At the level of the unit's intervention territories, they participate in the rollout of awareness-raising, promotion and communication actions and develop the network with the competent partners in the fight against discrimination and for access to rights. Finally, they contribute to the legal support of delegates on discrimination issues. Eventually, all regions will have to be provided with them.

The year 2021 was the occasion for numerous actions to promote and raise awareness of the fight against discrimination at the local level and throughout the territory.

For example, the Defender of Rights inaugurated its delegate's office in the Marseille Departmental Anti-Discrimination Centre (MDLD), in the presence of George Pau-Langevin, Deputy Defender of Rights in charge of the fight against discrimination and the promotion of equality. Beforehand, the MDLD team had been trained and supported in its work by the regional head of unit. In addition, the Bouches-du-Rhône department's territorial officials were able to benefit from the online training course "Discrimination: understanding in order to act". Similarly, supported by the dynamics of the *antidiscrimination.fr* platform, the Marseille and Aix sections of the Human Rights League (Ligue des Droits de l'Homme - LDH) have set up offices dedicated to discrimination, in conjunction with the delegates of the Defender of Rights.

In Brittany, the regional unit worked with two classes of 1st year vocational students at the Maison Familiale Rurale. A participatory module was used to raise awareness of the deconstruction of discrimination and its legal definition.

## THE SITUATION OF "TRAVELLERS"

As part of its dual mandate of protection and promotion, the institution continued its work on the discrimination suffered by Travellers and the difficulties they encounter in exercising their rights.

In July 2021, a working seminar entitled "The right to rights and remedies: what avenues of work in 2021-2022? The objective of this closed workshop, bringing together Travellers, non-profits, institutions and researchers, was to share common findings on the difficulties encountered by Travellers in the access to and exercise of their fundamental rights and freedoms.

These exchanges fed into the institution's contribution to the development of the French Strategy on Equality, Inclusion and Participation of Roma, coordinated by the Interministerial Delegation for Housing and Access to Housing (DIHAL) with the publication of a first report published in October 2021 and entitled "Travellers: removing barriers to rights".

The Defender of Rights notes that non-recourse is a major issue in the fight against discrimination for "Travellers", who rarely turn to the institution.

In order to remedy this, the Defender of Rights has undertaken to raise awareness and train the territorial network of delegates in order to better respond to the discrimination and denial of access to rights referrals that they receive. The Defender of Rights undertakes to draw up, in conjunction with the non-profits, a brochure intended for Travellers on their rights and the possible remedies for exercising them.

The Defender of Rights has also expressed concern to the Government about the possible discriminatory consequences of the introduction of a fixed criminal fine for the illegal occupation of land by Travellers", announced at the Beauvau security meeting in September 2021.

In December 2021, the Defender of Rights published the second part of her contribution "For an effective protection of the rights of Roma people". The lack of access to accommodation and housing for Roma people is a major concern for these populations who, in shanty towns, experience extremely vulnerable living and housing conditions that expose them to the discriminatory denial of rights, whether in terms of access to an address, healthcare or schooling.

At the University of Rennes 1, the regional unit ran an awareness-raising module on discrimination for the university's teaching and administrative staff, which is committed to setting up discrimination contacts within each training and research unit (UFR). This first working experiment between the regional unit and the University of Rennes will be developed in the years to come.

In the Hauts-de-France region, the institution was a partner in the "Fight against LGBTphobia" Hackathon. She participated in the citizens' consultation on gender discrimination and in the National Day against Violence against Women.

These events were an opportunity to present the institution and the *antidiscrimination.fr* platform to the general public and to local politicians and non-profits.

In the Auvergne-Rhône-Alpes region, several events were organised by the head of unit and the delegates, in order to present the institution and more specifically its anti-discrimination mission, particularly in Saint-Étienne and Lyon. Delegates spoke at courses given to students at Lyon II University. The territorial agents of the Defender of Rights also intervened more specifically on discrimination in the health sector, on the occasion of an event for the staff of health centres.



## 2. MAKING DISABILITY A PRIORITY ISSUE IN PUBLIC POLICY

### THE UN REVIEW OF FRANCE'S IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

From 18 to 23 August 2021, the United Nations Committee on the Rights of Persons with Disabilities examined France's initial report on the implementation of the International Convention on the Rights of Persons with Disabilities (CRPD). As the "independent mechanism" for monitoring the CRPD, the Defender of Rights submitted a parallel report which gives a mixed picture of the implementation of the CRPD in terms of the effectiveness of the rights of persons with disabilities.

According to the Defender of Rights, while much progress has undeniably been made in recent years, significant gaps remain. In this regard, while welcoming the political ambition to make disability a priority issue, she finds that France has not yet fully taken into account the new rights-based approach, induced by the CRPD, in the development and implementation of public policies. In many areas, she regrets the significant gaps between the stated ambition, the objectives pursued and the effectiveness of their implementation.

Following the review of France, the Committee on the Rights of Persons with Disabilities published its concluding comments on 14 September 2021. In line with the parallel report of the Defender of Rights, the Committee called on the French central government to change the paradigm in the approach to disability to a human rights-based model. Among its many recommendations, the Committee urged France to:

- Review disability legislation and policies to harmonize it with the Convention;
- Prohibit multiple and intersectional discrimination on the basis of disability, and adopt strategies to eliminate such discrimination;

- Recognise the denial of reasonable accommodation as a form of discrimination in all areas of life;
- Implement universal accessibility, including housing and accommodation, public transport, public spaces and digital technologies;
- Reform the regulation of the disabled adults' allowance to separate the incomes of disabled people from those of their spouses, and take measures to ensure and promote the autonomy and independence of disabled women living in couples;
- Strengthen the human, technical and financial resources allocated to the Defender of Rights institution to fulfil its mandate to monitor the Convention.

The Defender of Rights calls for the inclusive transition called for by the Convention and will monitor the implementation of the Committee's recommendations in conjunction with non-profits representing persons with disabilities. She believes that particular care should be taken to ensure that adequate and appropriate resources are provided to meet the needs of all people, regardless of their disability.

### INDEPENDENCE AND INCLUSION OF PERSONS WITH DISABILITIES: COMMENTS TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

The Defender of Rights submitted comments (decision No. 2021-078) to the European Committee of Social Rights of the Council of Europe, in support of the collective complaint of the European Disability Forum (EDF) and *Inclusion Europe v. France* (No. 168/2018) in order to enlighten the Committee on the situation of persons with disabilities in France with regard to the requirements of the European Social Charter.

In her comments, the Defender of Rights recalled that independent living and inclusion in society of persons with disabilities require the development of inclusive policies that address both environmental and personal

factors in order to provide appropriate responses to the needs of each person. However, she noted that in France there were still many obstacles to the autonomy and inclusion of persons with disabilities linked, on the one hand, to the lack of universal accessibility and, on the other, to insufficient or inappropriate responses to people's needs. This often has serious consequences for families.

### **THE RIGHT TO INDEPENDENT LIVING FOR DISABLED AND ELDERLY PEOPLE: OPINION TO THE EUROPEAN OMBUDSMAN**

Noting that during the Covid-19 pandemic, residential facilities for disabled and elderly people were particularly affected, thus showing their limitations in protecting residents, the European Ombudsman asked the Defender of Rights to conduct a strategic enquiry into how the European Commission monitors the use of EU funds intended to promote the right of disabled and elderly people to independent living.

In an opinion to the European Ombudsman (No. 21-02), the Defender of Rights shed light on the situation of disabled and elderly persons in France, on the one hand, in view of the difficulties encountered by users of medico-social establishments during the health crisis that were brought to her attention, and on the other hand, concerning the effectiveness of the right to autonomy and inclusion, enshrined in the International Convention on the Rights of Persons with Disabilities (CRPD), in the light of the comments made in her [report](#) on the implementation of the Convention, published in July 2021.

### **EQUAL ACCESS TO PRIVATE SERVICES FOR PERSONS WITH DISABILITIES**

The complainants are a disabled adult couple under guardianship. They both have permanent full-time jobs.

They were tenants of their flat when they learned that it was going to be put up for sale. Interested in buying it, they consulted a professional who gave a favourable opinion on their financial capacity to repay a bank loan. They submitted a reasoned application to two banking institutions. The applications were rejected without any justification. The complainants then contacted the delegate of the Defender of Rights, who sent a letter to the management of the two agencies concerned, stating the facts and the suspicion of discrimination on the grounds of disability.

Both agencies responded by email and offered the couple appointments for the following week to personally review their application.

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## **3. MAKING AGE DISCRIMINATION VISIBLE**

### **THE REPORT ON THE RIGHTS OF PEOPLE IN RESIDENTIAL CARE FACILITIES FOR DEPENDENT ELDERLY**

Elderly persons, including those who have lost their autonomy or are disabled, enjoy the same rights and freedoms as the general population.

However, the Defender of Rights regularly receives complaints about specific restrictions on the rights and freedoms of people in residential care facilities for the dependent elderly (EHPAD nursing homes), and even more so since the beginning of the health crisis.

In the last six years, 900 complaints about the conditions and methods of medical and social support have been submitted to the Defender of Rights. 80% of these involved an EHPAD nursing home.

The examination of these complaints showed recurrent violations of the fundamental rights of people accommodated in EHPAD nursing homes, and of respect for their dignity and integrity. In particular, the effectiveness of the principle of free choice, informed consent

and the right to information of the person being cared for; the right to appropriate care and support; the right to health; the right to freedom of movement; the right to privacy and to maintain family ties; the right to property; and the right to an effective remedy were at stake. Such infringements of residents' rights and freedoms, facilitated by their vulnerability due to loss of autonomy, constitute abuse and discrimination.

For the Defender of Rights, the fact that some of the violations are the responsibility of individuals should not mask the many more violations caused by the lack of human resources and organisational shortcomings that do not allow professionals to support residents as they would like. The structural and recurrent causes of rights violations are known: Staff shortages, high turnover, team exhaustion, lack of supervision... All these difficulties are the direct consequence of management choices made to the detriment of respecting the rights and freedoms of residents, as well as their dignity.

In this respect, the health crisis has only further highlighted failings already noted by the institution with regard to the right to maintain family ties, freedom of movement and the failure to respect residents' consent.

The pre-existing difficulties in terms of coordination of care and articulation between the medico-social sector and the health sector were only accentuated and further highlighted by the pandemic.

Given the scope of the subject, the services of the Defender of Rights have analysed all the complaints sent to the institution and, since the beginning of 2019, have conducted interviews and hearings with non-profits, unions, federations, institutions and professionals from the medico-social and health sectors, as well as visits to several EHPAD nursing homes. As part of its relations with civil society, the institution consulted its committee on ageing, made up of non-profits involved in the subject of ageing, to assess the situation with regard to respect for the rights of elderly people in EHPAD nursing homes. In addition, it contacted all the regional health agencies (ARS), which sent it an overview

of the complaints and reports that had been sent to them, as well as a summary of the inspections they had carried out over the past three years.

On the basis of these findings, the Defender of Rights drew up a report on the fundamental rights and freedoms of elderly people in EHPAD nursing homes. This report made 64 recommendations to improve the care of people in EHPAD nursing homes and ensure the effectiveness of their rights, including 13 recommendations specific to the health crisis.

Prior to the publication of the report, the Defender of Rights wished to meet directly with residents and staff. In particular, she went to Maromme in Seine-Maritime in April to visit an EHPAD nursing home, to discuss how the crisis was felt and to gather the findings and recommendations from the field.

### **THE DIFFICULT ACCESS TO THE LAW FOR ELDERLY PEOPLE IN INSTITUTIONS**

The delegate of the Defender of Rights was contacted by the general practitioner of the complainant, who was concerned about her grandmother. The 88-year-old had been transferred to a clinic after examinations at the public hospital. This transfer took place without giving her the choice, and without consultation with the family, even though they wanted her to return home.

The doctor made repeated attempts to contact the clinic, but to no avail. More than a month and a half after the elderly woman's internment, the doctor expressed serious concerns about the deterioration of her health if she had no contact with her family.

Contesting an illegal deprivation of liberty, the delegate contacted the clinic, urging the management to respond as soon as possible, failing which the case would be transferred to the institution's head office.

A few days later, the director of the clinic telephoned the delegate and confirmed by email that a discharge date had been set, the family notified, and that the discharge report would be completed and sent on the day of the patient's discharge to her GP.

## THE AGEING SURVEY

Published on 1<sup>st</sup> October 2021, the study on "Discrimination and difficulties in accessing rights in old age (Difficultés d'accès aux droits et discriminations liées à l'âge avancé)" involved a telephone survey of 2,506 people aged 65 or over living at home and an interview survey of 15 carers of elderly people with a loss of autonomy.

The study reports on the difficulties encountered by elderly people in several areas of daily life, particularly in their administrative procedures for accessing care for loss of autonomy and home support.

Nearly a quarter of the over-65s reported difficulties in completing their administrative procedures. Such difficulties were reported more by people in a situation of dependence, financial insecurity or "computer illiteracy". The latter result highlighted the effects of digitisation on access to public services for the over-65s, 30% of whom report not having Internet access at home.

In terms of discrimination, 30% of people aged 65 or over reported that they had witnessed discrimination related to old age in their lifetime and 17% reported that they had experienced it in the last five years.

Such situations of discrimination most often concern public transport, relations with public services or access to private goods and services (banks, insurance, etc.).

In response to these situations, less than 12% of those who reported age discrimination indicated that they had initiated legal proceedings.

These results invite us to put the issue of discrimination linked to old age back at the heart of public debates and policies, and to change the way we look at old age so that the elderly, in all their diversity, remain full subjects of law.

## DISCRIMINATORY AGE LIMITS

The age limits for competitive exams have been progressively eliminated in many civil service bodies. However, they remained in force for competitive exams for access to the National School of Magistrates (ENM) or for direct integration into the judiciary without competition. The Defender of Rights, in a decision No. 2020-118 of 19 June 2020, recommended to the Minister of Justice that he initiates work to abolish the existing age limits for all competitive examinations for access to the ENM and other age limits for direct integration without competition.

By letters of 5 January 2021 and 23 November 2021, the Minister of Justice informed the Defender of Rights of the forthcoming abolition of such age limits.

While Decree No. 2021-1686 of 16 December 2021 only abolished the lower age limit of 31 years for the competitive examination, in order to implement the injunction provided for by the Judgement No. 453471 of the Council of State of 8 September 2021, within three months, the Defender of Rights will remain attentive to the abolition of the other age limits announced by the Minister of Justice.

## THE FEELING OF DISCRIMINATION AMONG YOUNG PEOPLE - ILO BAROMETER

With the publication of the 14th edition of the Barometer on the perception of discrimination in employment conducted with the International Labour Organisation (ILO) on the subject of youth, the Defender of Rights wanted to alert those involved in employment to the overexposure of young workers to discrimination.

More than one in three young people reported having experienced discrimination or discriminatory harassment in their job search or career, compared to one in five in the general population. The most frequently cited discrimination criteria were gender, age, physical appearance and origin.

As evidence of this population's sensitivity to equality issues, one in two young people stated that they had witnessed discrimination or discriminatory harassment at least once in the course of their work.

Discrimination is part of a continuum of hostile attitudes, ranging from stigmatising comments and behaviour to a range of situations of professional devaluation. Such micro-aggressions may be coupled with unlawful inducements or pressure from the employer.

For example, almost half of the young people reported that they had already been encouraged in an interview to change their appearance or adopt a certain behaviour. In total, 60% of the young people said that they had already been confronted with stigmatising remarks or discriminatory demands during an interview.

Although more than half of the young victims of discrimination took action following the incident, more than 4 out of 10 young people did not say anything, and this was mainly the case for women. Yet discrimination has long-lasting and deleterious effects on the careers, health and social relationships of such young people. They also lead to a loss of confidence in their professional future and to self-censorship when looking for a job.

In order to promote this new edition throughout the country, events to present the results were organised in several cities (Paris, Nantes, Villeurbanne, Toulouse), in partnership with local authorities and stakeholders involved with young people or in the fight against discrimination in employment (local missions, non-profits, companies, trade unions, etc.).

For example, on the initiative of the head of the regional unit and the city of Nantes, a presentation was held on the occasion of the Barometer's publication to raise awareness of young people's perception of discrimination in employment. The event took place in the presence of George Pau-Langevin, Deputy Ombudsman in charge of the fight against discrimination and the promotion of equality.

### REFUSAL TO HIRE ON THE GROUNDS OF AGE

According to the Directorate for Research, Studies and Statistics (Direction de l'animation de la recherche, des études et des statistiques - DARES), only 56.2% of 55-64 year olds were employed in the 3rd quarter of 2021. Although the central government encourages the hiring of "seniors", their age is often an obstacle to their recruitment. However, refusing to hire a job applicant because of their age may, under certain conditions, constitute discrimination. The Defender of Rights is competent to deal with it.

In this respect, the Defender of Rights was approached by a 61-year-old man who had been refused employment after the recruitment process had been completed. After several interviews and a meeting with his future head of department and colleagues, he learned that the human resources department had objected to his hiring because of his age, considering him too close to retirement. However, age was not an "essential and determining professional requirement" for the position at issue and the uncertainty as to the time of retirement is not, according to the Court of Cassation, such as to remove the unlawful nature of the measure based on age. Considering that there were elements giving rise to a presumption of age discrimination, the lawyer in charge of investigating the case proposed to the

complainant, pursuant to Article 26 of Act No. 2011-333 of 29 March 2011 on the Defender of Rights, to attempt an amicable resolution of the dispute.

Having obtained the complainant's agreement, the lawyer approached the company in question and, after several exchanges, the latter agreed to offer the complainant a motivational interview in order to conduct a new analysis of his application. As a result of this interview, the complainant was hired on a permanent contract (RA-2021-079).

## 4. ACTING AT ALL LEVELS AGAINST DISCRIMINATION IN EMPLOYMENT

### REFUSAL OF EMPLOYMENT ON THE GROUNDS OF THE COMPLAINANT'S ORIGIN

As the Defender of Rights noted in the 2020 report "Discrimination and origins: the urgent need for action (Discriminations et origines : l'urgence d'agir)", employment is the area where discrimination on the basis of origin occurs most frequently.

The Defender of Rights received a complaint from an applicant for a position as an account manager in a company. Although he had the skills requested on the job description, he received a generic letter informing him that his application had been rejected. Two days later, he sent the same application, changing only his surname, which he had changed to sound more French, and his postal address. On the same day, an email was sent to his new name's email address informing him that he would soon receive an invitation to complete two tests, and the next day another email was sent informing him that the hiring team was analysing his application. A few days later, a telephone message asking him to call back to discuss his application was left in the name of his false name.

He did not respond to this appeal, but referred the matter to the Defender of Rights, providing all the evidence of the discrimination test he had conducted.

In her decision No. 2021-277 the Defender of Rights found that this situation test, which followed the method recommended in her practical guide "Discrimination test: a method to be respected (test de discrimination : une méthode à respecter)", constituted an element that gave rise to a presumption of discrimination and questioned the respondent company. The latter, in contradiction with the established facts, first argued that neither of the two *curricula vitae* had passed the pre-selection phase and then defended itself by commenting that the fictitious candidate had not passed the tests. In the absence of other justifications, the Defender of Rights concluded that the complainant had been discriminated against on the basis of his origin and recommended that the employer compensate for the damage, change its recruitment methods to comply with the principle of non-discrimination, and provide training for the hiring staff.

### THE STUDY DAY ON SYSTEMIC DISCRIMINATION

Based on the issues raised by research supported by the Defender of Rights, which recounts the trial of immigrant railway workers against the SNCF and the presentation of other collective mobilisations, the Defender of Rights organised a study day on 24 November 2021 dedicated to systemic discrimination.

In the last twenty years or so, legal action against discriminatory situations has developed under the influence of European law and the mobilisation of stakeholders (unions, non-profits, citizens' groups, etc.).

Despite the undeniable advances to which the High Authority for the Fight against Discrimination and for Equality (HALDE) then the Defender of Rights have contributed, litigation remains largely pegged to an individualist, restorative vision of the law.

Although we are seeing signs of a shift in paradigm with a growing number of trials involving multiple plaintiffs, focused on challenging discriminatory systems anchored in the very functioning of organisations, this progress remains timid.

## **ARTIFICIAL INTELLIGENCE,** **A QUESTION OF FUNDAMENTAL RIGHTS**

In 2021, the rollout of algorithmic devices in all sectors of society continued: police, justice, access to public services, social benefits, the functioning of organisations, hiring and management procedures. The list continues to grow. While these applications are an undeniable source of progress, they are also likely to infringe fundamental rights. This is particularly true of biometric technologies, which are based on artificial intelligence algorithms.

Processing sensitive data of individuals such as facial features, voice or behavioural characteristics in order to authenticate, identify or evaluate them, these technologies present a significant risk to the respect of privacy and the principle of non-discrimination, and even to the exercise of fundamental freedoms such as freedom of expression or assembly.

One example is the rollout of a facial recognition device to identify a wanted person in a crowd.

This day provided an opportunity to bring together and promote dialogue between actors from all walks of life, researchers, individuals and groups involved in the fight against discriminatory practices, as well as specialists from various disciplines. The interventions of our foreign counterparts from Belgium and Quebec have considerably enriched these debates.

In view of the richness of the interventions and exchanges, the Defender of Rights has published the proceedings of this day.

It involves the collection of sensitive data on a large scale, without prior knowledge of whether the person sought will be among those examined, without the possibility for individuals to object to its use, and without any guarantee of the absence of discriminatory bias, both in the algorithms on which it operates and in its use, which may target marginalised groups. Moreover, this type of device necessarily entails a risk of dissuasive effect: knowing that they are being monitored, individuals may alter their behaviour and give up exercising their rights. Although this type of rollout is now prohibited in France, it is the subject of much debate.

Published in July 2021, the report "Biometric technologies: the obligation to respect fundamental rights (Technologies biométriques : l'impératif respect des droits fondamentaux)". The Defender of Rights recommended the introduction of strong and effective guarantees to ensure respect for the rights of individuals through the introduction of strict conditions of necessity and proportionality, and considers that the express prohibition on the use of facial recognition by police forces in the context of image capture by drones should logically be extended to the integration of this type of functionality into existing surveillance systems.

## **RESTRICTIONS ON ACCESS TO THE GENDARMERIE PROFESSIONS**

The Defender of Rights is regularly approached by complainants who have been rejected from a recruitment procedure in the security forces due to their unfitness, which was determined by mechanical application of a so-called SIGYCOP reference system. The fact of having a pathology leads *ipso facto* to incapacity, without the actual condition of the person, with their treatments, being taken into account. Some doctors reported that they had been forced to declare the person unfit when they did not consider them to be so. However, administrative case law requires that the assessment be made in a concrete manner, taking into account the treatment and its effect.

## **UPSTREAM OF EMPLOYMENT, RESTRICTIONS ON ACCESS TO DIPLOMAS**

The Defender of Rights was informed of the specific requirements for mastery of the French language imposed on nationals of countries outside the European Union (EU) by the Order of 7 April 2020 on the conditions for admission to training leading to the State diplomas of nursing assistant and childcare assistant. In this case, these candidates had to provide a C1 level certificate for French.

Noting that this requirement applied only to nationals of a non-EU country and was not required for nationals of an EU Member State, thus resulting in a difference in treatment based on the nationality of the candidates, the agents of the Defender of Rights notified the Ministry of Solidarity and Health, noting that the prerequisite of a C1 language level posed a particularly high requirement for

mastery of the French language, higher than that required for other training courses of a higher academic level, for example the State nursing diploma.

Following this intervention, the Order of 12 April 2021 containing various amendments relating to the conditions of access to training leading to the State diplomas of nursing assistant and childcare assistant removed the requirement of the aforementioned certificate.

From now on, the requirements relating to the mastery of the French language are no longer specifically aimed at nationals of non-EU countries. At the same time, the level of French language required (B2) has been revised to be in line with the level required in other paramedical professions.

On several occasions, the lawyers of the Defender of Rights have been able to accompany complainants who have won their case in the administrative court.

In another case, the administration agreed, even though the appeal lodged by the complainant with the Military Appeals Commission had been rejected, to have a new expert assessment carried out, which concluded that he was fit.

This amicable settlement is part of a more general legislative development. The Defender of Rights has intervened on several occasions during the parliamentary procedure resulting in the adoption of Act 2021-1575 of 6 December 2021 on restrictions on access to certain professions due to health status, Article 2 of which stipulates, among other things, that "*The medical assessment of such special health conditions provided for by legislative or regulatory provisions shall be carried out on an individual basis and shall take into account the possibilities of treatment and compensation for the disability*". She is closely monitoring the implementation of these provisions.

## **DISCRIMINATORY DISMISSAL**

The Defender of Rights was informed of the dismissal for serious misconduct of a person with a recognised status as a disabled worker, who claimed that the real reason for her dismissal was her disability. Dismissal on such a ground constitutes prohibited discrimination and the dismissal is void. The investigation by the lawyers of the Defender of Rights first revealed that the employer had not fulfilled its obligation of "reasonable accommodation". This obligation, which stems from the CRPD and Article 5 of Council Directive 2000/78/EC of 27 November 2000, transposed into Article L. 5213-6 of the Labour Code, requires the employer to take all appropriate measures to enable disabled workers to have access to a job or to keep a job that corresponds to their qualification, to exercise it or to progress in it. The employer's refusal to take such measures constitutes discrimination, unless it can be shown that they represent a "disproportionate burden" for the employer".





In this case, the employer had not replaced the employee during her sick leave and had only belatedly complied with the occupational physician's recommendations, thus making it very difficult for the employee to perform her work. The employer did not demonstrate that such measures imposed a disproportionate burden on it.

The legal investigation also revealed that the employee had been excused from work prior to her pre-termination interview, under persecutory conditions, without the employer giving any reasons for this suspension of the employment contract. Finally, it was established that the employee's dismissal for gross misconduct was not objectively justified. The grievances against the employee were either time-barred or not supported by evidence or details. In addition, the letter notifying the dismissal referred to the employee's complaints to her superiors about the lack of accommodation at her workstation.

Therefore, the Defender of Rights concluded in her decision No. 2021-257 that the employee had been discriminated against and harassed because of her disability and health condition and decided to present her comments before the labour court.

A few days before the hearing, the parties, who had been notified of the Defender of Rights' comments, signed a settlement agreement ending the dispute.

### **SEXUAL HARASSMENT IN LAW ENFORCEMENT**

The complaints received by the institution show the persistence of sexual harassment within the public security forces, whether police, army or fire brigade.

The framework decision No. 2021-065 highlights the dangerously commonplace nature of comments and behaviour with sexual or sexist connotations and the lack of an appropriate reaction from the hierarchy to punish them, as well as the inadequacy, or even non-existence, of protection for a staff member who has reported sexual harassment, the lack of punishment for the perpetrator of sexual harassment and the complacency of the hierarchy.

The Defender of Rights has made recommendations to the Ministries of the Interior and the Armed Forces. They relate firstly to the need to give full effect to the functional protection system, by informing victims and granting it quickly and without making it excessively conditional. They also concern the training of staff involved in dealing with cases of sexual harassment (those responsible for the administrative investigation, members of the CHSCT, disciplinary councils) as well as the implementation of an administrative investigation and the conditions for it. The administrative investigation must also be conducted in an impartial and exhaustive manner and lead to exemplary sanctions.

In several cases monitored by the Defender of Rights' lawyers, the complainants obtained compensation, sometimes substantial, either as a result of mediation or before the administrative court.

#### **DISCRIMINATION IN EMPLOYMENT ON THE GROUNDS OF PREGNANCY**

The Defender of Rights regularly receives complaints from employees whose contracts are not signed or not renewed when they declare their pregnancy. Even though there is no legal obligation to inform the future employer, the latter may accuse the (future) employee of disloyalty and thus bring the hiring process to an abrupt end. In other cases, staff whose contracts had been regularly renewed for several years were suddenly no longer considered necessary.

Such practices are more frequent in sectors where the use of contractual workers is widespread, particularly the hospital and territorial public services. Their impact goes beyond cases of proven discrimination: faced with an employer who does not renew the contracts of pregnant women, many will not even ask for this renewal or even refuse it if it is offered to them, which deprives them of the rest of the benefit to help them return to work when the deprivation of employment is considered voluntary. Pregnancy therefore entails a significant - and invisible - financial loss for these women.

The institution's intervention has resulted in compensation that can be substantial. Thus, following the decision No. 2021-193, a pharmacist in a healthcare institution, whose contract had been reduced from one year to six months upon the announcement of her pregnancy, and then not renewed, without any evidence to support the "blocking interpersonal difficulties" invoked, obtained compensation of €20,800.

#### **THE THESIS PRIZE ON THE FEMINISATION OF THE SENIOR CIVIL SERVICE**

Winner of the 2021 Defender of Rights thesis prize, Elsa Favier's thesis *Elsa Favier's "National Administration School alumni and women. Gender in senior civil service (Énarques et femmes. Le genre dans la haute fonction publique)"* was carried out under the direction of Laure Bereni, and defended on 30 November 2020 at the School for Advanced Studies in the Social Sciences (École des Hautes études en sciences sociales - EHESS).

It sheds light on a major upheaval of recent decades: the feminisation of the administrative elite, with the share of women in the senior civil service rising from 12% to 40% between 2001 and 2017.

Based on an ethnographic, statistical and socio-historical survey, she explores the evolution of women's access to positions of power within the central government and the social logics at work through the profiles of the women who reach these positions and the way in which they appropriate professional roles historically constructed as masculine.

#### **HUMAN TRAFFICKING**

In 2019, the Defender of Rights received complaints from several people who believed they had been victims of the crime of human trafficking. These were illegal aliens who worked for a person who owned several food shops. They complained of undignified working and housing conditions, derisory pay, false promises of regularisation and reported having been threatened and even physically abused.

One conviction, now final, had already been handed down for several offences (undeclared work, employment of foreign nationals without a residence permit or work permit, and intentional violence). Trafficking, on the other hand, had not been found. The case was referred to the institution in the context of a direct summons for human trafficking.

For the first time, it considered itself competent to rule on such a qualification. Human trafficking is the ultimate form of discrimination when it consists of recruiting a person on the basis of one of the prohibited grounds of discrimination, by promising them remuneration or an advantage with the aim of subjecting them to working and living conditions contrary to their dignity.

As the institution did not itself conduct an adversarial investigation in this case, it only ruled on the constituent elements of the offence of human trafficking in the light of the documents of the criminal investigation transmitted to it, and the facts already established by the criminal court (Decision No. 2019-235). According to the Defender of Rights, the elements of the offence were clear and the employer had abused the economic, social and administrative vulnerability of the persons concerned.

In a judgement of 13 July 2021, the court found the defendant guilty of the offences of human trafficking committed in exchange for remuneration, of subjecting a vulnerable person to undignified working and living conditions and of non-existent or insufficient remuneration for the work of a vulnerable or dependent person.

As the defendant appealed the judgement, he is again presumed innocent of the facts that did not result in a final conviction.

## THE RIGHTS OF SEASONAL WORKERS

The complainant has a particular professional situation: a Nepalese Sherpa, he has spent his summers as a guide in an Alpine refuge for several years. He had a 3-year seasonal worker's residence permit.

The permit expired in 2021, and the complainant sought to renew it to work the following summer. However, he did not yet have his employment contract for the year 2022, which he usually signs in February. In order to renew his permit, the complainant therefore had to go back to Nepal, then return to France to complete his administrative formalities, then go back to Nepal before returning to work for the summer.

The delegate of the Defender of Rights explained the complainant's situation to the prefect and held a dialogue with him in order to work out a "common sense" solution.

It was finally decided to grant the complainant the renewal of his residence permit, by way of derogation. In exchange, the complainant undertook to provide the prefecture with his future employment contract as soon as possible.

## 5. OUR ALLIANCE NETWORKS

### THE "COMBATING DISCRIMINATION AND PROMOTING EQUALITY" PANEL

The Defender of Rights chairs the panel that assists her in exercising her powers in the fight against discrimination (Article 11 of the Organic Act on the Defender of Rights). Ms George Pau-Langevin, Deputy Defender of Rights, is the vice chair of this panel.

The discussions within this eight-member panel (see appendix), which met four times in 2021, made it possible to make certain decisions more pedagogical (decision No. 2021-187 concerning a candidate who was rejected for a public job).

The members of the panel also discussed the proposed guidelines for responding to a number of referrals concerning refusals to deliver parcels based on residence and/or origin.

In addition, the panel gave its opinion on several decisions finding discrimination based on the criterion of particular vulnerability resulting from economic status (decision No. 2021-159 concerning the schooling of children housed in a former barracks).

Lastly, two meetings of the three panels held jointly in 2021 made it possible to adopt framework decisions on cross-disciplinary issues, such as the one on sexual harassment suffered by civil servants working in the public security forces (decision No. 2021-065).

### **THE EQUINET NETWORK**

In 2021, the Defender of Rights institution continued its work in the European Network of Equality Bodies-Equinet. In November 2021, its representative was re-elected for a new term of office on the board of this network of 49 national anti-discrimination and equality organisations across Europe, in accordance with the European directives that establish the European legal framework for combating discrimination.

In particular, the Defender of Rights contributed to a training session organised by Equinet in April 2021 for its members on artificial intelligence and the fight against discrimination, following a report published by Equinet in 2020.

Furthermore, on this same topic, the Defender of Rights organised an online training course, in partnership with the Council of Europe, between June and September 2021, for its staff and those of other independent authorities such as CNIL, ARCOM (ex CSA), the CNCDH and the Prudential Supervision and Resolution Authority (Autorité de contrôle prudentiel et de régulation - ACPR).

The aim of these courses is to provide participants with initial expertise on these subjects in order to better prepare them for current or future cases within their own institution.

### **TRAINING OF PROFESSIONALS TO COMBAT DISCRIMINATION**

Within the framework of a partnership with the Institute for Higher Studies in Education and Learning (Institut des hautes études de l'éducation et de la formation - IH2EF), the Defender of Rights took part in three podcasts (How do we notice/measure discrimination? How can discrimination be explained? What actions/tools can be used to promote the fight against discrimination in the professional sphere?) in order to raise awareness among future school heads, national education inspectors or managers in higher education.

The Defender of Rights' staff also contributed to the design of a distance learning course on anti-discrimination for the network of public service schools. The six-hour course is aimed at managers in the three public services and the social security system, in order to raise their awareness of discrimination prevention and to help them deal with situations of discrimination in the workplace.

### **DIALOGUES WITH CIVIL SOCIETY**

Seven Defender of Rights understanding committees bring together recognised non-profits working in fields as varied as gender equality, disability, advancing age and loss of autonomy, discrimination linked to origin and religion, recognition of the rights of homosexual, bisexual, transgender or intersex persons, or health and child protection.

Two liaison committees bring together intermediary professionals in employment and private housing.

These committees, which meet twice a year and whose themes correspond to the areas of intervention of the Defender of Rights, allow the institution to explain its positions and initiatives, but also to hear the reactions, reports, expectations and needs of its members.

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## **AN INDEPENDENT STAKEHOLDER RESPONSIBLE FOR MONITORING THE RESPECT FOR PROFESSIONAL ETHICS BY PEOPLE EXERCISING SECURITY ACTIVITIES**

**PAULINE CABY**

**DEPUTY TO THE DEFENDER OF RIGHTS**

**IN CHARGE OF THE RESPECT FOR PROFESSIONAL  
ETHICS BY SECURITY PROFESSIONALS**

The year 2021 was an opportunity to reflect on the oversight of the security forces. First of all, within the framework of the "Beauvau security meeting", the Defender of Rights spoke at the request of the Minister of the Interior on 27 August 2021 at the round table on the internal oversight of the security forces, on the conditions for transparency of the activity of the inspectorates with regard to the population. This was an opportunity to recall that transparency is a necessary condition for impartiality, a requirement that led to the creation of the National Commission on Security Ethics (Commission nationale de déontologie de la sécurité - CNDS) - whose mission the Defender of Rights inherited. To achieve this, transparency must be comprehensive and objective, and be conducive to dialogue, criticism and questioning.

During the 7<sup>th</sup> seminar of the Independent police complaints authorities' network (IPCAN), devoted to external oversight, the exchanges made it possible to reflect on the positioning of external oversight bodies among other monitoring mechanisms, on the way impartiality is guaranteed by the laws, perceived and implemented and on the effectiveness of these mechanisms, by putting into perspective the various experiences encountered within the network.

In the area of policing, and as a continuation of the work carried out in 2018 and 2020, the Defender of Rights participated fully in the discussions on the dissemination of a national policing plan and its amendment.

Thus, the institution has taken several decisions, notably concerning the use of the less-than-lethal projectile launcher (LBD) and the necessary identification of internal security forces. These reflections were fed by the meetings and field visits carried out during the year, particularly at the National Training Centre for Gendarmerie Forces (CNEF) in Saint Astier, and by the publication of the study entitled "De-escalation of violence and management of protesting crowds. What are the links in France and Europe today? (Désescalade de la violence et gestion des foules protestataires. Quelle(s) articulation(s) en France et en Europe aujourd'hui ?)" This is a useful way of questioning the French model of policing.

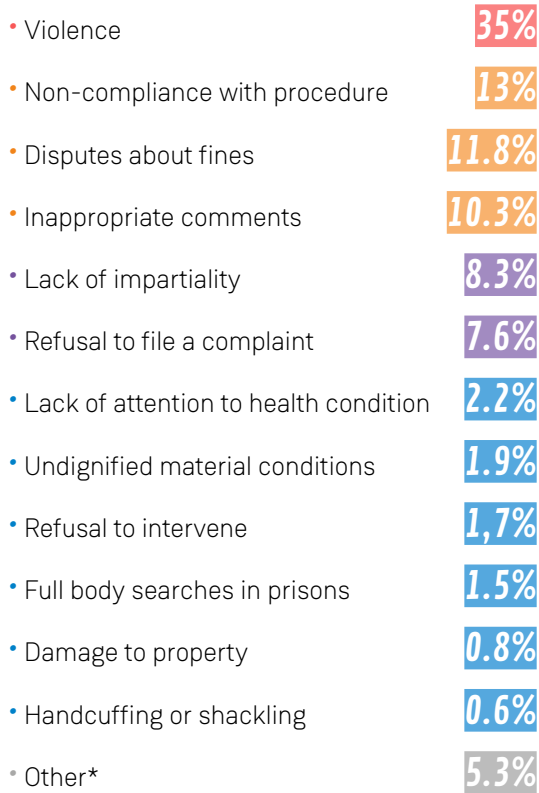
In 2022, I will continue to meet and exchange with professionals and representatives of civil society, as well as participate in consultation bodies such as the National Police Ethics Evaluation Committee (Comité d'évaluation de la déontologie de la police nationale - CEDPN), in order to promote ethics and to encourage the complementarity and effectiveness of the various controls of the internal security forces, which are essential to the public's confidence in them and to their necessary exemplarity.

**Pauline Caby**

The Organic Act No. 2011-333 of 29 March 2011 on the Defender of Rights stipulates that the institution is responsible for ensuring compliance with the code of ethics by persons carrying out security activities on the territory of the Republic. This competence is broad and covers the behaviour of police officers, gendarmes, prison officers, customs officers, private security guards and, more broadly, any person carrying out security activities. This year again, the national police were the main culprits in the complaints received by the Defender of Rights, especially for use of force.

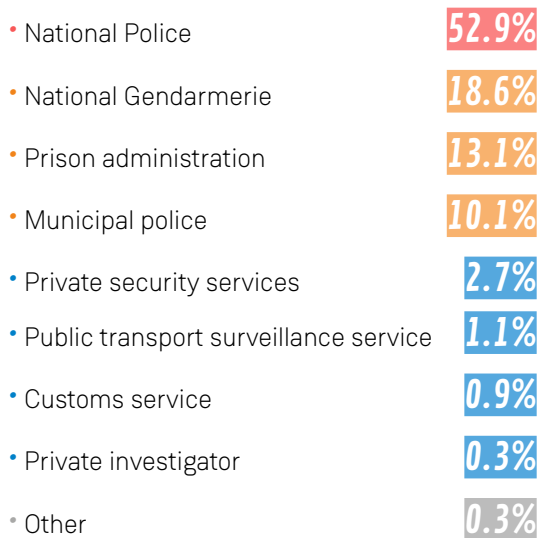
The means of action of the Defender of Rights institution are significant. It may carry out on-the-spot checks and request explanations from any person involved. It may hear any person whose assistance it considers useful. The persons implicated are obliged to respond to the requests for explanations that it sends to them and to comply with its summonses.

**BREAKDOWN BY TYPE OF COMPLAINT**



\* Other: Theft, death, bribery, security checks, etc.

**SECURITY ACTIVITY INVOLVED**



Within the framework of its instructions, the Defender of Rights institution has access, among other things, to investigations carried out by the oversight bodies and to judicial proceedings with the prior authorisation of the judge (Article 23 of the Organic Act), and regularly dialogues with representatives of the Ministry of the Interior. It is only through the complementary actions of all stakeholders that effective oversight can be achieved.

If the evidence gathered in the investigation does not reveal a breach of ethics, the Defender of Rights sends a reasoned letter to the complainant. When it is aware of misconduct and of measures taken by the hierarchy to punish a staff member or to prevent the recurrence of the misconduct, it takes note of that. When the Defender of Rights finds a low-level violation, it sends a reminder to the persons concerned.

When it finds a serious breach for which the hierarchy has not taken any action, it consults the panel in charge of security ethics before taking a decision which it makes public. It sends its decision to the responsible minister where public officials are concerned.

The Defender of Rights had the opportunity to remind the Ministers of the Interior and Justice of their legal obligation to respond to her within the time limit she sets on the follow-up to her recommendations (Articles 25 and 29 of the aforementioned Organic Act).

**1. DISCRIMINATORY IDENTITY CHECKS**

The Defender of Rights institution has special expertise in identity checks, not only because of the feedback and complaints it deals with, but also because of the work and studies it has been conducting on the subject for several years. The latter highlighted the discriminatory dimension of certain checks which have a negative influence on the population's confidence in the police.

In 2021, the Defender of Rights submitted comments to the Paris Court of Appeal in the context of a central government liability proceeding for alleged discriminatory identity

checks carried out at the Gare du Nord train station in Paris on three high school students on a class trip. In particular, she recalled the principle of adjusting the burden of proof applicable in discrimination cases and the evidence to be taken into account by the judge.

In this case, it considered that the circumstances of the checks were typical of "racial profiling", which is largely targeted at young black men and men of North African origin, and that it is reasonable to assume that other people would not have been subjected to such checks in a comparable situation.

On 8 June 2021, in three judgements the Court of Appeal went in the same direction and ruled that the identity checks were discriminatory and engaged the liability of the central government.

## 2. MAINTAINING ORDER WHILE RESPECTING RIGHTS AND FREEDOMS

### THE RECOMMENDATION TO ABOLISH THE USE OF LESS-THAN-LETHAL PROJECTILE LAUNCHERS DURING DEMONSTRATIONS

The Defender of Rights issued three decisions in 2021 on the use of less-than-lethal projectile launchers (LBD) by police officers during demonstrations that injured people, including a 15-year-old minor ([decision No. 2021-183](#)). These decisions were an opportunity to recall that police officers and gendarmes can only use weapons in cases of absolute necessity, and to note once again that the use of the LBD in a demonstration context is not adapted to the number of people present, their mobility and the risks of serious injury incurred. In line with her previous decisions, the Defender of Rights recommended that the use of LBDs in law enforcement operations be prohibited. Indeed, the shot may hit and injure a person who was not targeted, injure another person who was deliberately targeted but posed no threat ([decision No. 2021-288](#)), or hit a journalist ([decision No. 2021-265](#)).

The recommendation to ban this weapon during demonstrations has been a constant

position of the Defender of Rights institution, based on the referrals it receives and its investigations. However, the national policing plan published in December 2021 has confirmed the use of this weapon, even if it has changed the framework with the introduction of supervisors or cameras. According to the Defender of Rights, these developments do not remove the particular risks associated with the use of this weapon in demonstrations.

### DE-ESCALATION OF VIOLENCE

The Defender of Rights institution conducts and finances study and research activities to contribute to public information and further reflection in its areas of competence.

The [study](#) "De-escalation of violence and management of protesting crowds. What are the links in France and Europe today? (Désescalade de la violence et gestion des foules protestataires. Quelles(s) articulation(s) en France et en Europe aujourd'hui ?)" This article questions the French model of policing and its "confrontational vision". It was carried out by a team of researchers between December 2018 and June 2021, with the participation of the police and the national gendarmerie.

Three topics were discussed: the analysis of the dynamics of violence within demonstrations, the legal framework of demonstrations, and the tools of policing. The researchers noted a persistent distance between French conceptions of policing and those promoted particularly in Northern Europe, even though French stakeholders now look at European policing practices with interest.

This study sheds particularly useful light on the [recommendations](#) that the Defender of Rights institution has been making for several years, particularly: refocusing policing on its mission of prevention and accompanying demonstrations; developing dialogue and consultation as a condition for closer relations between the police and the population; and strengthening the initial and ongoing training of the forces responsible for public order.

### 3. ENSURING RESPECT AND PROTECTION OF PEOPLE BY POLICE OFFICERS, GENDARMES AND PRISON GUARDS

#### THE OBLIGATION TO PROTECT AND RESPECT CHILDREN IN A PARTICULARLY VULNERABLE SITUATION

The Defender of Rights was informed of several situations concerning the failure of police officers to take into account the declaration of minority of exiled persons in Calais.

The Defender of Rights found in her decision No. 2021-029 that police officers had arbitrarily treated exiled minors as adults, thus depriving them of any protection provided by law and international law. Police officers had initiated deportation proceedings on the basis of reports containing false dates of birth. These police officers have violated their mission, their duty to protect and the trust that can be placed in their written reports.

The Defender of Rights forwarded her decision to the Minister of the Interior and to the public prosecutor at the judicial court of Boulogne-sur-Mer so that he could follow up on it in criminal terms. The latter replied that he had made a request to the police for an explanation and that the answers provided led him to consider that the offence of forgery was not sufficiently serious to justify prosecution. He closed the case without further action. The Defender of Rights is still waiting for a response from the Minister of the Interior.

The Defender of Rights was also informed of the situation of twelve juvenile detainees who complained of physical violence by prison staff in the same juvenile facility. After investigation by the institution's lawyers, the Defender of Rights concluded that there were several individual breaches of the obligation of discretion, absolute respect, necessity and proportionality in the use of force (decision No. 2021-173). The Minister of Justice has sent letters of observation to the officers concerned.

#### THE OBLIGATION TO RESPECT PERSONS IN POLICE CUSTODY

The Defender of Rights had the opportunity to recall the rules of respect for the person in police custody following a complaint about the behaviour of gendarmes. The investigation by the Defender of Rights staff concluded that insulting or threatening words were used during the hearings by the gendarmes, who constantly used the familiar form of address to the person in custody.

While the detainee was handcuffed to the table in the interview room, the gendarmes got up to approach him, shouting, banging on the furniture, and violently slamming the door of the room without any measure being mentioned, explained or motivated in the procedure.

In the opinion of the Defender of Rights, the gendarmes failed in their obligations of courtesy, exemplarity, neutrality and their duty to protect, which requires that any person apprehended be protected from any form of violence and degrading treatment (decision No. 2021-302).



## **THE ACCOMPANIMENT OF VICTIMS WHEN THEY FILE A COMPLAINT**

At all stages of the investigation, the victim may, at their request, be accompanied by their legal representative and by the adult of their choice, unless the competent judicial authority decides otherwise for good reason.

The Defender of Rights was informed of the conditions under which a person, accompanied by a friend, was received at a police station in order to file a complaint. The police officer refused to allow this friend to accompany them when they filed a complaint, without the judicial authority having adopted a reasoned decision to this effect.

The Defender of Rights recommended that a reminder of the legislative texts be issued (decision No. 2021-155). The Minister of the Interior followed this recommendation by having the departmental public security directorate concerned issue a note reminding all services and the official in question of their obligations.

## **PROXIMITY MEDIATION BY DELEGATES WITH THE PUBLIC SECURITY SERVICE FOR REFUSALS TO FILE COMPLAINTS AND FOR INAPPROPRIATE COMMENTS**

Forty delegates of the Defender of Rights are referents on the issues of refusal to file complaints and making inappropriate comments. They carry out mediation to enable the reception and consideration of the expectations of users of the public security service. Here is an example.

The complainant received a letter from a bailiff in 2021 concerning the non-payment of a fine for dangerous parking dating back one year. However, she indicated in her letter that she had never received a ticket for this offence and that she was out of town at the time.

After receiving the letter from the bailiff, she went to the gendarmerie to lodge a complaint for misuse of a number plate. The gendarmerie refused to take her complaint and turned the request into a day book entry request. The complainant therefore sent a registered letter with acknowledgement of receipt to the public prosecutor's office

to explain her situation. This letter did not receive any response. Despite all her efforts, a few months later she received notification of garnishment by a third party and decided to contact the delegate of the Defender of Rights.

The delegate contacted the local gendarmerie and questioned the officers about the reasons for refusing to register the complaint. She asked the gendarmes to receive the complainant again. Once the complaint was properly filed, the delegate contacted the public prosecutor and sent him all the documents in the case.

Subsequently, the complainant informed the delegate of the Defender of Rights that the public prosecutor had notified her that the garnishment was cancelled.

## **THE CONTRIBUTION TO THE "BEAUVAU SECURITY MEETING"**

On August 27th 2021, the Defender of Rights, accompanied by her deputy in charge of security ethics, Pauline Caby, spoke at the round table of the Beauvau security meeting devoted to the internal oversight of the security forces.

She was asked by the Minister of the Interior to examine the **conditions for transparency** in the activities of the General Inspectorate of the National Police (IGPN) and the General Inspectorate of the National Gendarmerie (IGGN), in order to contribute to improving the way they operate in relation to the public.

The legislator of 2000 created the National Commission on Security Ethics (CNDS) - whose mission the Defender of Rights inherited - in order to fight against the feeling of partiality and lack of independence of internal oversight bodies. This transparency is particularly manifested by the publication of reasoned decisions. The publication of the intervention of the Defender of Rights is also part of this desire for transparency. The speech at the "Beauvau security meeting" was also an opportunity to emphasise the importance of internal peer review, which is the most frequent, simple and effective review in the eyes of the Defender of Rights.

In addition, since the beginning of 2021, the Defender of Rights has published the ministers' responses to her recommendations, thus contributing to greater transparency in the discussion and positions on these issues.

### **PRISON VIOLENCE, AN ENCOURAGING RESPONSE FROM THE MINISTER OF JUSTICE**

In its role of monitoring compliance with the code of conduct by prison staff, the Defender of Rights institution has regularly found it difficult to carry out effective investigations. In order to identify the obstacles and determine their causes, the Defender of Rights institution carried out a study in 2019 on the complaints received by the institution concerning violence in detention over a two-year period. This analysis seemed to be all the more important as the number of complaints addressed to the Defender of Rights from persons deprived of their liberty was constantly increasing. It revealed shortcomings at several stages of the administrative and judicial procedures in the cases transmitted to the Defender of Rights. Investigations are often marked by slow procedures and lost evidence.

The Defender of Rights sent this analysis to the Minister of Justice in 2019, convinced that the effectiveness of investigations is the joint responsibility of the Defender of Rights and the Minister of Justice. The aim was to establish a discussion to improve the response to situations of violence reported by detainees.

The report contained several recommendations and the response of the Minister of Justice in June 2021 showed a willingness to follow some of them. The Minister indicated that he was planning to harmonise the time limits for keeping videos at 30 days and that he was considering extending them to six months, to systematically inform the health unit after any use of force and to make supervisors aware during their training of the quality of professional writings describing the use of force.



He also plans to consider setting up a toll-free number to facilitate the filing of complaints and direct contact with the police and gendarmes.

Wishing to use all the means at her disposal to combat violence in prisons by prison officers, the Defender of Rights investigated the conditions under which a person held in the Meaux-Chauconin prison died on 2 February 2021.

## 4. OUR ALLIANCE NETWORKS

### THE "SECURITY ETHICS" PANEL

The Defender of Rights chairs the panel that assists her in exercising her powers in the area of security ethics (Article 11 of the Organic Act on the Defender of Rights). Ms Pauline Caby, Deputy Defender of Rights, is the vice chair of this panel.

The eight-member panel (see appendix) met four times and had several opportunities to discuss whether or not there had been misconduct by the security forces. The Defender of Rights attaches great importance to debate and collective decision-making. Thus, all the decisions related to the ethics of the security forces cited in this report have been submitted to the panel.

The panel examined several projects concerning minors (decision No. 2021-013 of 26 February 2021 on the conditions for hearing two minors in the context of proceedings against their mother and decision No. 2021-183 of 16 December 2021 concerning a minor injured by a shot from a less-than-lethal projectile launcher during a demonstration).

In addition, two cases examined at the summary note stage provided an opportunity to reflect on the weight given to evidence in cases where the facts are not clearly established.

### THE EUROPEAN IPCAN NETWORK

The European IPCAN (Independent Police Complaints Authorities' Network), created on the initiative of the Defender of Rights in 2013, organises a European seminar every two years on the problems related to complaints handled by the 22 members of the network in the field of security ethics.

In December, the Defender of Rights organised the 7<sup>th</sup> seminar of the IPCAN network, entitled "External and Independent Police Oversight Mechanisms: Functioning, Interactions and Effectiveness (Les mécanismes externes et indépendants de contrôle des forces de police : fonctionnement, interactions et efficacité)". The seminar was structured around three topics: the positioning of external oversight bodies in the national landscape of police oversight; the independence and impartiality of such bodies; and their effectiveness.

This seminar launched a first round of reflections that will continue on the oversight of security forces in 2022.

### TRAINING OF PERSONS ENGAGED IN SECURITY ACTIVITIES

The activity of the Defender of Rights in the field of security ethics is marked by a strong investment in the field of training.

3,980 student peacekeepers received training in ethical rules in 33 sessions in 10 mainland French schools. 110 officer cadets from the Canne-Écluse school also received training based on practical cases from situations involving peers. In addition, 130 cadets or external auditors from the Gendarmerie Officer School in Melun were trained on the same pedagogical model as police officers. The training is based on the idea that ethics provide a legal framework for the daily interventions of the agents, which is binding, but also protective for them.

The new materials developed in partnership with the central directorate for recruitment and training of the national police force - institutional films, video clips and educational brochures - have made it possible to make the training more interactive and to include the Defender of Rights even more in the students' training.

Other professionals have also been trained in the legal rules of ethics. In 2021, the directors and deputy directors of the municipal police of 23 cities, including Lyon, Grenoble, Montpellier, Nice and Saint-Louis on Reunion Island, took part in a one-day training session on the roles and missions of the Defender of Rights. This training course, which was developed in partnership with the CNFPT, includes a theoretical presentation and numerous practical workshops.

Finally, a booklet for trainers at the SNCF's security university (SUGE) was designed to enable them to run a training course on the missions of the Defender of Rights, what discrimination is and the problems and issues of security ethics. An initial seven-hour trainer training course was conducted for SUGE managers.

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## **AN EFFECTIVE REMEDY IN THE EVENT OF A DISPUTE BETWEEN USERS AND THE ADMINISTRATION**

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**DANIEL AGACINSKI**

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### **GENERAL DELEGATE FOR MEDIATION**

Once again this year, difficulties encountered by users of a public service represented the overwhelming majority of complaints received by the Defender of Rights institution, both at the head office and by its delegates. The following pages illustrate the wide variety of situations: unjustified suspension of social benefits, difficulties in accessing a prefecture counter, inability to buy a train ticket without a smartphone.

The accumulation of specific cases has made it possible to measure the systemic failings of certain procedures and even certain services. Not to call into question public servants, who are resolutely committed to the values of public service, but to highlight the harmful effects of certain changes in the way administrations operate.

In all situations where a public service does not provide satisfactory access to the rights of its users, the Defender of Rights provides a remedy. A remedy that is accessible through any type of channel, particularly "face-to-face", as it is now called. A resolutely independent remedy. It is also an effective remedy because it has many tools at its disposal to restore the rights of those who turn to it.

The first of these tools is dialogue. Day-to-day, local dialogue that enables delegates to resolve, through mediation, disputes that administrations may find "small", but which sometimes have considerable consequences on people's resources, living conditions and dignity. Institutional dialogue also, in the regions as well as at national level, to contribute to the constant improvement of the attention that public services give to their users, to make the voice of those they no longer meet heard by the administrations.

In the regular exchanges that the Defender of Rights conducts with the major national directorates, with the prefectures and with social protection organisations, we advocate for the recognition of the right to make a mistake, we encourage the administrations to accept dialogue, and we support the existing mediation mechanisms so that they can assert their independence and build an indispensable complementarity with our interventions.

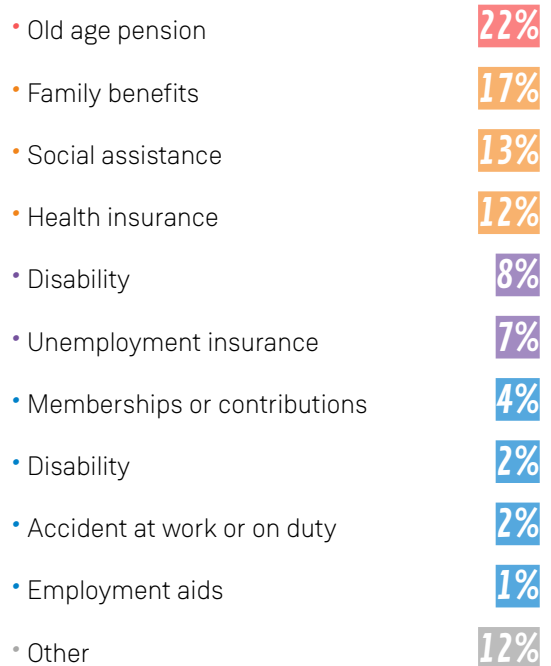
But when dialogue is at an impasse, the institution does not hesitate to use more restrictive prerogatives to assert users' rights. This is what allows the Defender of Rights, after rigorous investigation by the institution's lawyers, to issue recommendations, injunctions, comments in court - in short, to make administrations face up to their obligations.

More than any other case, the Treasury bill affair (see below) demonstrates the complementarity of these interventions. After the public finances department refused to comply with our requests for amicable review, including on the grounds of equity, the adversarial investigation procedure highlighted the breaches committed by the administration, particularly in terms of informing the user concerned. Since the recommendations were not followed, the Defender decided to publish a special report for the first time in this area, making the situation public - and this ultimately led to the restoration of her rights.

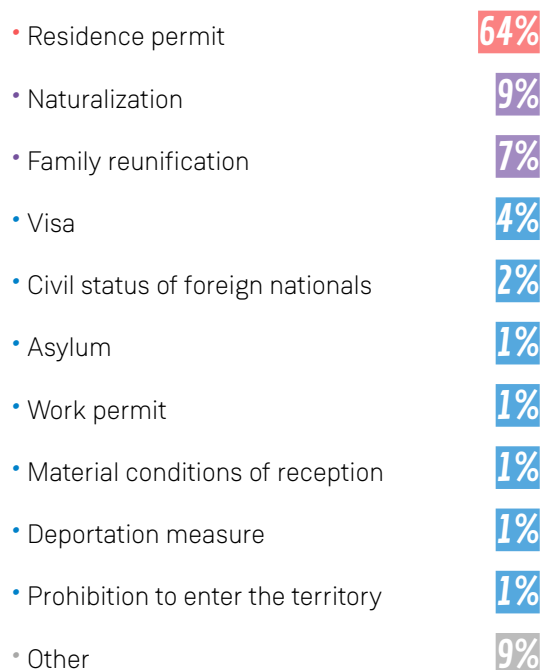
Let us hope that this example, like many others, reminds each of the stakeholders of the importance of a sincere, constructive dialogue, geared towards the recognition and effectiveness of rights. In this context, the Defender of Rights institution intends to play a full role and actively contribute to the promotion of the principles of public service.

**Daniel Agacinski**

#### MAIN COMPLAINTS IN THE FIELD OF SOCIAL SECURITY



#### MAIN COMPLAINTS IN THE FIELD OF IMMIGRATION LAW



**MAIN COMPLAINTS IN THE FIELD OF TRAFFIC LAW**

• Driving licence	47%
• Disputed ticket	14%
• Certificate of registration	8%
• Post parking charge (FPS)	4%
• Unregistered transfer certificate	4%
• Lump sum criminal fine	4%
• Highway traffic	3%
• Non-receipt of the initial or increased fixed fine	3%
• No response from the public prosecutor's office	2%
• Identity or plate theft	2%
• Non-refund of deposit/overpayment	1%
• Other	8%

## 1. EFFECTIVE ACTION TO RESTORE USERS' RIGHTS

**MANDATORY PRIOR MEDIATION: ARE USERS SATISFIED?**

From 2018 to 2021, the Act on the modernisation of the justice system for the 21st century has provided, on an experimental basis, for "mandatory prior mediation" (MPO) in six departments (Haute-Garonne, Isère, Loire-Atlantique, Maine-et-Loire, Meurthe-et-Moselle and Bas-Rhin), for disputes concerning the active solidarity income (RSA), personalised housing benefit (APL) and the Christmas bonus.

As part of the Observatory of the Defender of Rights, a study was carried out in partnership with the Observatory of Non-Recourse (Odenore) and Vizget among recipients who had used a mandatory prior mediation carried out by the institution's representatives.

It aimed to document the complainants' journey and their level of satisfaction, but also to shed light on the reasons for recourse or non-recourse to the judge at the end of the mediation process to ensure that the absence of recourse to the judge was the sign of a successful mediation and not of discouragement on the part of the complainant due to the introduction of an additional step.

In 77% of the situations, the disagreement with the organisation was about a request for reimbursement of overpayments. One third of the complainants obtained a review of the decision they were contesting, but 55% of the respondents were satisfied with the procedure, which means that the explanation was, for a large proportion of them, able to answer their questions.

The intervention of the delegates of the Defender of Rights seems to have been particularly appreciated: 65% of complainants who had been in contact with them were satisfied with the way the dispute was handled.

71% of delegates were seen to be more responsive than the respondent organisation, and 6 out of 10 respondents felt that their needs and arguments were better taken into account. Overall, 74% of the respondents answered that the intervention of a delegate was "rather an asset".

The Council of State has reviewed all the schemes tested and the Act of 22 December 2021 on confidence in the judiciary now allows the Government to determine by decree the disputes concerned by mandatory prior mediation. However, social benefits are no longer part of this.

**CLOSURE OF TRAIN STATIONS AND TICKET OFFICES:  
RECOMMENDATIONS FOLLOWED BY ACTION**

Several complainants reported difficulties encountered by users of the regional rail network, in several regions, due to closures of ticket offices in stations and of the stations themselves. Those passengers, not always able to obtain a ticket before boarding the train, complained about the inability to buy their ticket from the ticket inspector, and the too systematic recourse to fines by the inspectors

in the event of boarding the train without a ticket, even if the passenger was acting in good faith.

The Defender of Rights recommended to SNCF, by the [decision No. 2021-158](#) of 28 June 2021:

- To limit the elimination of ticket offices in stations and the transformation of stations into Unmanaged Stopping Places (USPs), particularly on the TER network;
- Where appropriate, to set up automatic ticket machines at Unmanaged Stopping Places and to ensure their permanent maintenance;
- To clearly inform passengers of the regularisation scales when boarding a train from a USP, by any useful means, including by displaying them on the platforms in sufficiently legible characters accessible to passengers with disabilities;
- To modify the arrangements for the regularisation of passengers using trains departing from a USP, as the current arrangements appear to constitute an inequality of treatment for users;
- Abandon the application of the "inspection" scale on trains without systematic commercial support;
- Remind all inspection officers that passengers boarding a train from a USP must be able to benefit from a regularisation fare and that fines should only be imposed if the passenger fails to present themselves spontaneously, or in the event of proven fraud.

Following this recommendation, SNCF made commitments to develop ticket distribution points in USPs, in stations or by partner organisations located on the outskirts of stations, to provide passengers with information on regularisation scales, to hold discussions with regional authorities on scales that exceed the "ticket office fare" and to deal with abusive fines on board TER trains.

### TYPOLGY OF THE MAIN RIGHTS VIOLATIONS

VIOLATIONS	%
Relations with users	77.8%
Regulations	15.9%
IT tools	4.1%
Organizations	2.2%

### TYPOLGY OF THE MAIN VIOLATIONS RELATED TO THE RELATIONSHIP WITH USERS

VIOLATIONS	%
Lack of listening and consideration of arguments	27.6%
Absence of response	21.9%
Processing or response time	15.2%
Lack of information	6.3%
Lack of reason for decisions	3.1%
Intelligibility of responses	1.5%
Abusive or repetitive requests for documents	0.9%
Time limit for reimbursement of undue payments	0.7%
Loss of files or documents	0.7%
Multiplicity of contacts	0.5%
Other	21.6%

**THE REPORT ENTITLED, "RIGHTS SET IN STONE?  
THE DECEASED PERSON AND THEIR RELATIVES FACING  
THE PUBLIC FUNERAL SERVICE (DES DROITS GRAVÉS DANS  
LE MARBRE ? LA PERSONNE DÉFUNTE ET SES PROCHES  
FACE AU SERVICE PUBLIC FUNÉRAIRE)".**

Ten years after the publication of a first report on funeral legislation, and based on the complaints that the institution has dealt with during this period, the Defender of Rights has renewed her analysis, this time questioning the respect, by the public funeral service, of the wishes of the deceased and the rights of their relatives. Despite some progress in the years following the publication of the first report, the number of complaints received by the institution in this area has increased significantly. The Defender's staff has observed a doubling of the number of cases handled each year since 2014.

This increase is accompanied by the comment that referring the matter to the Defender of Rights is an appropriate way to avoid long and costly litigation, the outcome of which, whatever the outcome, can often be disappointing. The report is supported by numerous cases in which the Defender of Rights, as an independent administrative authority with a mediation role, has been able to restore the possibility of a calmer dialogue between the parties and to find solutions, sometimes original ones, that are more satisfactory to the aggrieved families than mere financial compensation, or even to propose a solution that could settle the conflict.

In addition, the report stresses the essential role of information for families in all areas of funeral matters and recommends its consolidation. Several recommendations for adapting the General Code of Local Authorities, in order to incorporate solutions identified by case law and now stabilised, are also formulated, particularly concerning the different categories of concessions and the terms of their renewal.

**THE OPINION TO PARLIAMENT  
ON USER-ADMINISTRATION RELATIONS**

The bill on differentiation, decentralisation, deconcentration and various measures to simplify local public action, known as the 3DS bill, submitted in May 2021, aimed to "build a new stage of decentralisation". The text included several provisions on relations between users and administrations.

In an opinion to the Parliament No. 21-09 the Defender of Rights made comments and recommendations, particularly on the articles concerning the financing of the active solidarity income (RSA), the exchange of data between administrations and the France Services Spaces.

With regard to the experimentation of differentiated funding of the RSA, which responded to a request from certain departments, the Defender of Rights indicated that she would be attentive to the legibility and accessibility of the various appeal procedures provided for by regulation.

On the extension of the scope of data exchange between administrations within the framework of the "Tell us once" system, the Defender of Rights expressed her vigilance on the implementation of an audit and oversight system that would make it possible to account for what the administrations actually do with the shared data.

Finally, while the perpetuation of France Services Spaces is in line with the recognition of the long-term imperative of the physical presence of public services in the territories, defended by the Defender of Rights, she will ensure that the reality of the services offered is equal to the promise of human and complete access to the services mobilised in this context.



## EARLY ACTION BY A DELEGATE BEFORE THE ELECTION DEADLINE

The complainant left the Paris region in November 2020 to settle in another department. Her applications for registration on the electoral roll of her new town of residence proved unsuccessful. With no other solution, the complainant referred the matter to the delegate of the Defender of Rights, who contacted the general director of services of the municipality in question so that he could quickly examine the request.

The registration was carried out on the same day as the complaint was received by the official petitioned, before the legal deadline of May 14th 2021, which enabled the complainant to vote in the departmental and regional elections.

## 2. RECTIFYING THE ADMINISTRATION'S MISTAKES

### TREASURY BONDS

In 1996, a couple wishing to invest their savings acquired, on the advice of the treasury, Treasury bonds, securities issued by the central government to finance its debt. At the time, these bearer bonds were valid for 30 years.

After being reimbursed for some bonds in 2009 and again in 2011, and after being told by an agent that these bonds were valid for 30 years, in 2017 the complainant was refused reimbursement of the remaining bonds to finance repairs to her home, by the same agent. The regional public finance department (DRFIP) informed the wife that her bonds were time-barred, in accordance with the Act No. 2008-561 of 17 June 2008, which had reduced the limitation period for non-negotiable debt from 30 years to 5 years, amending Article 2224 of the Civil Code.

Thus, the bonds were no longer valid since June 19th 2013, without the complainant having been informed of this, even though a ministerial circular sent to the treasuries clearly instructed them to "*inform the holders in their jurisdiction of this legislative measure and its effects*".

The Defender of Rights recommended to the Minister of Economy, Finance and Recovery to grant the request by reimbursing the 72 vouchers concerned, with a total value of 590,000 francs, i.e., an equivalent value of just under €90,000. Otherwise, she recommended that he grant the applicant's request in view of the principle of fairness.

In the absence of a satisfactory response from the Minister, an injunction letter was sent on February 4th 2021. As the minister did not comply with this injunction, the Defender of Rights sent him a special report and published it in the Official Journal of the French Republic (decision No. 2021-255) in the absence of any follow-up to the recommendations of the decision No. 2020-019 and No. 2021-175. When questioned by a journalist, the Minister publicly indicated that he would review this situation. His chief of staff subsequently confirmed by letter to the complainant that the Minister had decided to lift the statute of limitations on the claim.

### TRANSPORT COSTS FOR A STUDENT WITH A DISABILITY

A student with a disability who received a notification from the departmental home for disabled persons (MDPH) granting reimbursement of his home-school transport costs was refused reimbursement by a Departmental Council on the grounds that Article R. 3111-27 of the Transport Code only provided for this for establishments under the Ministry of National Education and Agriculture, whereas his school was an art school under the authority of the Ministry of Education.

The agents of the Defender of Rights intervened to request a re-examination of the student's situation and his direct assumption of responsibility by the Ministry. They also drew the attention of the Ministry of Culture to the loopholes in Article R. 3111-27 of the Transport Code.

The ministry indicated that the art school concerned had initially voted to approve an exceptional allowance for this student in July 2021 and that the Departmental Council had included disabled students enrolled in establishments under the supervision of the Ministry of Culture in the scheme to cover

transport costs. Finally, it was stated that the Ministerial Delegate for Accessibility had been asked to amend the provisions of Article R. 3111-27 of the Transport Code, which is expected to be amended in 2022.

### **COMPENSATION FOR VICTIMS OF A JUDICIAL POLICE OPERATION**

The Defender of Rights is regularly petitioned with the difficulties encountered by persons who are victims of a judicial police operation carried out by mistake at their home, in the context of their application for compensation from the Ministry of Justice.

In its decision No. 2019-173 the Defender of Rights institution found that the methods of compensation of such persons, third parties to the legal proceedings, were likely to infringe the principle of equality and to constitute an infringement of their property. It challenged the systematic application of a flat-rate deduction of 10% on the costs of dealing with the material damage caused and recommended full compensation for the loss. It also recommended that better account be taken of non-material damage, since its instructions showed that the Ministry of Justice almost never granted requests made on this basis. It asked the Ministry to ensure that the forms issued when the claim was acknowledged include the fact that third parties must provide a quantified estimate of their non-material damage if they seek compensation.

After several exchanges between the Defender of Rights and the Ministry of Justice, the latter considered that it was not desirable to lift the application of this flat-rate deduction of 10% for obsolescence. Moreover, the mention of compensation for the non-material damage of users was not added to the acknowledgements of receipt issued by the Ministry.

The Defender of Rights was called upon in a case brought by a victim of a police operation carried out by mistake at her home, and she submitted comments to the court. In her decision No. 2021-204 she stressed the need to implement her previous recommendations.

In a judgment of 20 October 2021, taking into account the comments of the Defender

of Rights, the court rejected the application of the flat-rate deduction of 10% applied by the Ministry of Justice. It ordered the latter to pay the sum of €4,777 in application of the "principle of full compensation" for the complainant's material damage, as well as the sum of €2,500 for moral damage.

By letter of April 5th 2022, the Ministry of Justice informed the Defender of Rights that, following Decision No. 2021-204, it was definitively abandoning the application of a flat-rate depreciation factor of 10% to claims for compensation for property damaged in a criminal investigation. Thus, as of January 1st 2022, compensation to complainants is made on the basis of the full amount of the proven damages.

### **COMPENSATION FOR INVALIDATED IDENTITY DOCUMENTS**

During a planned trip abroad, the complainant was denied boarding on the grounds that the national identity card (CNI) she presented had been reported stolen or lost. The complainant indicated that she had never reported her ID lost or stolen. She contacted the prefecture and the Ministry of the Interior in vain in order to understand the reasons for the confiscation of her ID. The applicant also sought compensation for the non-material and material damage suffered as a result of the cancellation of her trip, as well as for the costs of renewing her ticket. No detailed answer was given to her on the reasons for the invalidation of her ID and no compensation was offered.

The Defender of Rights' staff referred the matter to the Department of Public Freedoms and Legal Affairs of the Ministry of the Interior to request explanations on the circumstances of the invalidation of the interested party's identity card. It was also asked whether the services of the Ministry of the Interior intended to respond favourably to her request for compensation.

The Ministry of the Interior replied that it was not able to establish that the person concerned had initiated this declaration of loss or theft or, in the event that this registration was the result of an error by the administration, that she had been asked to return the document

wrongly declared lost or stolen and to apply for its renewal. In these circumstances, it considered that the claim for compensation by the interested party appeared to be well founded in principle (RA-2021-031).

### **AN ATTACK ON THE FREEDOM OF THE PRESS**

The Defender of Rights was informed of the difficulties encountered by a person holding a provisional identity card for professional journalists, who complained about the refusal to allow him access to the press gallery of a Departmental Council and the restriction of documents given to journalists during a plenary session.

In her decision No. 2021-188, the Defender of Rights recalled the specific protection attached to the status of journalist. She considered that, in the absence of specific regulations, there was no need to distinguish between journalists according to the professional card they hold. She concluded that the lack of a legal basis for the refusals against the journalist violated the obligation of foreseeability of the law and the principle of legal certainty under Article 2 of the Declaration of the Rights of Man and the Citizen and infringed the freedom of the press protected by Article 10 of the European Convention on Human Rights, consequently representing an infringement of the rights of users of the public service.

The Defender of Rights recommended that the chairman of the Departmental Council allow holders of the provisional professional journalist's identity card to enter the area reserved for journalists and to give them the documents intended for them during meetings, in accordance with Articles L. 7111-3 paragraph 1 and R. 7111-9 of the Labour Code.

The president of the Departmental Council in turn indicated that he would follow the recommendations of the Defender of Rights. He specified that the complainant would be able to access the space dedicated to journalists and have access to the relevant documents from the next sessions.

### **THE NEED TO TAKE INTO ACCOUNT THE GOOD FAITH OF USERS**

The complainant lived alone with her daughter and received various benefits from the family allowance fund (CAF), including housing benefit and activity allowance.

However, the CAF notified her of an undue payment of more than €2,500, which was presented as the result of her daughter's failure to declare her wages, since she had started working at the time. In addition, the CAF accused her of fraud related to the concealment of her daughter's income and part of the living allowance. The undue payment amounted to almost €4,000.

The complainant wrote to the CAF to contest the accusation of fraud, saying that she had declared her daughter's income to the tax authorities, but had not known that she should also have declared it to the CAF. Despite her objections, the CAF notified her of an administrative penalty of €475. While she understood the validity of the undue payment, the complainant strongly contested the qualification of fraud.

The delegate of the Defender of Rights wrote to the CAF and indicated that it seemed to him that the complainant's particular case fell within the framework of the right to error enshrined in the law by Act No. 2018-727 for a State at the service of a trustworthy society.

In return, the CAF Ombudsman informed the delegate that the qualification of fraud had been removed.

In another case handled by a delegate, the complainant had noted that she had not been receiving her personalised housing benefit (APL) for several months. The complainant commented that 8,000 of income appeared on her personal account with the Family Allowance Fund (Caisse d'allocations familiales - CAF), resulting in the withdrawal of the personalised housing benefits. This sum corresponded to a salary allegedly received in a city where the complainant had never lived or worked. Despite several protests, CAF refused to believe her.

The delegate of the Defender of Rights contacted the CAF to request a review of the case. The internal investigation uncovered an error on the part of the fund and proved the complainant's good faith.

After she returned her pay slips, the complainant's entitlement was recalculated. The CAF informed the delegate that the complainant's case had been sorted out, resulting in an APL payment of €1,314.

#### **ADMINISTRATIVE DIFFICULTIES IN THE CONTEXT OF AN INHERITANCE**

An elderly woman stayed in an EHPAD nursing home from 2013 until her death in 2017. She received social assistance from the department and had taken out a life insurance policy for her daughter, the complainant.

During her stay in the EHPAD nursing home, the complainant's mother drew on her life insurance account to pay part of the costs of the nursing home. When she died, only €3,000 was left, intended to pay for her funeral. When she died, the Departmental Council contacted her daughter to recover the sums paid as social assistance during her stay in an EHPAD nursing home, i.e., €30,658.74.

The delegate intervened with the Departmental Council and argued that the life insurance accounts, which showed the complainant as the beneficiary, had been used for the most part to pay for her mother's stay in an EHPAD nursing home.

The President of the Departmental Council took into account the delegate's arguments and finally admitted the complainant's good faith. He acknowledged that the estate was in deficit, after deducting the funeral expenses.

The Departmental Council reassessed the amount claimed at €3,619.22, which corresponded to the amount of the life insurance actually inherited. The intervention of the delegate made it possible to divide the amount requested from the complainant by 10.

### **3. THE DELETERIOUS EFFECTS OF ALL-DIGITAL TECHNOLOGY**

#### **TAKING INTO ACCOUNT SAME-SEX PARENTAGE ON THE ANTS WEBSITE**

The Defender of Rights was informed by a non-profit and parents of the difficulties encountered by several same-sex families, who were unable to provide information on the dual maternal or paternal parentage of their children when applying for French identity documents on the website of the National Agency for Secure Documents (ANTS).

The pre-application form for a French ID document to be filled in on the ANTS website required that information concerning the civil status of the mother and father be entered at, without allowing the possibility of entering the identity of two same-sex parents.

The Defender of Rights asked the ANTS to modify the pre-application form in order to take into account the possibility of double maternal or paternal parentage provided for since Act No. 2013-404 of 17 May 2013 opening up marriage to same-sex couples. By requesting information on the identity of their mother and father on the form, the ANTS had not taken into account the consequences of opening up to dual maternal or paternal parentage.

The national agency accepted the change. The user will now be able to indicate either the existence of a father and a mother, or two mothers, or two fathers (RA-2021-058).

## THE LACK OF COORDINATION OF DIGITAL TOOLS

Following a roadside check in his department of residence, the complainant had his driving licence administratively withheld for a period of 5 months. He was informed by the prefecture that his licence would be returned to him at the end of the suspension and after a favourable opinion from a medical commission.

The complainant moved to another department after his licence was suspended. His driving licence was returned to him after he had passed the medical examination.

He then decided to take his HGV licence. However, when he was going through the ANTS website, his application was blocked for the following reason: "*Invalid licence, absence of medical examination*".

He sought the help of a delegate of the Defender of Rights, who initiated mediation with the prefectures of the two departments where the complainant resided. The prefecture of the new residence referred to the service of the prefecture of origin, while the prefecture of origin indicated that it could not forward the application, as it had not kept it. The delegate therefore sent a letter to the Centre for Expertise and Title Resources (centre d'expertise et de ressources titres - CERT) and requested an examination of the complainant's particular situation.

Eventually, the CERT proposed to the complainant to have a new medical examination near his new home, which the complainant accepted in good faith. Subsequently, his application was unblocked.

## 4. MAKING ACCESS TO RIGHTS EFFECTIVE FOR FOREIGN NATIONALS

### APPOINTMENTS AT THE PREFECTURE

Since 2017, in the departments that have chosen the online appointment booking module as a prerequisite for submitting an application for a residence permit or naturalization, queues have remained, but invisibly. The numerous complaints from people who cannot even get an appointment online, both at the head office and at the territorial delegates, show that the volume of slots open on the digitized platforms is very insufficient.

In the area of residence permits, the Defender of Rights addressed recommendations to the Minister of the Interior in 2020 (Decision No. 2020-142). In 2021, the Defender of Rights reiterated and updated her findings in an opinion to Parliament (opinion No. 21-03). At the same time, the instructions given to the prefects concerned, through written exchanges or meetings, were continued. Finally, the Defender's staff presented about fifty comments before the administrative courts petitioned with summary proceedings for "useful measures" in individual cases (Decisions No. 2021-134, No. 2021-149, No. 2021-170, No. 2021-171 etc.).

The comments were overwhelmingly followed by the administrative courts, which ordered the prefects concerned to summon the persons concerned to allow them to register their application for a residence permit.

In the area of naturalization, the Defender of Rights has also issued several decisions with recommendations: No. 2019-015, No. 2019-266, No. 2021-014, No. 2021-030, No. 2021-040.

In all these decisions, the Defender of Rights pointed out the obstacles resulting from the imposed use of online appointment systems. Far from facilitating the procedures of foreign nationals, they lead in many cases to a dead end due to the lack of available slots.

They make users invisible and encourage bypassing strategies, particularly the payment of private service providers. The impact on rights is dramatic, since foreign nationals who do not manage to obtain an appointment are kept in a vulnerable situation and even lose their residence permit and suffer a breakdown in their rights.

The Defender of Rights pointed out that such shortcomings violated the principles of continuity of public service and equality of users before the public service. It recommended the introduction of alternative procedures to the digitised route, both for online appointment booking and for those more recently deployed, which allow applications to be submitted online: the *demarches-simplifiees* platform and, above all, the Digital Administration for Foreign Nationals in France (administration numérique pour les étrangers en France - ANEF), which is intended to become the single interface for all procedures for submitting applications for foreign nationals.

Although the institution sometimes achieves amicable settlements with certain prefectures in the processing of individual complaints, the Defender noted that at the national level, efficient alternatives to the electronic procedure have not been established. In two recent reports digitisation of public services: three years on, where do we stand (Dématérialisation des services publics : trois ans après, où en est-on ?) and Becoming French by naturalization (Devenir français par naturalisation) she made several recommendations aimed at ensuring that users' rights are respected.

Wherever difficulties have been reported with regard to the non-response of prefectural services, the Defender of Rights or the Delegate General for Mediation has met with the prefects concerned in order to alert them to this phenomenon and its deleterious consequences, and to re-establish normal functioning. Unresponsive public services are an additional obstacle to accessing rights, leading to user exhaustion with the loss of resources, housing and residence permits. This increasingly frequent failure to respond leads to an unbearable feeling



of powerlessness for the delegates who deal with such cases. The Defender of Rights has made the fight against non-response from administrations a priority in her travels.

### **FOREIGN RESIDENTS AND FAMILY BENEFITS**

An Armenian couple who entered France with their two children were regularised in June 2020 and therefore hold a valid temporary residence permit.

The Family Allowance Fund (Caisse d'allocations familiales - CAF) denied their two children the right to social benefits. It asked the prefecture for a certificate stating that the two children had entered France *"at the latest at the same time as one of the parents"*, or failing that, a certificate mentioning the date of entry into France of the children. It was difficult for the spouses to get an appointment at the prefecture.

In this context, the delegate of the Defender of Rights contacted the prefectural services, which indicated that they no longer provide this type of document, and argued that it was up to the families to keep them. A mediation process was initiated with the CAF in order to challenge the validity of the attestation requirement and to request an examination of the particular case under Article L.313-11-7 CESEDA.

In February 2021, CAF informed the delegate that the right to family benefits had been regularised with effect from June 2020, the date of issue of the parents' temporary residence permit.

### **VISAS AND FAMILY REUNIFICATION**

The Defender of Rights was contacted by the curator of a statutory refugee because of the difficulties he was encountering in the context of a family reunification procedure, initiated in May 2018, for the benefit of his wife and two children who remained in Bangladesh. After several months of waiting, the intervention of the Defender of Rights's agents enabled the complainant's family to obtain an appointment at the French consulate in Bangladesh, in order to submit their visa application file. Despite several

requests, the complainant's wife was not contacted again by the consulate.

The agents of the Defender of Rights unsuccessfully requested a review of the complainants' situation from the Ministry of the Interior so that the visas could be issued as soon as possible. At the same time, the complainant's guardian lodged an appeal against the implicit decision to refuse visas, which was rejected on the grounds that *"the documents produced showed fraudulent intent and did not make it possible to establish the identity of the applicants"*.

In October 2020, the Ministry of the Interior finally replied to the Defender of Rights that the visas were ready to be issued but that the health crisis prevented the arrival of the complainant's family. After noting the contradictory nature of the reasons given to justify the refusal to issue visas, the Defender of Rights asked the Ministry of the Interior to re-examine the situation as soon as possible.

In the absence of a response from the Ministry, the Defender of Rights submitted comments to the Administrative Court, relying on the provisions of the International Convention on the Rights of Persons with Disabilities (CRPD) and the European Convention on Human Rights (ECHR) [decision No. 2020-248 of 7 January 2021](#). In the course of the litigation procedure, the Minister of the Interior finally instructed the consular authority to issue long-stay visas to the complainant's family. The family is now reunited in France.

### **ISSUANCE OF VISAS DURING THE HEALTH STATE OF EMERGENCY**

In the context of the governmental measures taken to curb the spread of the Covid-19 epidemic, the Defender of Rights was informed of numerous cases of foreign nationals who were refused access to a long-stay visa for France, even though they met the legal conditions for such a visa.

This included persons benefiting from family reunification procedures, who were excluded from the categories of persons authorised to enter the territory by virtue of a ministerial instruction of 15 August 2020.

In the course of a lawsuit for suspension of the investigation, the Defender of Rights submitted comments to the interim relief judge of the Council of State (Decision No. 2020-193). She considered that the choices made by the Government to admit foreign nationals to the national territory according to the nature of the visa applied for did not meet the requirement of proportionality with regard to the health risk and that they had discriminatory consequences and were contrary to several fundamental rights.

By a summary order of 21 January 2021, the Council of State suspended the Government's decision to stop issuing visas to beneficiaries of family reunification procedures. Since then, the latter have been included in the category of unvaccinated persons allowed to travel to France.

Similarly, the Defender of Rights commented on the suspension of the issuance of visas bearing the word "scientific family" to Algerian nationals. While family members of scientists of other nationalities were allowed to enter the country, she considered, before the interim relief judge of the Council of State, that the difference in treatment on the basis of nationality instituted de facto by the ministerial instructions was likely to characterise discrimination (decision No. 2021-063). By an Order of 17 March 2021, the interim relief judge of the Council of State suspended the circular that did not provide for a waiver of the entry restrictions for the families of Algerian "research scientists".

## 5. ENABLING EQUAL ACCESS TO BENEFITS

### **HARMONISED CONSIDERATION OF THE ADDITIONAL RESOURCES OF RECIPIENTS OF THE ACTIVE SOLIDARITY INCOME (REVENU DE SOLIDARITÉ ACTIVE - RSA)**

In the first case, the complainant was refused the RSA by a Departmental Council on the grounds that he had capital in excess of €23,000.

The services of the Defender of Rights noted the non-compliance of the decision instituting this rule with the legal and regulatory provisions organising the methods of taking into account, for the determination of the right to RSA, capital likely to be held by the users. The Departmental Council added a condition to Article R. 132-1 of the Code of Social Action and Families (Code de l'action sociale et des familles - CASF), stipulating that only 3% of the amount of capital held by the RSA applicant should be assessed to determine their eligibility for the scheme.

The Departmental Council followed the recommendation of the Defender of Rights and repealed the disputed decision (Decision No. 2021-123).

In the context of a dispute between another complainant and a Departmental Council, the latter had issued a decision to refuse RSA on the grounds that the complainant owned shares in a non-trading property company (SCI).

Although the rental of the property placed in the SCI did generate rental income, this was not passed on to the partners of the company and therefore did not generate any income. In her comments before the administrative court, the Defender of Rights recalled the need to respect the provisions of the CASF and the solutions established by case law regarding the consideration of the actual income of RSA applicants.

Thus, only the profits of the partnership actually distributed can be assessed as the partner's income. In its judgment of 15 March 2022, the administrative court followed the Defender of Rights, annulling the decision of the Departmental Council to refuse the application (Decision No. 2021-287).



In another case, the complainant, who received the RSA, received "compensation" in her capacity as family carer for her disabled son. This compensation income is part of the Disability Compensation Benefit (prestation de compensation du handicap - PCH), which is allocated to disabled people to enable them to benefit from "human assistance".

After declaring this resource quarterly to the family allowance fund (CAF), her RSA payments were suspended. The fund relied on the provisions of Article R.262-11 of the CASF, then in force, which did not explicitly provide for the exclusion of this type of compensation from the resources taken into account for the calculation of the RSA.

However, in its Order of 10 February 2017, the Council of State ruled that the PCH received for a child, as human assistance, was not included in the RSA resource base. In view of this case law, the complainant could not be excluded from this scheme.

Article No. R. 262-11 of the amended CASF, which came into force on 5 November 2020, endorsed this solution. After the intervention of the Defender of Rights' agents in mediation, the CAF agreed to open the complainant's right to RSA retroactively.

Taking note of this successful mediation, the Defender of Rights recommended that the CNAF open access to the restoration of the right to RSA for recipients who apply for it as of 1 May 2020, the date on which the decree amending the Social Action and Family Code should have come into force (Decision No. 2021-212).

### **THE BACK TO WORK ALLOWANCE**

The Defender of Rights is regularly approached by persons who have worked for a public employer and who have difficulties in obtaining payment of the back-to-work allowance (aide au retour à l'emploi - ARE) from the latter. The public employer insures itself against the risk of unemployment of its employees by taking on the administrative management and financial cost of unemployment compensation for its former employees (self-insurance).

This is the case with La Poste. More than fifty of its former employees have complained to the Defender of Rights about problems in the processing of their ARE applications. They denounce the difficulties in obtaining a contact person and the repeated requests for the transmission of documents already sent. Although difficulties remain, discussions with the department concerned have shown the efforts made by La Poste. The introduction of digital tools has certainly made exchanges more fluid in some cases, but must be accompanied by efforts to make the telephone more accessible and to provide more individualised follow-up.

This requirement is all the more pressing as the increase in the number of short contracts means that the steps to be taken are repeated, which complicates access to rights, as disputes over a few days' compensation can multiply and discourage them in their efforts.

### **CLAIMING RIGHTS AFTER AN ACCIDENT AT WORK**

The complainant, an agricultural worker, suffered an accident at work in January 2017 which was not initially recognised as such, so that he received daily allowances paid by the Mutualité Sociale Agricole (MSA) under the sickness scheme. In December 2018, the MSA's amicable appeals commission recognised his accident at work and his file was regularised.

One year later, the MSA notified him of an undue payment of about €400, and indicated that the daily allowance for accidents at work was lower than the daily allowance under the health scheme. The complainant lodged an amicable appeal against this decision. The MSA sent him a conservatory notice until his amicable appeal went before the commission. He therefore made an appointment with a delegate of the Defender of Rights, not having understood the justification for the undue payment, which the delegate contested with the MSA.

After acknowledging receipt and announcing that it was requesting additional information from the complainant's employer, the MSA informed him that his amicable appeal had

been rejected. The delegate of the Defender of Rights wrote to the MSA to request an audit of the mutual insurance company's expertise centre, expressing surprise at the arguments for rejecting the appeal.

After checking with the MSA's expertise centre, a calculation error was found. A revaluation of the allowances was carried out over the whole period concerned. In response, the MSA indicated that the complainant's situation had been reviewed: the undue payment of €400 was cancelled and a supplement of €812.11 in daily allowances was paid.

### **MATERNITY BENEFITS**

The complainant is the mother of a child who was born prematurely and did not survive the delivery. After the death of her child, she had great difficulty in receiving the maternity benefits due to her for prenatal leave. She decided to end her leave and return to work early, as the loneliness had become unbearable.

After two days, she realised that it was not physically possible for her to fully return to work. She asked the primary health insurance fund (CPAM) to resume her maternity leave, which was refused. The complainant, who was in a painful bereavement situation, complained about the great administrative complexity she had to face after the death of her baby. She also suffered from the lack of listening and empathy of her contacts.

She therefore decided to contact the local delegate of the Defender of Rights, who referred the complainant's particular case to the CPAM. They indicated by e-mail that they had assessed the particular case, and decided to allow the complainant to return to maternity leave for the remaining weeks. In addition, they stated that they have implemented a special procedure to better assist parents in such tragedies.

## **6. OUR ALLIANCE NETWORKS**

### **THE CLUB OF PUBLIC SERVICE MEDIATORS**

Bringing together mediators in charge of the amicable settlement of user disputes from ministerial departments (Ministries of Finance, National Education and Higher Education, Agricultural Education, etc.), public agencies or social protection bodies (employment office, MSA, etc.), large public companies (RATP, SNCF) and local authorities, the Club of Public Service Mediators provides a forum for dialogue on the evolution of the legal framework for mediation and on the difficulties encountered by users of public services. The Defender of Rights is represented by the General Delegate for Mediation.

### **THE "EMERGING PRACTICES OF SOCIAL WORK PROFESSIONALS IN THE CONTEXT OF COVID-19" SEMINAR.**

One year after the Defender of Rights published and distributed more than 10,000 copies of the "Practical guide for social workers (Guide pratique à l'usage des intervenants de l'action sociale)", the Defender of Rights organised an online seminar to assess the professional practices of those involved in access to rights and social support for vulnerable groups, especially young people in vulnerable situations.

Organised in partnership with Media Social, this event brought together more than 300 participants to hear presentations and testimonies from professionals (social workers, managers of non-profits or institutions, representatives of training establishments, students, employees of companies, agents and delegates of the Defender of Rights). The participants were able to put some innovative professional practices into perspective. They emphasised the usefulness and importance of cooperation between social work professionals and the Defender of Rights.

This guide was used to raise awareness among professionals throughout the country, particularly among agents of France Services in Loire-Atlantique, the Fédération des acteurs de la solidarité in Bourgogne-Franche-Comté and Normandy, the Assemblée des Comités locaux du Travail Social et du Développement

Social in PACA, and Red Cross student social workers in Auvergne-Rhône-Alpes. A workshop was also conducted by the head of the Occitanie regional unit within the framework of the regional conference on preventing and combating poverty, in order to strengthen cooperation between the elected representatives of local authorities responsible for social action and the Defender of Rights.

### THE TRAINING SESSIONS

As it does every year, the training department of the Defender of Rights held two three-hour sessions with students of the Regional Institute of Administration (Institut régional d'administration - IRA) in Lille (52<sup>nd</sup> "Marianne" class and 53<sup>rd</sup> "Romain Gary" class). Due to the health context, both interventions took place remotely, with over 70 students in each session. These interventions make it possible to strengthen the knowledge of the legal action of the Defender of Rights and to reaffirm the responsibility of future managers in the prevention of disputes between users and public services as well as situations of discrimination.

### THE SUPPORT OF THE DEFENDER OF RIGHTS TO FRANCE COMPÉTENCES

This year, the National Union of Social Work Training and Research Stakeholders (Union nationale des acteurs de formation et de recherche en travail social - UNAFORIS) submitted a certification project entitled "Welcoming and Supporting in Digitised Spaces (Accueillir et Accompagner dans des espaces digitalisés - ACCED)" to France Compétences. Pursuant to the provisions of Article 34 of the Organic Act 2011-333 of 29 March 2011 defining the role of the institution in promoting the implementation of training programmes, the Defender of Rights supported this certification project, which received a positive response. Through this new approach for the institution, the objective is to develop and strengthen the skills of professionals in the social sector in terms of welcoming and supporting users and the public who have difficulty using digital technology or who are "computer illiterate".

### FOCUS ON...

#### DEFENDING THE RIGHTS OF PRISONERS

In May, Claire Hédon and Pauline Caby visited the Varennes-le-Grand prison in Saône-et-Loire, where they met with staff and inmates. One month later, the Defender of Rights visited the juvenile detention centre (EPM) in Quiévrechain in the North of France, thus enabling the installation of a delegate office.

In 2021, 147 delegates worked in 169 of the 186 prisons, holding regular offices or by appointment. They have dealt with a wide range of situations in prisons, bringing a human dimension of proximity and listening. This mission is of a particular and sensitive nature. It requires training, support, good knowledge of the stakeholders in the prison administration, and sharing of practices.

During the Convention of the Defender of Rights's delegates, a conference with the participation of the Director of the Prison Administration was dedicated to the theme of "intervening in detention". This workshop concluded a series of 6 meetings held in June 2021 at the initiative of Pauline Caby.

The main reasons for complaints addressed to the delegates concerned access to social rights, access to administrative documents, renewal of identity cards, residence permits, detention conditions, transfer requests, canteen, loss of personal belongings, maintaining family ties, access to the visiting room, visiting permits, access to the telephone, mail, disciplinary procedures, sentence adjustment, access to work, vocational training, and healthcare.

Beyond these recurring subjects, the approach to handling complaints, their number and the conditions under which the mission was carried out varied from one establishment to another, depending on the size, the state of sanitation, the profile of the inmates, the relations with the management and staff of the establishment and the local stakeholders of the prison and judicial administration.

If the detainee is deprived of liberty, they should not be deprived of their rights. A leaflet entitled "Asserting your rights



during detention", produced by the institution, is given to each detainee on arrival in detention, as well as a display on access to a delegate of the Defender of Rights and the institution's competences in this area.

### **ACCESS TO CARE, AN OBSTACLE COURSE FOR PRISONERS**

The complainant has been detained for several years and was recently diagnosed with breast cancer. She denounced the inhumane conditions in which she was treated in hospital as a prisoner.

Systematically placed in a room separate from the main wards, cold, and in the basement of the hospital, she was initially called the "hypochondriac" by the supervisors. After the formal examinations on the diagnosis, the prison staff remained very aggressive towards her.

Confronted with her experience and the testimonies of other detainees, and faced with this systematic mistreatment, she decided to contact the delegate of the Defender of Rights.

The work of the delegate corroborated the complainant's version. In view of the scale of the violence, he referred the request to head office. The Defender of Rights alerted the Chief Inspector of Places of Deprivation of Liberty (Contrôleure générale des lieux de privation de liberté - CGLPL), which took over the investigation.

### **PRISONERS CONFRONTED WITH ADMINISTRATIVE ERRORS**

The complainant discovered that his ex-wife had sold his car while he was in custody, without notifying him, and without declaring the sale to the National Agency for Secure Documents (ANTS). As a result, the name of the new owner was not administratively associated with the vehicle registration document. In fact, the complainant, who was in detention at the time, received 9 speeding tickets, totalling €2,000. Faced with the bailiffs' insistent demands, the complainant referred the matter to the delegate of the Defender of Rights.

**THE OPINION TO PARLIAMENT ON CONFIDENCE**  
**IN THE JUDICIARY**

In May 2021, the Defender of Rights sent the parliamentarians comments and recommendations on several articles of the bill on confidence in the judiciary.

This bill aimed to improve knowledge of the missions and functioning of the judiciary, the conduct of criminal proceedings, confidence in the public prison service and in the action of legal professionals, and the effectiveness of the action of the administrative judge for the benefit of the litigant.

It seemed necessary, for example, to provide a legislative framework for the recording of hearings, which has until now been authorised on an exceptional basis, in order to ensure greater consistency in decisions to authorise recording and real legal security. Nevertheless, in order to respect privacy and to promote the serenity of the proceedings, the Defender of Rights recommended that the parties to the proceedings and the witnesses be informed of the recording of the hearing, even when it is public. Moreover, in order to protect minors and protected adults, the Defender of Rights recommended that their consent and that of their legal representative be systematically obtained by the presiding judge.

The Defender of Rights has spoken out in favour of measures to strengthen the rights of the defence, such as limiting the duration of preliminary investigations, strengthening the protection of attorney-client privilege and the secrecy of investigations, extending the obligation to inform to the right to remain silent, etc.

With regard to the provisions concerning the prison, although the Defender of Rights supported the drafting of a prison code, the provisions concerning the abolition of automatic sentence reduction credits did not seem to her to be a step in the direction of improving the public prison service.

The Defender of Rights regularly receives complaints from detainees who encounter difficulties with the administrative management of their criminal situation or the exercise of appeals, and has observed that the shortcomings observed are in most cases due to a lack of human resources and a particularly heavy workload for the judicial registry service in prisons. Consequently, the right of detainees to an effective remedy could be infringed, particularly in the context of the exercise of remedies, which must be exercised within 24 hours of the notification of the decision of the sentence enforcement judge.

The delegate first contacted the ANTS in order to claim the change of ownership. He then contacted the two public prosecutors related to the fines.

After a long mediation process, the delegate succeeded in having the tickets issued to the complainant cancelled and forwarded to the offender. The complainant's licence points were also restored.

## **THE OPINION TO PARLIAMENT** **ON PRISON POLICY**

During her hearing before the National Assembly's committee of enquiry into the malfunctions and shortcomings of French prison policy (opinion No. 21-13), the Defender of Rights recalled that the persistence of prison overcrowding was the primary cause of infringement of the fundamental rights of detainees, particularly the right to health and the right to respect for physical and psychological integrity. Her main recommendation was to end the moratorium on solitary confinement.

With regard to reintegration, the prisoner can, in practice, prepare for their reintegration by carrying out administrative procedures under common law. Nevertheless, obtaining a national identity card, for example, remains difficult. However, it is an essential document for the exercise of the right to maintain social relations and for the prisoner's reintegration. Access to websites in detention, which allow certain administrative procedures to be carried out electronically, remains problematic. The Defender of Rights therefore recommended free access to some of the content on the Internet in prisons: websites of public services, social organisations and e-learning websites recognised by the Ministry of Education.

Regarding the particular situation of incarcerated minors, the Defender of Rights indicated that detention should be the exception and that alternatives to incarceration should be favoured. She also insisted on the respect of the principle of separation of minors and adults, particularly for the security of young girls who are victims of trafficking and are incarcerated in detention centres for adults, as well as on the social reintegration of minors and the quality of social, educational and leisure support and access to education and training with a view to building a plan for their release.

The Defender of Rights also recommended that the obstacles to increasing the number of hours of education and socio-educational activities offered to detained minors be identified and that the educational achievements be monitored in detention so that the work done during detention is not lost.

She recommended that longitudinal research be carried out by independent researchers on the trajectory of minors after their stay in detention or in a closed educational unit in terms of social integration, health, training, access to employment, housing, family life and recidivism.

The Defender of Rights raised the recurrent problem of access to somatic and psychiatric care for minors and adults alike, due to the insufficient availability of healthcare professionals, as well as the recurrent breaches of medical confidentiality. The institution was also informed of difficulties relating to the performance of medical extractions to the connecting hospitals.

Finally, with regard to violence in prisons, the Defender of Rights indicated that there are still many functional and evidentiary obstacles to lodging a complaint or referring a case to the Defender of Rights, as detained victims of violence have great difficulty in getting their complaints heard due to short investigations and a lack of cooperation between institutions. The Defender of Rights therefore recommended the introduction of measures to facilitate hearings of detainees by the Defender of Rights' agents (videoconferences, telephone appointments, extractions), the extension of the period of retention of video-protection data (six months), and the drafting of protocols on the exchange of information in order to guarantee better cooperation between the judicial authority and the Prison Administration with the Defender of Rights.

F.

## STRENGTHENING THE WHISTLEBLOWER PROTECTION AND GUIDANCE FUNCTION

**CÉCILE BARROIS DE SARIGNY**

**DEPUTY DEFENDER OF RIGHTS IN CHARGE  
OF WHISTLEBLOWERS' SUPPORT**

Since the Act of 9 December 2016, the Defender of Rights was given the new mission of "*helping to guide all whistleblowers to the competent authorities under the conditions laid down by law and ensuring their rights and freedoms*".

In five years, the institution has accompanied, guided or protected several hundred whistleblowers, contributing to the implementation of the first national mechanism in their favour. These years of implementation have also enabled it to measure its limitations, particularly with regard to the complexity of the applicable rules, on which the benefit of protection depends, as well as the flaws in the protection mechanisms.

The institution has therefore closely followed the adoption of Directive (EU) 2019/1937 of the Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law and the discussions that have taken place in France on the transposition of this directive (see particularly Opinions No. 20-12 of 16 December 2020, Opinion No. 21-16 of 29 October 2021). In this context, the adoption of the Act of 21 March 2022 aimed at improving the protection of whistleblowers as well as the Organic Act of the same day aimed at strengthening the role of the Defender of Rights in terms of whistleblowing is to be welcomed.

Choosing an ambitious transposition, going beyond the strict scope of the directive, France has in fact retained a broad scope of protection within the framework of a more flexible definition of whistleblowers.



The reporting procedure has been clarified. Finally, the protection of the whistleblower, but also of the persons in contact with the whistleblower and the facilitators, has been considerably strengthened. And the scope of the Defender of Rights' tasks has evolved to include an even more active role in the protection of whistleblowers. A step has even been taken in the place occupied by our institution. In addition to the tasks of guidance and protection, the Defender of Rights institution is now endowed with a specific competence enabling it to direct requests that do not fall within the competence of one of the external authorities designated by the central government to those that it deems best able to deal with them, which will facilitate the processing and follow-up of reports. It is also responsible for issuing an opinion on the status of whistleblower, thus providing security for those who take the often difficult step of blowing the whistle.

As deputy in charge of whistleblower support, a function created by the Organic Act of 21 March 2022, I will endeavour to ensure the full application of the new legislative provisions by developing an ambitious doctrine and effective procedures for handling requests. Nothing will be done without dialogue or experience sharing, internally, with the various authorities to which reports are sent, particularly the external authorities designated by the central government, but also with France's European partners, within the framework of the European authorities responsible for whistleblowers.

The next few months, when the Act of 21 March 2022 will be supplemented by implementing regulations, will also be decisive for the future of the protection regime for democracy's watchdogs, the whistleblowers. I will pay particular attention to this.

**Cécile Barrois de Sarigny**

## 1. THE TRANSPOSITION OF THE EU DIRECTIVE ON THE PROTECTION OF PERSONS WHO REPORT BREACHES OF UNION LAW

### **THE OPINION OF THE DEFENDER OF RIGHTS NO. 21-16 ON THE ORGANIC BILL AND ORDINARY BILL ON THE TRANSPOSITION OF THE EUROPEAN DIRECTIVE**

In an opinion to the Parliament, the Defender of Rights, who has been for years advocating for the strengthening of whistleblower protection mechanisms, welcomed the important advances contained in the organic and ordinary bills transposing the Directive (EU) 2019/1937 of 23 October 2019.

Among these notable developments and beyond those imposed by the transposition, are particularly the maintenance of the broad scope of application of the Act No. 2016-1691 of 9 December 2016, the extension to legal persons of the possibility of assisting whistleblowers by allowing them to be recognised as *facilitators* or the possibility for judges to allocate, during the course of proceedings, an advance on costs and for the purpose of subsidies.

The legislator has also removed an option from the directive by allowing external administrative authorities, the list of which will be determined by decree, to provide psychological and financial support for whistleblowers in difficulty.

These texts have also significantly strengthened the role of the Defender of Rights, who has been given a pivotal role in guiding whistleblowers and will now be able to decide whether a person is a whistleblower, regardless of the whistleblowing regime which they fall under.

The Defender of Rights will be supported by a new deputy in the performance of this task. On her proposal, Cécile Barrois de Sarigny was appointed deputy to the Defender of Rights in charge of supporting whistleblowers by decree of the Prime Minister on April 16th 2022.

The Constitutional Council, to which the Government was referred, validated the entire new legislative framework (decisions No. 2022-838 DC and No. 2022-839 DC of 17 March 2022).

The Defender of Rights has once again stressed the urgent need to allocate sufficient budgetary and human resources to make this new right effective and to set up awareness-raising and training activities to develop a culture of whistleblowing in our society.

### **THE NEIWA NETWORK**

In 2021, the Defender of Rights intensified her work with the Network of European Integrity and Whistle-blowing Authorities (NEIWA). The network met several times, including a webinar hosted by the Irish on December 10th 2021, in preparation for the 17 December 2021 deadline for transposition of the EU directive.

At this meeting, the Dublin Declaration was adopted, enabling the network to formulate a set of common recommendations, and thus:

- Encourages its Member States to complete the transposition of the EU Directive ambitiously;
- Stresses that whistleblowers must be protected against any form of reprisal, and are entitled to benefit from existing protection measures;
- Encourages Member States to implement external reporting channels via the competent authorities;
- Recommends that the authorities inform the public widely, in a transparent and clear manner, about the rights granted to whistleblowers.



## 2. EXAMPLES OF THE DEFENDER'S SUPPORT FOR WHISTLEBLOWERS WHO ARE VICTIMS OF RETALIATION

The Defender of Rights received a complaint from a hospital practitioner regarding the retaliatory measures to which he felt he had been subjected after denouncing the illegal medical practices of a colleague. The complainant was suspended from his duties as head of department and was subject to three successive suspension measures, pronounced as a precautionary measure by the director of the establishment, by the national management unit and finally by the regional health agency (agence régionale de santé - ARS). In addition, a disciplinary proceeding was initiated against him by the director of the national management unit.

Following the investigation by her services, the Defender of Rights found that the complainant was a victim of retaliation following a report issued in the performance of his duties. She also submitted comments to the interim relief judge of the administrative court. If the request for suspension of the decision by which the director general of the regional health agency suspended him from exercising his functions was rejected, the ARS abrogated this suspension the next day in view of the decision of the Defender of Rights. The disciplinary proceedings were dropped and the complainant was allowed to return to work. However, the complainant was again suspended by the ARS one month later, on the basis of Article L. 4113-14 of the Public Health Code. He appealed against this decision on the grounds of abuse of authority. Mediation has been initiated.

In another case, the Defender of Rights was approached by an employee who felt that her dismissal was in retaliation for a report she had made. As a biology technician, she had reported since 2012 on several occasions, first to her employer and then to other authorities, failures relating to health and safety rules as well as serious breaches of animal protection rules. On her return from maternity leave, some of her duties were taken away and she was dismissed for misconduct in 2017.

The investigation by the Defender of Rights' lawyers revealed that the employee had complied with the graduated whistleblower procedure imposed by Article 8 of Act No. 2016-1691 (Sapin 2) and European case law, that the breaches she had reported characterised the reporting of a crime or offence and that there was nothing in the file to establish that she had not reported the facts in good faith. She therefore fulfilled the conditions to benefit from the protection granted to whistleblowers under the Sapin 2 Act. Nevertheless, the industrial tribunal that had ruled before the referral to the Defender of Rights, while recognising the employee's status as a whistleblower, had refused to apply the provisions of the act, insofar as the employee had made her report before the act came into force.

On the other hand, the Defender of Rights considered that if such a temporal application of the Sapin 2 Act were to be retained, it would deprive all whistleblowers who reported before the entry into force of the Act but who suffered retaliation afterwards, of any useful effect relating to the protection from which the legislator had intended them to benefit.

The investigation by the lawyers of the Defender of Rights also showed that there was a link between the report and the dismissal and that the latter was indeed retaliation following the employee's report. In decision No. 2020-024 the Defender of Rights submitted comments to the Court of Appeal concluding that the Sapin 2 Act should be applied and that the dismissal should be invalid.

In its decision of 6 May 2021, the Grenoble Court of Appeal followed the analysis of the Defender of Rights. It ruled that the date to be taken into account for the application of the Sapin 2 Act was the date of the employee's dismissal, that the employee had denounced the facts in good faith, noting that the terms used to formulate the report were detailed and measured and that, as she fulfilled the conditions of this act, she could therefore benefit from the status of whistleblower, regardless of the fact that the facts reported were not criminal. The court annulled the dismissal and ordered the employer to compensate its former employee for the damage caused.

PART 4

# GENERAL ADMINISTRATION

## 1. MOBILISATION OF THE INSTITUTION'S SUPPORT DEPARTMENTS

In 2021, the activity of the institution's support departments was again marked by the health context, inviting them to focus on the day-to-day monitoring of the individual and collective working situations and conditions of staff.

In addition to the highlights of the year, which included the launch of the anti-discrimination platform and the National Delegates' Convention, the support departments were able to make progress or finalise long-term projects:

- The continuation of a social dialogue and a Covid committee, with a dozen bodies, have made it possible to monitor and discuss the rules of organisation of work and work from home;
- Maintaining an individualised training offer, with the reinforcement of the training path for managers, and individualised training for 24 agents of the institution, sometimes with the use of the personal training account;
- The finalisation and vote on the institution's trade directory;
- The conclusion of almost 45 staff recruitments over the year, not to mention the reception and support of around 70 trainees over the two semesters;
- Building up a CV bank of candidates with a disability who would like experience within the institution, in connection with the Duo Day operation;
- The strengthening of psycho-social risk (PSR) prevention tools by linking up with the interdepartmental "Pro-Consult" market;
- The development of HR tools: professional evaluation with the implementation of the ESTEVE system (see box below) or the acquisition of BETWEEN hiring software which will be operational in 2022 to process the nearly 3,000 applications received annually by the institution;
- Preparation for the renewal of the computer fleet, in accordance with the recommendations on the obsolescence of equipment, with the acquisition and preparation of a significant amount of equipment;
- The finalisation of a budgetary and accounting risk map in the context of financial internal control;
- The support of a mission from the State Digital Directorate (DINUM) to identify ways of improving the use and practices of digital tools;
- The reorganisation of the archive management table in conjunction with the archive mission of the Prime Minister's office;
- The discussion and conclusion of seven temporary occupancy agreements for the installation of the regional heads of units in the regions in the public domain;
- And participation in about ten site management committees (COGES) to coordinate with the other entities occupying the Ségur-Fontenoy building, where the institution has its head office, on all common issues (sanitary protocol, collective catering, modernisation work, waste collection, caretaking).



## 2. THE INSTITUTION'S HUMAN RESOURCES

The institution's employment authorisation cap (EAC) has increased between 2020 and 2021 from 226 to 231 full-time equivalents (FTEs) according to the Budget Acts.

The category and gender breakdown tables are calculated on this regulatory basis to facilitate comparability from one year to the next and reflect a broadly stable segmentation according to these criteria compared to previous years.

### BREAKDOWN OF THE INSTITUTION'S FTE EMPLOYMENT CAP BY CATEGORY AND GENDER

EMPLOYMENT CAP IN FTE		EMPLOYMENT CAP 2021
<b>TENURED</b>	Category A+	11
	Category A	21
	Category B	8
	Category C	2
	Subtotal	42
<b>CONTRACT WORKERS</b>		190
<b>TOTAL</b>		<b>231</b>

	2021	
	NUMBER OF STAFF	%
Women	169	73%
Men	62	27%
<b>TOTAL</b>	<b>231</b>	<b>100%</b>

	WOMEN			MEN			TOTAL WORKFORCE	DISTRIBUTION OF STAFF
	NO.	% F	% F/F	NO.	% M	% M/M	NO.	%
A+	24	59%	14%	17	41%	27%	41	18%
A	113	75%	67%	37	25%	60%	150	65%
B	27	87%	16%	4	13%	6%	31	13%
C	5	56%	3%	4	44%	6%	9	4%
<b>TOTAL</b>	<b>169</b>	<b>73%</b>	<b>100%</b>	<b>62</b>	<b>27%</b>	<b>100%</b>	<b>231</b>	<b>100%</b>

However, this change in resources is based on technical criteria and does not reflect the actual increase in jobs at the very beginning of the management period, mainly due to the arbitration linked to the creation of the new anti-discrimination platform, which has broadened the scope of the institution's missions.

On average, the consumption of jobs will have reached almost 234 FTEs, reflecting a significant recruitment activity during the financial year 2021, the effects of which will be reflected in the next financial year since the institution's jobs cap is already set at 249 in the 2022 Budget Act.

In fact, apart from the delegates whose status as volunteers makes them special employees who cannot be counted in the workforce, nearly 300 people (agents, trainees and casual employees) will have been managed by the HR teams in 2021.

#### FOCUS ON...

#### ESTEVE: A TOOL TO FACILITATE AND PROFESSIONALISE THE EVALUATION OF AGENTS

The teams of the General Administration Directorate have accelerated their policy of supporting the professional development of the institution's staff over the past two years. In parallel with the gender equality plan, the overhaul of the job directory and

the professionalisation of the mobility council, staff appraisals have also been an issue in terms of progress, enhancement and follow-up. The ESTEVE tool was designed as a response to this challenge.

In 2021, on the occasion of the annual assessment campaign for staff and managers, the institution has chosen to move towards a flexible and reversible digitisation of assessment reports, using the free "ESTEVE" application, which is already in place in some ministries and public sector bodies.

This tool simplifies the input of information gathered during assessment interviews and makes them more reliable for the years to come, particularly with a view to facilitating career management in the context of interministerial career mobility for staff, which the institution wishes to develop in the years to come.

The implementation of this tool is also intended to simplify the analysis of skills assessments in order to more easily identify training needs for certain skills, both for managers and for human resources teams. It plays a full part in the professionalisation of the assessment interview, which remains a privileged moment of exchange between the staff member and their line manager, and in the modernisation of HR support, as individualised as possible, for the institution's staff.

### CONSUMPTION OF T2 AND T3 APPROPRIATIONS IN 2021

	STAFF EXPENDITURE (TITLE 2)		OTHER EXPENDITURE (EXCLUDING TITLE 2)		TOTAL BUDGET	
	AE=CP	AE	CP	AE	CP	
Initial Budget Act Budget	16,906,465	6,053,599	6,053,599	22,960,064	22,960,064	
Available budget	16,971,933	7,157,383	7,157,383	24,129,316	24,129,316	
Budget consumed (1)	16,884,461	7,129,489	7,124,810	24,013,950	24,009,271	
Implementation rate	99%	100%	100%	100%	100%	

After securing the recovery of data from previous evaluations and conducting several rollout tests, the human resources teams provided training in the use of this tool, which enabled all staff and evaluators to carry out a first exercise in the digitisation of evaluation reports, which was complete and respected the deadlines.

The structure of expenditure remained broadly stable compared to previous years (70% devoted to the wage bill and 11% to territorial delegates, i.e., 36% of the operating budget).

In addition, €2,081,355 in operating appropriations were allocated to the institution by the Prime Minister's Administrative and Financial Services Directorate to cover expenses shared with the Prime Minister's departments.

### 3. THE BUDGETARY RESOURCES OF THE INSTITUTION

In 2021, the appropriations made available to the Defender of Rights, on programme 308 "Protection of rights and freedoms" of the central government general budget, amounted to €24,129,316 in commitment appropriations (AE) and payment appropriations (CP).

These amounts included the additional resources (€1,467,000 in commitment appropriations and payment appropriations) that were granted in management to allow the rollout, at the very beginning of the year, of the anti-discrimination platform (see specific box below), which explains the difference with the appropriations voted in the initial budget act.

24,013,950 in commitment appropriations and €24,009,271 in payment appropriations were used, i.e. total implementation of the appropriations made available, both for staff and operating appropriations.

#### BREAKDOWN OF OPERATING EXPENDITURE IN 2021

- Compensation of territorial delegates **36%**
- Rights promotion actions, communication, partnerships, events **28%**
- Everyday operations **14%**
- IT **5%**
- Hosting/web development **5%**
- Reimbursement of staff made available **5%**
- Trainee remuneration **4%**
- Studies **2%**
- JADE Programme **1%**

As an extension of previous actions and while continuing its policy of promoting rights, the institution has endeavoured to rationalise its operating costs with a view to controlling public expenditure and ensuring transparency in purchasing by resorting, whenever possible, to interministerial and mutualised public contracts of the Prime Minister's departments and to the Union of Public Purchasing Groups (Union des groupements d'achats publics - UGAP).

In addition, structural savings were pursued in conjunction with the regional property policy managers. In fact, the year 2021 saw the gradual and sustainable installation of all the mainland French regional units in the public domain, most of which had previously been installed in private premises.

More generally, these savings have been used, albeit insufficiently, to compensate for the lack of growth in appropriations (on a like-for-like basis, excluding new missions), which has a worrying impact on the institution's ability to respond effectively to the growing workload observed in recent years, as shown by the sharp increase in complaints.

#### **FOCUS ON...**

#### **ADDITIONAL RESOURCES FOR THE ROLLOUT OF THE ANTI-DISCRIMINATION PLATFORM**

The rollout of the anti-discrimination platform (39 28 number and online chat) has mobilised the entire General Administration Directorate to enable its launch in February 2021.

An additional €1,467,000 was allocated to the institution to ensure the launch of the scheme:

- €467,000 dedicated to the launch and ongoing operations;
- €300,000 for the provision of legal helplines, based on a new dedicated contract;
- €700,000 in order to deploy a communication campaign to make the general public aware of this new system so that they can contact the institution.

Within the framework of this campaign and in accordance with the budgetary arbitration, €300,000 was also released, in management, from the appropriations initially made available to the institution, limiting its leeway a little more, bearing in mind that approximately 80% of its operating expenditure is constrained.

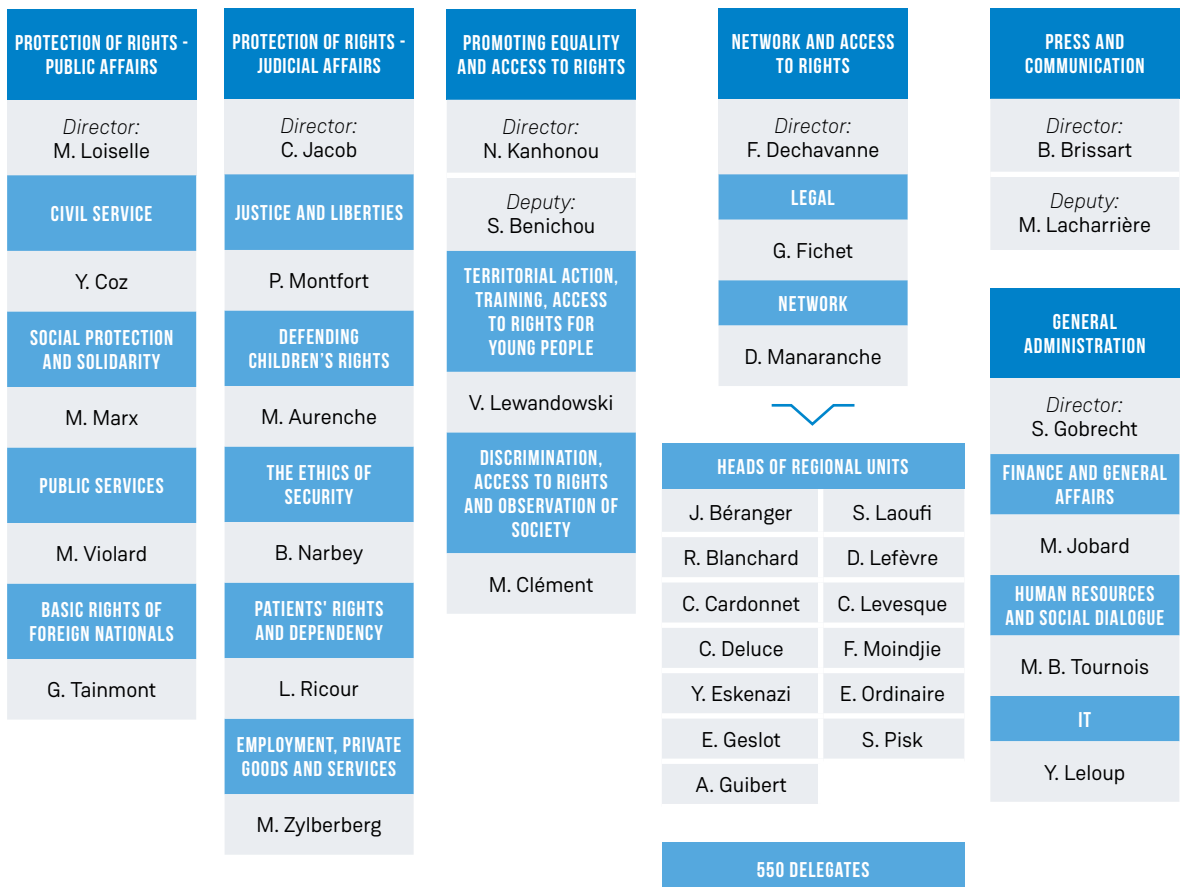
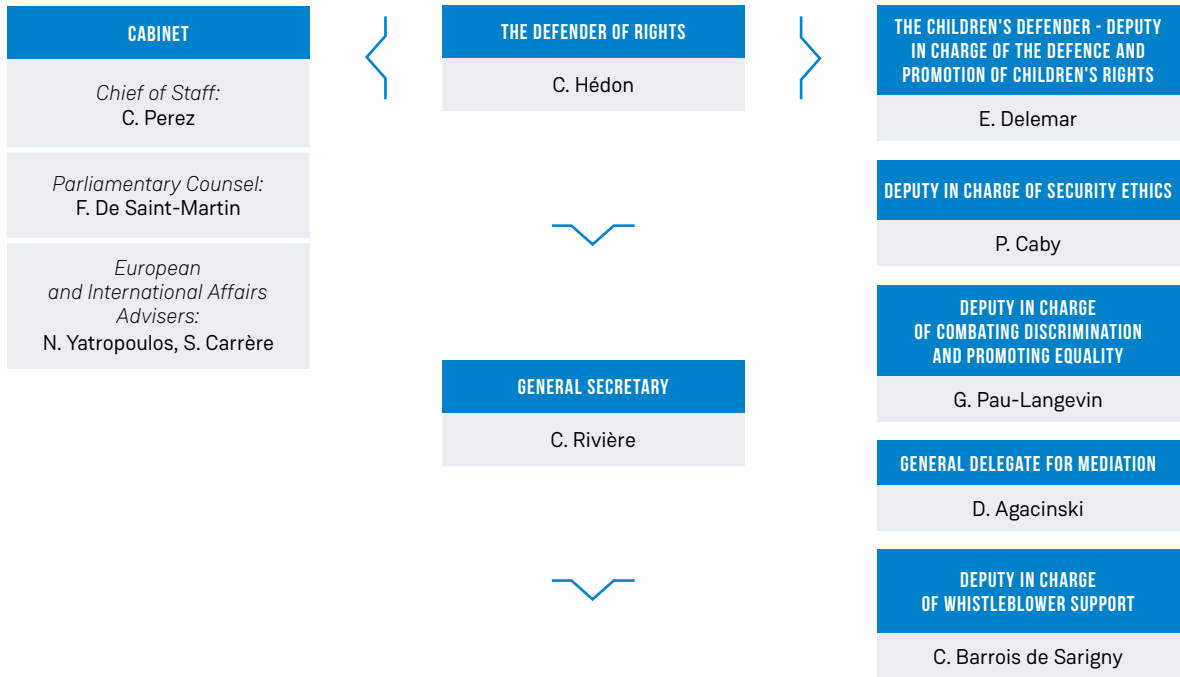
These additional resources explain the changes, compared to the previous year particularly, in the distribution of the institution's expenditure, with a strong increase in communication expenditure in particular (28% instead of 11%).

In addition to these financial aspects, human resources (some fifteen FTEs) were recruited to ensure its operational implementation and to handle the activity generated by this system, as well as its impact on the institution's core business of handling complaints.

These jobs could be recruited for without any deterioration in the wage bill initially allocated to the institution since no additional allocation was granted for this purpose (they will however be perpetuated and reflected in the 2022 Budget Act). They have mobilised the human resources teams to recruit, train and support a wide range of profiles: legal specialists or coordinators in the field of anti-discrimination, regional discrimination officers, placed under the heads of regional units, communication or IT officers dedicated to the project.

Finally, from a logistical and IT point of view, this project required the physical installation of a new platform of dedicated listening agents, as well as the provision and fitting out of new office space and the corresponding equipment in the premises of the institution's head office.

### DEFENDER OF RIGHTS 2021 ORGANISATIONAL CHART



PART 5

# THE FACES OF THE INSTITUTION

**"THE SERVICES PROVIDED BY THE UNITS ARE DIVERSE: TRAINING, FINANCING OF STUDIES, COMPUTER SOFTWARE, PRINTING, PRODUCTION OF COMMUNICATION TOOLS, ETC."**

**HANSEL KRYST**

**MANAGER IN THE FINANCE AND GENERAL AFFAIRS UNIT**

**WHAT ARE YOUR DUTIES?**

I am a manager in the Finance and General Affairs unit. In concrete terms, I manage the expenditure of the institution's various directorates: when there is a need for a service, the departments send us estimates that are validated by our superiors and then passed on to the Prime Minister's departmental accounting service. That service then sends us a purchase order, which formalises the central government's legal commitment to the service provider. When the service is completed, the requesting department within the institution sends us a certificate of service rendered: this step is essential for the payment of the service provider. The services provided by the units are diverse: training, financing of studies, computer software, printing, production of communication tools, etc. We also monitor the budget of each directorate to ensure that the institution's projects are carried out within the budget allocated each year and to justify each expenditure.



**HOW LONG HAVE YOU BEEN WORKING AT THE DEFENDER OF RIGHTS INSTITUTION?**

I have been working at the Defender of Rights for 10 years. My colleagues and I have been working together in the unit for a long time. What I like about working here is the working atmosphere and the interpersonal relations between people. There is an easy contact between everyone and a real mutual respect.



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**"IT IS ALWAYS BETTER TO THINK TOGETHER  
ABOUT SITUATIONS THAT MAY BE SENSITIVE  
OR EMOTIONALLY CHARGED."**

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**NATHALIE LEQUEUX**

**LAWYER –LEGAL COORDINATOR  
IN THE CHILDREN'S RIGHTS UNIT.**

**WHAT ARE YOUR DUTIES?**

I am a lawyer-coordinator in the Children's Rights Unit, which consists of 9 lawyers, an assistant, a head of unit and two trainees. This position is a bit special in that it involves a mission of animation and support to my colleagues in addition to the instruction and follow-up of a portfolio of files. I lead a team of 4 lawyers whom I try to advise and support in their investigations. It is always better to think together about situations that may be sensitive or emotionally charged.

**WHAT WAS A HIGHLIGHT FOR YOU IN 2021?**

The year 2021 was marked by the publication of the first special report of the Children's Rights Unit. This is indeed the first time we have implemented this exceptional possibility of publishing a decision in the Official Journal, not anonymised.

On February 4th 2019, a member of the family council for wards of the state in the department of Mayotte referred to us the situation of an unidentified child who was found in May 2017 on the public highway. The situation of this child had enabled us to highlight a series of failures on the part of child welfare (Aide sociale à l'enfance - ASE).



To better understand the situation, we asked the ASE for a copy of the child's file and received an almost empty file, with poorly documented notes on the boy's situation. Reading these notes in which the services persisted in naming this child "baby X" was particularly shocking for me. We later learned that the child had been given an identity, but many requests for information remained unanswered.

We then adopted a decision on November 28th 2019 (Decision No. 2019-295), which addressed, among other things, a child's right to identity, a fundamental right under the CRC. We contacted the department several times but received no response. That is why we have decided to publish the special report in the Official Journal on July 8th 2021.

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## "THE LAST TWO YEARS OF HEALTH CRISIS HAVE HAD A VERY STRONG IMPACT ON CHILDREN AND YOUNG PEOPLE."

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### THOMAS BOUVARD

**JADE PROJECT OFFICER AT THE TERRITORIAL ACTION,  
TRAINING AND ACCESS TO RIGHTS FOR YOUNG PEOPLE UNIT**

#### WHAT ARE YOUR DUTIES?

I arrived in December 2020 and am one of the three coordinators of the JADE programme. I particularly appreciate the diversity of our mission, which has two main dimensions: on the one hand, the general management of the programme (management of the various national and local partnerships, rollout in new territories) and, on the other, the recruitment, training and daily support of the young ambassadors during their 9-month mission. In our territorial distribution, I am more specifically in charge of monitoring the JADE Young Rights Ambassadors of Côte d'Or, Loire and Isère. In addition, I am the "animation" referent within the coordination, whether it is to train the JADE Young Rights Ambassadors for interventions, manage and enrich the animation catalogue, or accompany them in the creation of new tools.



#### HOW DO YOU LOOK BACK ON THE PAST YEAR?

The last two years of health crisis have had a huge impact on children and young people, whether it be on their learning, mental health or social relationships. The increase in the number of worrying comments collected by JADE Young Rights Ambassadors is one of the manifestations of this. This reinforces my conviction that the action of our institution is essential to promote and ensure respect for the rights of all, especially the most vulnerable.

**"... ORGANISATIONS OFTEN LABEL INSURED PERSONS AS FRAUDSTERS ON THE BASIS OF AN OVERSIGHT IN DECLARATION OR AN ERROR IN UNDERSTANDING WITHOUT HAVING ESTABLISHED THEIR INTENT TO DEFRAUD."**

**ELÉONORE QUINIOU**

**LEGAL OFFICER IN THE SOCIAL PROTECTION AND SOLIDARITY DEPARTMENT**

**WHY DID YOU CHOOSE TO WORK FOR THE DEFENDER OF RIGHTS?**

I joined the Social Protection and Solidarity Department as a lawyer in June 2020, specialising mainly in pensions and family benefits. The Defender of Rights is an institution that I had always wanted to work for, to have the opportunity to defend people's rights and freedoms and to feel useful.

Moreover, after working for 12 years in a social protection organisation drafting legal circulars to implement reforms, I wanted to see what concrete repercussions these had on the lives of the insured.

**WHAT PROJECT WAS A HIGHLIGHT OF 2021?**

A key project in 2021 was to work in the benefits fraud working group, which has recently been set up within the unit. This work is important because we are often approached by insured persons, sometimes in very vulnerable situations, who find themselves accused of fraud from one day to the next and have to repay an overpayment of social benefits.



However, it has been observed that organisations often label insured persons as fraudsters on the basis of an oversight in declaration or an error in understanding without having established their intent to defraud. However, fraud corresponds to a precise definition which includes the obligation for the organisation to demonstrate the insured's intent to defraud.

**"CITIZENS HAVE REALLY SUFFERED THE CONSEQUENCES  
OF THE HEALTH CRISIS AND THE CLOSURE OF ADMINISTRATIONS.  
IN THE MIDST OF THE CRISIS, WE CONTINUED  
TO BE A RESOURCE FOR THEM."**

**HOUCINE ARAB**

**DELEGATE, REFERENT IN DISCRIMINATION - MONTPELLIER**

**HOW DO YOU LOOK BACK ON THE PAST YEAR?**

As in 2020, the year 2021 was revealing of the usefulness of the institution and the role of the delegates. The subject of discrimination was of course there before, but it has become more important. Citizens have really suffered the consequences of the health crisis and the closure of administrations. In the midst of the crisis, we continued to be a resource for them. I personally dealt with twice as many complaints in 2021 as in the previous year, on complex issues: people who had lost access to their social rights, residence rights, driving licence, etc. This had serious consequences for these people, such as loss of employment or income for some.



**WHY DID YOU GET INVOLVED WITH THE DEFENDER  
OF RIGHTS?**

I joined the HALDE and then the Defender of Rights 13 years ago. It is an institution that meets my aspirations, that corresponds to my commitment and the values I defend. I find in the mission of delegate a human dimension and a cross-disciplinary aspect that suits me perfectly: we deal with various subjects that touch on all the dimensions of the lives of individuals and families. It is fascinating.

**"... I AM, FOR EXAMPLE, IN CHARGE OF COMPLAINTS  
FROM FARMERS WHO ENCOUNTER DIFFICULTIES  
IN ACCESSING AGRICULTURAL AID."**

**DOMINIQUE DAAS**

**LAWYER IN THE PUBLIC SERVICES UNIT**

**WHAT ARE YOUR DUTIES?**

I am a regional customs inspector, seconded to the Defender's Public Services unit since 2016. I work on customs disputes but also on other issues concerning access to public services. For example, I am in charge of complaints from farmers who encounter difficulties in accessing agricultural subsidies.

**WHAT PROJECT WAS A HIGHLIGHT OF 2021?**

A key project was to work on the publication of a special report on Treasury bonds (Decision No. 2021-255). The original case concerned a lady who had invested all her savings in the purchase of Treasury bonds - securities issued by the central government to finance its debt, initially valid for 30 years. The complainant was able to have a few bonds reimbursed before being refused by the Treasury: following a new law setting the validity of Treasury bonds at 5 years, her bonds had become time-barred without her being informed of this. However, a ministerial circular had been sent to the treasuries instructing them to inform holders in their jurisdiction of the new regulations.



The Defender of Rights recommended that the Minister of Economy, Finance and Recovery reimburse the complainant or, failing that, grant her request in consideration of the principle of equity. In the absence of any follow-up, the Defender of Rights decided to send a special report to the Minister and to publish it in the Official Journal of the French Republic. Subsequently, the Minister indicated that he would review the case.

**"AS ONE OF THE INSTITUTION'S MISSIONS  
IS TO "PROMOTE (...) THE IMPLEMENTATION  
OF TRAINING PROGRAMMES",  
WE DEVELOP OUR OWN TRAINING SYSTEMS..."**

**JULIE VOLDOIRE**

**POLICY OFFICER AT THE TERRITORIAL ACTION, TRAINING  
AND ACCESS TO RIGHTS FOR YOUNG PEOPLE UNIT**

**WHAT ARE YOUR DUTIES?**

I am in charge of training professionals who collaborate with the Defender of Rights, specifically professionals from the National Education, Higher Education and Research Ministry, social workers and local civil servants. As one of the institution's missions is to "promote (...) the implementation of training programmes", we develop our own training systems (digital, face-to-face, hybrid...) and support associative and institutional partners in the implementation of their training programmes.



**WHAT PROJECT WAS A HIGHLIGHT OF 2021?**

A key project was the development, in partnership with the Institute for Higher Studies in Education and Learning (Institut des hautes études de l'éducation et de la formation - IH2EF), of two training courses aimed mainly at management staff: one aimed at raising awareness among civil service and social security managers of the fight against discrimination; and a hybrid training course for school principals and national education inspectors on children's rights. These training projects are an example of what can be achieved through long-term partnerships.

"... IT HAS BEEN IMPORTANT FOR US TO CONSTANTLY CHECK  
WHETHER THE MEASURES TAKEN WERE LEGAL AND PROPORTIONATE  
TO THE OBJECTIVE OF COMBATING THE COVID-19 EPIDEMIC..."

**SARAH DOZSLA**

**LAWYER IN THE PATIENTS' RIGHTS AND DEPENDENCY UNIT**

**HOW DO YOU LOOK BACK ON THE PAST YEAR?**

With the health crisis, restrictions on personal freedom in the name of public interest imperatives have been at the heart of the productions of the Patients' Rights and Dependency unit. In the health and social care fields, it was important for us to constantly check whether the measures taken were legal and proportionate to the objective of combating the Covid-19 epidemic. However, we have had to deal, for example, with certain cases of isolation of residents in EHPAD nursing homes, with greater restrictions on fundamental rights than for the rest of the population, without any legal or regulatory basis. The examination of the situations referred to us thus often required reference to numerous norms adopted in a context of urgency that made them difficult to read, and to take into consideration sources of flexible law, such as the protocols and recommendations of the health authorities.



**WHAT PROJECT WAS A HIGHLIGHT OF 2021?**

We produced a report on the fundamental rights of elderly people in EHPAD nursing homes with 64 recommendations. A first follow-up on those recommendations is planned for the summer of 2022. This project required the mobilisation of various skills: analysing all the complaints received in this area, carrying out interviews, hearings and visits, consulting our agreement committees and synthesising the information provided by the various stakeholders. Beyond that, I was reinforced in the idea that it is important that we remain very vigilant so that the rights of the most vulnerable are always defended and protected.

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## "DISABILITY IS A CROSS-DISCIPLINARY ISSUE IN ALL THE MISSIONS OF THE DEFENDER OF RIGHTS."

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### FABIENNE JÉGU

**ADVISER - DISABILITY EXPERTISE  
AT THE GENERAL SECRETARIAT**

#### WHAT ARE YOUR DUTIES?

Disability is a cross-disciplinary issue in all the missions of the Defender of Rights. Moreover, in an inclusive approach in line with the institution's guidelines, this topic is dealt with by all the directorates and units in our organisation. In this context, I provide legal support, strategic advice and coordination to the various departments in the processing of disability cases. I also participate in supporting the governance, and in connection with institutional and associative partners, in the development of our guidelines on disability. Finally, I am leading our work as the independent monitoring mechanism for the Convention on the Rights of Persons with Disabilities (CRPD).



#### HOW DO YOU SEE THE YEAR 2021?

The year 2021 has been an important year in our mission to monitor the implementation of the CRPD. Indeed, last August France was reviewed by the United Nations Committee on the Rights of Persons with Disabilities on the implementation of the Convention. This event was highly expected. On this occasion, our institution published a parallel report with the aim of enlightening the Committee in the light of the various comments we made on this implementation. As a result of the review, the UN made comments and took up many of the recommendations we had made. These comments constitute for us areas of work for the years to come.



**"WE NEVER LET ANYONE HANG UP  
WITHOUT OFFERING A SOLUTION  
OR A REMEDY."**

**SINE SALL**

**LEGAL LISTENER -  
ANTI-DISCRIMINATION PLATFORM**

**WHAT ARE YOUR DUTIES?**

I am the contact of the Anti-Discrimination Platform. I handle the calls and coordinate the 7 listeners, I make sure the team is working well. We receive between 50 and 60 calls a day on average. Our job is to listen to the callers, to verify that it is discrimination and what the criteria are. In some situations, when the person hesitates to file a complaint or ask for our help, we offer to make a pre-referral. We then send a summary email with a list of items to be provided, and if the person agrees, we proceed to a pre-referral. Then it is up to the internal investigating units to take over. When a person's problem does not concern one of the institution's areas of competence, we refer them to other services or non-profits. We never let anyone hang up without offering a solution or a remedy.



**WHAT PROJECT WAS A HIGHLIGHT OF 2021?**

The highlight for me was the launch of the Anti-Discrimination Platform in February 2021 as I was able to take up a new position. Before that, I worked for 10 years as a contact for the general platform of the Defender of Rights. I was interested in working for this platform, I was able to learn new things. As the subject of discrimination is complex, we do not have a time limit on calls, so we can take as much time as necessary to listen to people.

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## "WE HAVE NOTICED A FORM OF NON-USE OF THE DEFENDER OF RIGHTS, ESPECIALLY FOR TRAVELLING CITIZENS."

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### NÉPHÉLI YATROPOULOS

EUROPEAN AND INTERNATIONAL AFFAIRS ADVISER  
TO THE CABINET

#### WHAT ARE YOUR DUTIES?

I am the European and International Affairs Adviser in the Office of the Defender of Rights. It is a very cross-disciplinary job. I coordinate the European and international strategy and contribute to promoting the doctrine and the work of the institution to the European and international institutions and to some of our counterpart networks. I am also in charge of bringing benchmarking into the institution, i.e., looking at foreign experiences to help us strengthen our legal arguments and recommendations. For example, in 2021, we began a comparative study with our counterparts in the IPCAN (Independent Police Complaints Authorities' Network) on video surveillance systems and their use by security forces in Europe, which will be completed in 2022. We have observed a form of non-use of the Defender of Rights, especially for travelling citizens.



#### DO YOU HAVE AN EXAMPLE OF A PROJECT THAT HAS BEEN LAUNCHED IN 2021?

In 2021, the government was to develop a national Roma strategy to comply with a European Union recommendation. We have made two contributions on Foreign Roma and travelling citizens, "Travellers" who are subject to ongoing systemic discrimination. This strategy has enabled us to formulate a number of recommendations but also to take stock of the status of our referrals. We have observed a form of non-use of the Defender of Rights, especially for travelling citizens. We are therefore committed to producing tools and a strategy to address this in conjunction with key stakeholders.

# APPENDICES

## THE PANELS

### DEFENCE AND PROMOTION OF CHILDREN'S RIGHTS

#### Mr Jérôme BIGNON

Honorary Member of Parliament -  
Honorary Lawyer (appointed by the Speaker  
of the Senate)

#### Ms Odette-Luce BOUVIER

Counsellor at the Court of Cassation  
(appointed by the First President of the Court  
of Cassation and the Prosecutor General at the  
Court of Cassation)

#### Ms Pascale Coton

Vice-President of the EESC - Vice-President  
of the CFTC (appointed by the President of the  
Economic, Social and Environmental Council)

#### Ms Elisabeth LAITHIER

Honorary Deputy Mayor of Nancy - President  
of the Early Childhood Committee, Expert-  
Referent for Early Childhood at the AMF -  
President of the Association for the Promotion  
of Early Medical and Social Action in Lorraine  
(appointed by the President of the Senate)

#### Ms Anne-Marie LEROYER

Professor at the Sorbonne Law School,  
specialist in personal and family law  
(appointed by the President of the National  
Assembly)

#### Ms Marie-Rose MORO

Professor of Child and Adolescent Psychiatry -  
Head of Department of the Maison des  
adolescents at the Hôpital Cochin, Université  
Paris Descartes (appointed by the President of  
the National Assembly).

### COMBATING DISCRIMINATION AND PROMOTING EQUALITY

#### Ms Gwénaële Calves

Professor of public law at the University  
of Cergy-Pontoise, specialist in non-  
discrimination law (appointed by the  
President of the National Assembly)

#### Mr Stéphane CARCILLO

Adjunct professor at the Economics  
Department of Sciences Po - Head of the  
Employment and Income Division at the OECD  
(appointed by the President of the Senate)

#### Mr Éric CÉDIEY

Director of ISM Corum (appointed by the  
President of the National Assembly)

#### Ms Marie-Françoise GUILHEMSANS

Councillor of State (appointed by the  
Vice President of the Council of State)

#### Mr Guy-Dominique KENNEL

Former Senator - Honorary President of  
the Departmental Council of Bas-Rhin  
(appointed by the President of the Senate)

#### Mr Pap NDIAYE

University Professor at Sciences-Po Paris,  
specialist in the history of minorities -  
Director General of the Palais de la Porte  
Dorée (appointed by the President of the  
National Assembly)

#### Ms Karima SILVENT

Director of Human Resources of the AXA  
Group and President of the Public agency for  
integration into employment (Établissement  
public d'insertion dans l'emploi - EPIDE)  
(appointed by the President of the Senate)

#### Ms Véronique SLOVE

Counsellor at the Court of Cassation  
(appointed by the First President of the  
Court of Cassation).

## THE ETHICS OF SECURITY

### Mr Claude BALAND

Honorary Prefect - Former Director General of the National Police, President of the Food Bank Network (appointed by the President of the Senate)

### Mr Alain FOUCHÉ

Honorary Senator of Vienne - Honorary lawyer at the Court of Appeal of Poitiers (appointed by the President of the Senate)

### Ms Dominique de la GARANDERIE

Lawyer - Former President of the Paris Bar - President of the Ethics Committee of Le Monde Group (appointed by the President of the Senate)

### Mr Yves NICOLLE

Honorary Commissioner General (appointed by the President of the National Assembly)

### Mr Olivier RENAUDIE

Professor of Public Law at the University of Paris 1 Panthéon-Sorbonne (appointed by the President of the National Assembly).

### Mr Jacky RICHARD

Honorary Councillor of State (appointed by the Vice President of the Council of State)

### Ms Valérie SAGANT

Magistrate - Director of the Institute for Studies and Research on Law and Justice (appointed by the President of the National Assembly)

### Mr Pierre VALLEIX

Honorary Advocate General at the Court of Cassation (appointed by the First President of the Court of Cassation and the Prosecutor General at the Court of Cassation).

## THE JOINT AND LIAISON COMMITTEES

### HEALTH JOINT COMMITTEE

- Aides
- Secours Catholique
- Croix Rouge Française
- France Assos santé
- Ligue Nationale Contre le Cancer
- Médecins du Monde
- UNAF
- COMEDE
- SPARADRAP
- ATD Quart Monde
- FAS
- Secours Populaire
- Fédération française des diabétiques
- UNIOPSS
- UNAFAM
- Emmaüs France

### ORIGIN JOINT COMMITTEE

- SOS Racisme
- Ligue Internationale Contre le Racisme et l'Antisémitisme (LICRA)
- Association des Jeunes Chinois de France (AJCF)
- Fédération Nationale des Maisons des Potes (FNMP)
- Conseil Représentatif des Associations Noires de France (CRAN)
- Association Nationale des Gens du Voyage (ANGVC)
- Romeurope
- Conseil Représentatif des Français d'Outre-Mer (CREFOM)
- Mouvement contre le Racisme et pour l'Amitié entre les peuples (MRAP)
- Ligue des Droits de l'Homme (LDH)

**AGEING JOINT COMMITTEE**

- Les petits frères des pauvres
- Fédération nationale des associations et amis des personnes âgées et de leurs familles (FNAPAEF)
- Association Parisienne de solidarité familles et amis de personnes âgées et de leurs familles (ASFAPADE, membre de la FNAPAEF)
- Association des Villes Amies des Aînés (RFVAA)
- Fédération Internationale des Associations des Personnes Âgées (FIAPA)
- Association française des aidants
- Union nationale interfédérale des œuvres et organismes privés non lucratif sanitaires et sociaux (UNIOPSS)
- Union nationale des associations familiales (UNAF)
- Old'up
- Association "Monalisa"
- Fédération 3977 contre la maltraitance
- Fédération nationale de l'aide familiale populaire (FNAAFP/CSF)
- Générations Mouvement Aînés Ruraux
- Union nationale France Alzheimer
- France assos santé
- FIAPA

**GENDER EQUALITY JOINT COMMITTEE**

- Administration moderne
- Association européenne contre les violences faites aux femmes au travail (AVFT)
- Association pour le Droit à l'Initiative Economique (ADIE)
- Business and Professional Women France (BPW)
- Fédération nationale des Centres d'Information sur les Droits des Femmes et des Familles (FNCIDFF)
- Fédération nationale solidarité femmes (FNSF)

- Femmes pour le dire, Femmes pour agir (FDFA)
- Femmes pour le dire, Femmes pour agir (FDFA)
- Femmes Solidaires
- Fondation des Femmes
- Grandes Écoles au Féminin
- La Boucle
- La Cimade
- La Coordination française pour le lobby européen des femmes (LA CLEF)
- Laboratoire de l'Égalité
- Mouvement Français pour Le Planning Familial (MFPF)
- Osez le Féminisme (OLF)
- Voix d'Elles Rebelles

**CHILD PROTECTION JOINT COMMITTEE**

- Association Française des Magistrats de la Jeunesse et de la Famille (AFMJF)
- Conseil national des barreaux (CNB)
- Droit d'enfance
- Convention Nationale des Associations de Protection de l'Enfant (CNAPE)
- Conseil Français des Associations des Droits de l'Enfant (COFRADE)
- Défense des Enfants International (DEI) France
- Agir ensemble pour les droits de l'enfant (AEDE)
- Enfance et Partage
- Fédération des acteurs de la solidarité (FAS)
- Fondation pour l'Enfance
- Fédération Nationale des Associations Départementales d'Entraide des Pupilles et Anciennes Pupilles de l'Etat (FNADEPAPE)
- Fédération Nationale des Administrateurs Ad Hoc (FENAAH)
- Groupe SOS Jeunesse
- SOS Villages d'Enfants

- Union Nationale des Associations Familiales (UNAF)
- UNICEF France
- Union Nationale Interfédérale des œuvres et Organismes Privés non lucratifs Sanitaires et Sociaux (UNIOPSS)
- La Voix de l'Enfant
- UNAFORIS (Union nationale des acteurs de formation et de recherche en intervention sociale)

#### **DISABILITY JOINT COMMITTEE**

- APF FRANCE HANDICAP
- AUTISME FRANCE
- CFPSAA
- COLLECTIF HANDICAPS
- FÉDÉRATION DES APAJH
- FFDYS
- FNATH
- GIHP
- GNCHR (GPF)
- GNCHR (ANPSA)
- NOUS AUSSI
- PARALYSIE CÉRÉBRALE FRANCE
- SESAME AUTISME
- UNAFAM
- UNANIMES
- UNAPEI
- LADAPT

#### **LGBTQI+ JOINT COMMITTEE**

- ACT-UP Paris
- ADHEOS
- APGL
- Association Nationale Transgenre
- Centre LGBTQI+ Paris IdF
- Collectif contre les LGBTQIphobies en milieu scolaire

- Collectif contre l'homophobie et pour l'égalité des droits
- Fédération LGBTI+
- Fédération total respect / Tjenbé Rèd!
- FLAG!
- Homoboulot
- Inter-LGBT
- L'autre Cercle
- MAG Jeunes LGBT
- OUNTrans
- RAVAD
- SOS homophobie
- ACCEPTESS T
- CIA - Collectif Intersexes Et Alliés

#### **EMPLOYMENT LIAISON COMMITTEE**

- À Compétence Égale
- Andrh
- Apec • Pôle Emploi
- Prism'emploi
- Syntec Conseil En Recrutement
- The Adecco Group
- UNML (Union Nationale des Missions Locales)

#### **HOUSING LIAISON COMMITTEE**

- FNAIM
- FONCIA GROUPE
- LAFORÊT FRANCHISE SAS
- ORPI FRANCE
- SELOGER.COM
- SNPI, Syndicat National de la Propriété Immobilière
- UNIS
- UNIS IDF
- UNPI (Union Nationale pour la propriété immobilière)

## THE PRODUCTIONS

### LIST OF STUDIES COMPLETED IN 2021

Collective mobilisation of PS25 railway workers against the SNCF: dynamics and tensions of a grouped legal action Vincent-Arnaud Chappe (CNRS, CEMS-EHESS), Narguesse Keyhani (Lyon 2 University, Triangle)

French Guiana: the challenges of the right to education Alexandra Vié (University of Paris Nanterre), Grégory Bériet, Silvia Lopes Macedo, Abdelhak Qribi (University of French Guiana), with the support of Unicef France

Promoting Social Housing in Poor Communities Thomas Kirszbaum (Institute for the Social Sciences of Politics), Edward G. Goetz, Yi Wang (Center for Urban and Regional Affairs, University of Minnesota), with the support of the Agence nationale de la cohésion des territoires, the Caisse des dépôts et consignations, the Plan urbanisme construction architecture and the Union sociale pour l'habitat.

De-escalation of violence and management of protesting crowds, which articulation(s) in France and Europe today? Anne Wuilleumier (IHEM), Olivier Fillieule, Pascal Viot (University of Lausanne, IEPH), Fabien Jobard (Cesdip), Andrea Kretschmann (Marc Bloch Centre, Berlin), Aurélien Restelli (Cesdip)

Justice, families and beliefs: a religious silence? Anne Wyvekens (Institut des sciences sociales du politique/ENS Paris Saclay), Barbara Truffin (Université libre de Bruxelles)

Survey "Trajectories and socialisations of young carers" Céline Jung Lorient, David Mahut (Collective in applied social sciences)

## NOTES

- <sup>1</sup> See Court of Accounts, *Le Numérique au service de la transformation de l'action publique*, Rapport public annuel, 2020, t. 2.
- <sup>2</sup> Sée A. (2022), "Les plateformes publiques", in Cluzel-Métayer L., Prébissy-Schnall C. and Sée A., *La Transformation numérique du service public: une nouvelle crise ?* Mare et Martin, Paris.
- <sup>3</sup> Institut Paul Delouvrier, *Les Services publics vus par les Français et les usagers*, 22nd edition of the barometer January 2022.
- <sup>4</sup> See <https://www.cnfpt.fr/s-informer/nos-actualites/le-fil-dactus/panorama-metiers-territoriaux-2017-2019/national>.
- <sup>5</sup> See *Our public services* (2021), "Perte de sens chez les agents du service public. Survey".
- <sup>6</sup> See on this subject Mazet, P. (2019), "Les conditionnalités implicites de l'accès aux droits à l'ère numérique". in Sorin, F, Mazet, P, Plantard, P & Vallauri B., *Accès aux droits sociaux et lutte contre le non-recours dans un contexte de dématérialisation*. Scientific support report for the #LABAcces project. Ti Lab, Askoria, p.43-46.
- <sup>7</sup> See particularly Deville, C. (2018). "Les chemins du droit : Ethnographie des parcours d'accès au RSA en milieu rural". *Gouvernement et action publique*, OL7, 83-112.
- <sup>8</sup> Hannafi, C., Le Gall, R., Omalek, L., Marc, C. (2022). "Mesurer régulièrement le non-recours au RSA et à la prime d'activité : méthode et résultats". DREES, *Les Dossiers de la DREES*, 92.
- <sup>9</sup> See also Defender of Rights (2017), *Lutte contre la fraude aux prestations sociales : à quel prix pour les droits des usagers ?* Report.
- <sup>10</sup> See Dubois V. (2021), *Contrôler les assistés. Genèse et usages d'un mot d'ordre*, Paris, *Raisons d'agir*, p. 287 particularly; and Lequesne-Roth C. (2022), "Administration digitale et pauvreté. La politique sociale à l'épreuve des systèmes automatisés", in C. Castets-Renard and J. Eynard, *Un droit de l'intelligence artificielle : entre règles sectorielles et régime général*, Larcier Bruylant, 2022, forthcoming.

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