ANNUAL ACTIVITY REPORT

2018

Watercolour presented by the Maison des Habitants de Sous-le-Bois in Maubeuge (Nord)

All are equal before the law

Défenseurdesdroits
RÉPUBLIQUE FRANÇAISE

ANNUAL ACTIVITY REPORT 2018

EDITORIAL

RESPONSIBILITY FOR RIGHTS

Almost five years after I took on the job of Defender of Rights, the dual role that the Institution plays in French society is becoming ever more clear to me: seismograph of social demand, revealing the fissures, the divides in a people torn between the planet and the village; alarm, megaphone, concerned witness of the decline of fundamental rights and their unequal effectiveness.

The Defender of Rights has this dual role because everywhere in Metropolitan and Overseas France, through its network of delegates, its processing of almost 100,000 requests a year, its partnerships with civil society, and its publication of scientific studies, it is faced with the shortcomings of public services, the prevalence of certain types of discrimination, refusal to take the best interests of the child into consideration, breaches of ethics on the part of the security forces, and the vulnerability of whistleblowers. It is all of the above that this Activity Report attempts to give an idea of.

The Defender of Rights is therefore obviously not an impassive observer of settled weather. It notes the grey days, the showers, the hard roads and the sufferings of those who are forced to travel them.

And nothing, apart from respect for republican principles, can stop it from asserting these truths.

Its institutional independence and freedom authorise it – even require it – to proclaim the absoluteness of the fundamental rights that everything conspires to relativise today.

Defending and promoting fundamental rights and freedoms means questioning the public authorities, delivering opinions to Parliament and the Government, presenting observations before courts, and exposing or raising the alarm on whatever the Institution's lawyers' analyses define as infringements of the law.

The Defender of Rights is not content just to observe, its job is to prevent and to warn. A heavy responsibility as things stand today, expected and hoped for by those who watch over the Rule of Law and the preservation of individual freedoms at the heart of our democracy, and criticised by those – undoubtedly greater in number – who have other convictions, other viewpoints, ideological, political or economic priorities that lead them to put the reality principle before any other imperative.

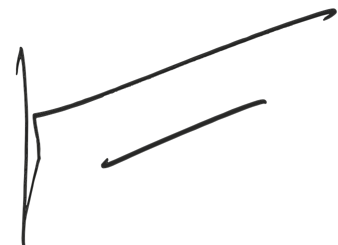
"...that they be heard and listened to in their demand for effective rights, and that their equal dignity be protected."

Unfortunately, public debate seems unable to address many subjects essential to national cohesion and membership of the Republic: security and freedoms, migration policy and human rights, universality and performance, equality and modernisation. Fears, exclusions and their own interests prevent people from facing facts, sharing questions and developing solutions, in particular through the powerful lever of the law.

The Defender of Rights does not claim to be Cassandra, whose adjurations the Trojans refused to heed, resulting in their defeat and exile; It has no wish to lecture anyone.

It simply continues to request that nobody turn a blind eye to the reality of the men and women who live here, that they be heard and listened to in their demand for effective rights, and that their equal dignity be protected.

At the head of an essential task, the independent external monitoring of implementation of fundamental rights – the subject of this document – the Defender of Rights calls on the responsibility of the Republican authorities and civil society in order that they act uncompromisingly to perpetuate the progress of human rights.



JACQUES TOUBON
Defender of Rights

CONTENTS

EDITORIAL 02
THE DEFENDER OF RIGHTS IN FIGURES 06
GENERAL STATISTICS 09
LIST OF STUDIES AND PUBLICATIONS 12

I. ALERTING THE PUBLIC AUTHORITIES 15

A. PUBLIC SERVICES AND EQUAL ACCESS TO RIGHTS: A KEY SOCIAL ISSUE 17
B. PUBLIC SERVICES INCREASINGLY DISTANT FROM USERS 19
C. PUBLIC SERVICES FALLING SHORT WITH REGARD TO USERS' NEEDS 24
D. COMPLEX PUBLIC SERVICES: ACCESSING RIGHTS IS WORTHWHILE BUT FATIGUING 30
E. ONGOING REGRESSION OF FUNDAMENTAL RIGHTS AND FREEDOMS 31

II. PROTECTING RIGHTS 35

A. DEFENCE OF THE RIGHTS OF THE CHILD 35
B. THE FIGHT AGAINST DISCRIMINATION 41
C. DEFENCE OF THE RIGHTS OF PUBLIC-SERVICE USERS 51
D. SECURITY ETHICS 59
E. PROTECTION AND ORIENTATION OF WHISTLEBLOWERS 65

III. PROMOTING RIGHTS 69

A. TRAINING IN SUPPORT OF CHANGES IN PROFESSIONAL PRACTICES 69

B. RIGHTS PROMOTION PROGRAMMES DESIGNED FOR YOUNGER AUDIENCES 71

C. MULTIPLICATION OF DISCRIMINATION CRITERIA 75

D. PUBLIC-AWARENESS ACTIONS TARGETING ALL SECTORS OF SOCIETY 77

IV. INCREASING THE DEFENDER OF RIGHTS' PRESENCE ACROSS THE TERRITORY 81

A. NATIONAL COVERAGE GUARANTEEING ACCESS TO RIGHTS 81

B. PROMOTION ACTIONS CARRIED OUT BY THE DEFENDER OF RIGHTS' DELEGATES 85

V. SHARING AND DEVELOPING THE DEFENDER OF RIGHTS' EXPERTISE 87

A. THE DEFENDER OF RIGHTS' BOARDS 87

B. JOINT AND LIAISON COMMITTEES 89

C. CONVENTIONS AND PARTNERSHIPS 89

D. ACTING ON THE INTERNATIONAL SCENE 90

VI. MAKING THE UTMOST OF AVAILABLE SKILLS AND ENSURING EFFICIENT MANAGEMENT OF THE INSTITUTION'S RESOURCES 97

A. IMPROVEMENT OF WORKING CONDITIONS CENTRAL TO THE HUMAN RESOURCES POLICY 100

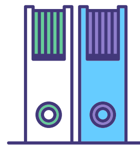
B. BUDGETARY RESOURCE MANAGEMENT FOCUSING ON CONTROL OF PUBLIC EXPENDITURES 101

THE DEFENDER OF RIGHTS IN FIGURES

OVER 140,000 REQUESTS FOR INTERVENTION OR ADVICE

95,836

COMPLAINT FILES



6.1%

INCREASE* IN COMPLAINTS OVER 2018, MAKING 13 % OVER THE LAST TWO YEARS

46,243

CALLS TO THE INSTITUTION'S CALL CENTRE

PERMANENT CONTACTS WITH THE PUBLIC AND CIVIL SOCIETY

3

ADVISORY BOARDS COMPOSED OF 22 QUALIFIED INDIVIDUALS, WHICH MET 13 TIMES

8

PERMANENT COMMITTEES FOR DIALOGUE WITH CIVIL SOCIETY, WHICH MET 18 TIMES

53

PARTNERSHIP AGREEMENTS, INCLUDING 3 CONCLUDED IN 2018, WITH THE AIM OF IMPROVING ACCESS TO RIGHTS

* Calculation is based on number of referrals without taking account of multi-complainants.

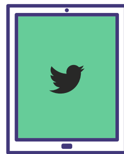
1,549,418

WEBSITE CONSULTATIONS IN 2018

OVER

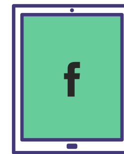
845,000

COMMUNICATION TOOLS DISSEMINATED IN 2018



49,000

SUBSCRIBERS ON TWITTER



16,000

SUBSCRIBERS ON FACEBOOK

OVER 1 M

VIEWS ON YOUTUBE

4,000

SUBSCRIBERS ON LINKEDIN

ACKNOWLEDGED EXPERTISE

91,316
FILES PROCESSED

ALMOST
80%
OF AMICABLE SETTLEMENTS UNDERTAKEN HAVE POSITIVE OUTCOMES

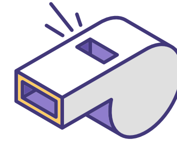
295
DECISIONS

400
RECOMMENDATIONS

108
SUBMISSIONS OF OBSERVATIONS TO COURTS

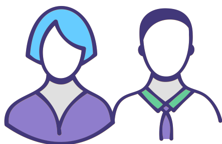
In 73% of cases, court decisions confirmed the Institution's observations

29
OPINIONS TO PARLIAMENT



21
EX-OFFICIO REFERRALS

A TEAM AT THE SERVICE OF RIGHTS AND FREEDOMS



226
STAFF AT THE HEAD OFFICE

501
DELEGATES ACTIVE ACROSS THE TERRITORY

874
RECEPTION POINTS ACROSS THE TERRITORY

GENERAL STATISTICS

OVERALL EVOLUTION OF COMPLAINTS RECEIVED BETWEEN 2017 AND 2018

HEAD OFFICE	19,204	20,661	+ 7.6 %
DELEGATES	71,148	75,175	+ 5.7 %
TOTAL	90,352	95,836	+ 6.1 %

The presentation does not take account of the number of multi-complainants.

BREAKDOWN ACCORDING TO DEFENDER OF RIGHTS' FIELDS OF COMPETENCE*

RELATIONS WITH PUBLIC SERVICES	50,560	55,785	+ 10.3 %	38,091
DEFENCE OF THE RIGHTS OF THE CHILD	2,959	3,029	+ 2.4 %	1,250
THE FIGHT AGAINST DISCRIMINATION	5,405	5,631	+ 4.2 %	3,055
SECURITY ETHICS	1,228	1,520	+ 23.8 %	185
ORIENTATION AND PROTECTION OF WHISTLEBLOWERS	71	84	+ 18.3 %	
ACCESS TO RIGHTSINFORMATION AND ORIENTATION	35,545	34,999	- 1.5 %	

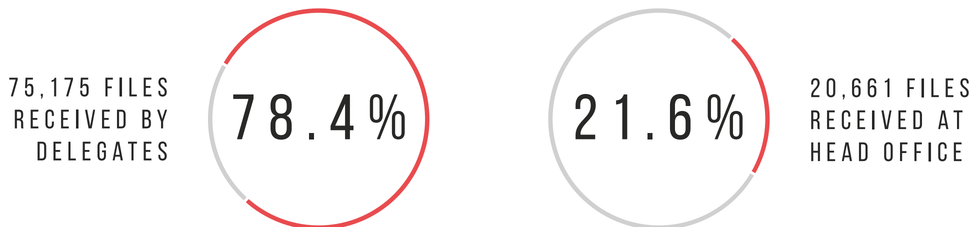
* A complaint may come under more than one of the Defender of Rights' fields of competence and so be multiqualified.

BREAKDOWN OF HEAD OFFICE FILES ACCORDING TO FIELDS OF COMPETENCE

PUBLIC SERVICES	10,593 58 %	11,439 60 %	13,243 58 %	14,688 59.1 %	17,047 63.5 %
DISCRIMINATION	3,280 18 %	3,204 17 %	3,595 16 %	3,758 15.1 %	4,122 15.4 %
CHILDHOOD	1,661 9 %	1,464 8 %	1,644 7 %	1,848 7.4 %	2,029 7.6 %
ETHICS	789 4 %	790 4 %	1,106 5 %	1,057 4.2 %	1,306 4.9 %
WHISTLEBLOWERS			17 0 %	71 0.3 %	84 0.3 %
ACCESS TO RIGHTS INFORMATION AND ORIENTATION	1,868 11 %	2,047 11 %	3,065 14 %	3,450 13.9 %	2,244 8.3 %

Account should be taken of the fact that the figure is not the same as the total number of complaints received, due to multiqualified submissions.

BREAKDOWN BETWEEN HEAD OFFICE AND DELEGATES



REFERRAL METHOD

HEAD OFFICE

Online referral form 57.2%

Mail 42.8%

DELEGATES

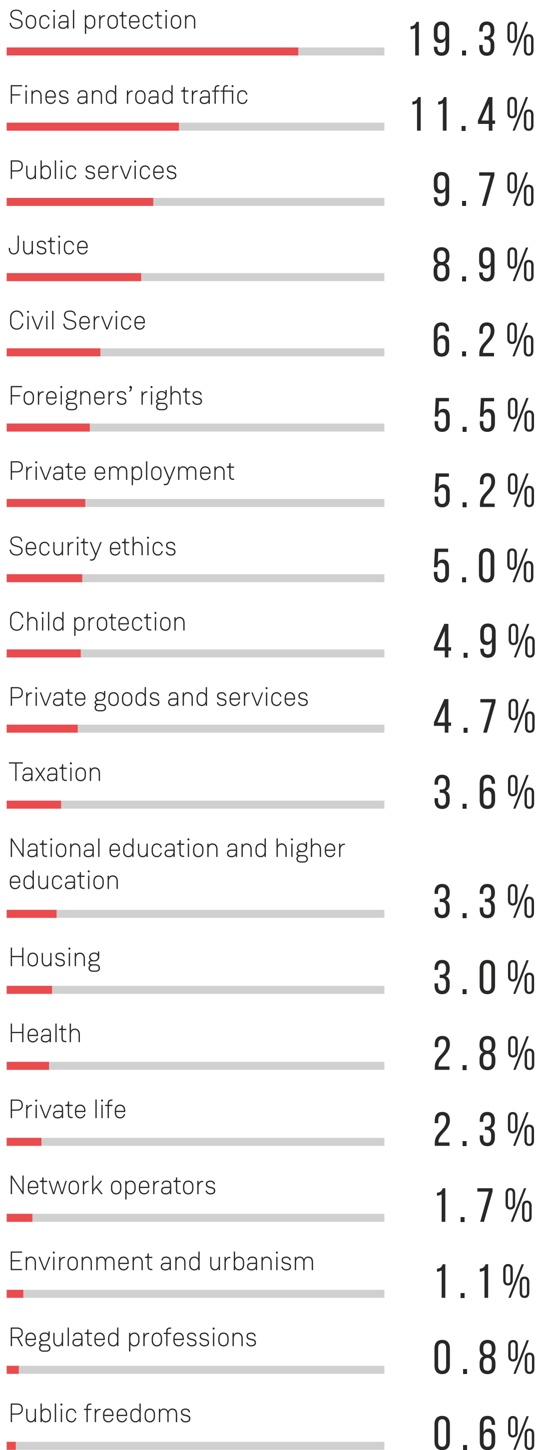
Physical reception 77.5%

Email 9.5%

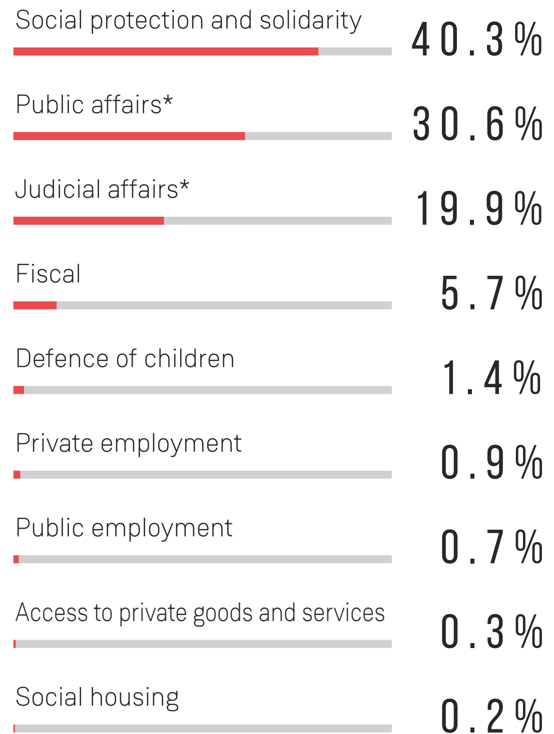
Telephone 7.5%

Mail 5.5%

BREAKDOWN BY FIELD OF INTERVENTION (HEAD OFFICE)



BREAKDOWN BY FIELD OF INTERVENTION (DELEGATES)



IN 2018,

4,217

FILES WERE MULTIQUALIFIED, INCLUDING 1,307 FILES HANDLED BY DELEGATES AND 2,910 FILES HANDLED BY HEAD THE HEAD OFFICE.

* The "Public Affairs" field covers individual complaints relating to disputes mostly coming under public law (with the exception of law bearing on foreigners and law bearing on the civil service and medical responsibility) and alleging wrongdoing by an administration, local authority or body carrying out a public-service mission.

The "Judicial Affairs" field covers individual complaints relating to disputes mostly to do with civil status, nationality, foreigners' rights, road traffic regulations and the public justice service.

LIST OF STUDIES AND PUBLICATIONS

REPORTS

JADE ANNUAL ACTIVITY REPORT 2017-2018
June 2018

ENOC REPORT ON CHILDREN'S AND ADOLESCENTS' MENTAL HEALTH IN EUROPE
September 2018

2018 ANNUAL REPORT DEDICATED TO THE RIGHTS OF THE CHILD: "DE LA NAISSANCE À 6 ANS: AU COMMENCEMENT DES DROITS" (FROM BIRTH TO SIX YEARS OLD: AT THE BEGINNING OF RIGHTS)
November 2018

REPORT ON DÉMATÉRIALISATION ET INÉGALITÉS D'ACCÈS AUX SERVICES PUBLICS (DEMATERIALISATION AND INEQUALITIES OF ACCESS TO PUBLIC SERVICES)
January 2019

TOOLS

CAMPAIGN FOR ACTION AGAINST SEXUAL HARASSMENT: LEAFLET, POSTER, VIDEO
February 2018

POSTER ON THE RIGHTS OF THE CHILD
March 2018

STUDIES&RESULTS – 11TH BAROMETER OF PERCEPTION OF DISCRIMINATION AT WORK (DDD/ILO)
September 2018

PRACTICAL SHEET FOR EMPLOYERS - HARCÈLEMENT DISCRIMINATOIRE AU TRAVAIL" (DISCRIMINATORY HARASSMENT AT WORK)
September 2018

INFORMATION LEAFLET - AGIR CONTRE LES REFUS DE SOINS (ACTING AGAINST REFUSAL OF TREATMENT) AND PRACTICAL SHEET FOR HEALTH PROFESSIONALS - LES REFUS DE SOINS (REFUSALS OF TREATMENT)
December 2018

STUDIES

"CE QUI RESTE(RA) TOUJOURS DE L'ÉTAT D'URGENCE" (WHAT STILL REMAINS – AND WILL ALWAYS REMAIN – OF THE STATE OF EMERGENCY), RESEARCH REPORT BY CREDOF
February 2018

CONDITIONS DE TRAVAIL ET EXPÉRIENCES DES DISCRIMINATIONS DANS LA PROFESSION D'AVOCAT EN FRANCE, (WORKING CONDITIONS AND EXPERIENCES OF DISCRIMINATION IN THE LEGAL PROFESSION IN FRANCE), SURVEY
May 2018

STUDY ON THE SCHOOLING OF NEWLY ARRIVED NON-FRENCH SPEAKING PUPILS AND CHILDREN FROM HOMELESS FAMILIES AND TRAVELLING COMMUNITIES
December 2018

PROCEEDINGS OF THE COLLOQUIUM "MULTIPLICATION DES CRITÈRES DE DISCRIMINATION. ENJEUX, EFFETS ET PERSPECTIVES" (MULTIPLICATION OF DISCRIMINATION CRITERIA. ISSUES, EFFECTS AND PERSPECTIVES)
January 2019

DEMANDES D'EUTHANASIE ET DE SUICIDE ASSISTÉ (REQUESTS FOR EUTHANASIA AND ASSISTED SUICIDE), RESEARCH REPORT, 2014 – 2017
February 2019

MATINÉE THÉMATIQUE
HARCELEMENT SEXUEL AU TRAVAIL
VENIR, ALERTER, RÉAGIR
MARDI 6 FÉVRIER

1
martinique
Défenseurdesdroits

I. ALERTING THE PUBLIC AUTHORITIES

PUBLIC SERVICES THAT ARE DISAPPEARING, INEQUALITIES THAT ARE INCREASING AND FUNDAMENTAL RIGHTS THAT ARE REGRESSING

The Defender of Rights is tasked with ensuring respect for rights and freedoms by central and local government, public institutions and any organisation providing a public service or over which the Organic Law gives it jurisdiction (Article 71-1 of the Constitution of 1958).

In this respect, it is one of the guarantees of the principle of equality, which, as Articles 1 and 6 of the Declaration of the Rights of Man and the Citizen proclaim, constitutes the foundation of all democratic political organisation. It is also tasked with combating discrimination and promoting equality and access to rights, in particular for people in temporary or long-lasting situations of vulnerability for whatever reason. Public services' effective application of the right to equal rights is therefore central to its mission.

In 2018, the Defender received almost 55,785 complaints from individuals who considered that their rights had been infringed. Via its call centre and network of delegates, it also advised and provided guidance to over forty thousand people.

These complaints make the Defender of Rights a privileged observer of problems encountered by public service users and violations of their fundamental rights, and, through them, of the inequalities and ills in society that they reflect. In order to refine its analyses, in particular of the individuals that refer to it, the Defender of Rights has created an Observatory tasked with collecting statistical data from its information system on processing complaints (AGORA).

It is of course true that problems encountered by users of public services may result from individual situations or local phenomena, such as poor operation of such-and-such a body. However, their number and recurrence in various parts of the territory are often the result of more deep-seated systemic problems. They constitute "weak signals" sent out by French society, often "invisible" to the nation's political leaders and administrators as they have not been assimilated in their entirety. Such signals highlight tensions existing in our society, fault lines all too likely to undermine social cohesion and break the republican pact. This is why the Defender of Rights endeavours to bring them to the attention of the public authorities and users.

In 2018, both at local level via its 501 delegates and at national level via the Institution's central departments, the Defender of Rights once again observed the harmful effects that the growing evanescence of public services is having on people for whom they are often the main recourse.

The situation is worsening with every passing year, sparing nobody, including users who have been able to cope with it up until now, and affecting all social strata.

It is one of the main sources of inequality, segregation and relegation, auguring a worrying regression of fundamental rights, called into question by the weakening of fundamental freedoms threatened by unprecedented development of a security rationale that not only aims to tackle the terrorist threat, but also deal with the civil unrest that accompanies this ongoing evolution.

A. PUBLIC SERVICES AND EQUAL ACCESS TO RIGHTS: A SOCIAL ISSUE OF THE FIRST IMPORTANCE

France's public services play an essential role in civil and social integration. Created and implemented by the State, their action is in principle governed by uniform rules designed to guarantee equality of users and consequent national unity. Such equality is also given concrete expression through increasing application of the right to non-discrimination, which helps seek out differences in treatment in empirical situations and the reasons that underlie them.

Required to ensure continuity of action and adapt to users' needs, and embodying values of public interest, public services have long been seen as a key constituent of the social bond that unites each and every citizen to the State, a guarantee of social cohesion.

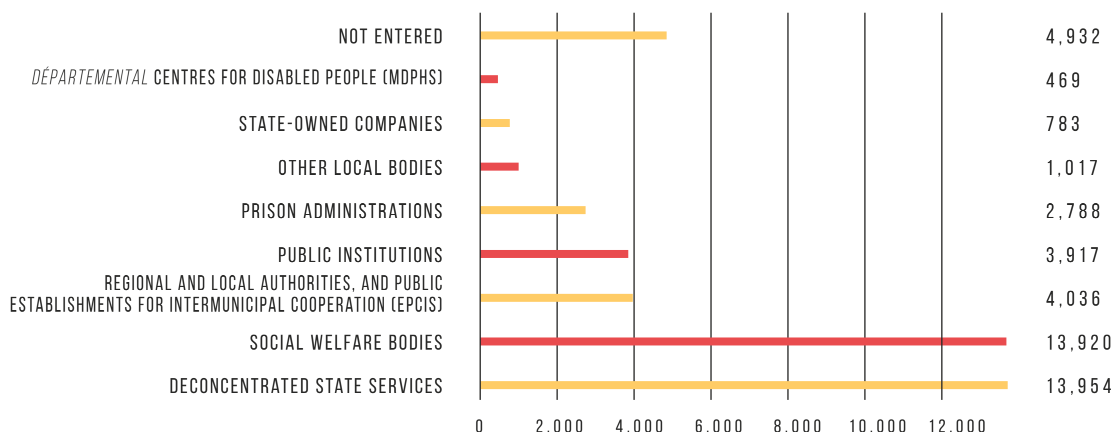
The bond is all the stronger in that public services guarantee everybody's access to a whole range of fundamental rights, including the rights to health, housing, education, justice and emergency accommodation, and are also responsible for redistribution of wealth and goods to the benefit of social groups, families and individuals, as well as entire geographical areas. They therefore also embody an essential value: solidarity.

Yet, as the Defender of Rights has observed through the complaints sent to it every year, this balance is getting increasingly fragile.

Since the 1990s, the scope of public services has been significantly reduced, due in particular to privatisation of services organised into networks, such as the postal service, telecommunications, water, gas, electricity, urban services, and public transport.

In parallel, a number of public services, in particular in the fields of social action and home assistance to people suffering from loss of autonomy, have been delegated to nonprofit associations that are increasingly in competition with private companies in the context of calls for tenders in which financial criteria predominate.

Another movement, decentralisation, has led to numerous public services, such as social assistance and vocational training, being transferred to local authorities, with the advantage of greater proximity to users but also carrying new risks of territorial inequalities.



Public services have finally been faced with limitations on their budgets, including in the social field, along with transformation of their methods of intervention in the name of greater efficiency.

Yet over the same period, public services have had to deal with development of inequalities, exclusion and poverty. “Excluded” individuals have been making ever increasing calls upon public services: not only at social services’ and housing organisations’ counters, but also with regard to health, education and justice services among others, all of them faced with a multiplication of emergency situations.

For the Defender of Rights, public services’ ability to respond to such appeals, in particular by providing poor, disadvantaged and excluded individuals with the same access as everyone else despite the extra costs this might incur, is a major issue.

Yet a number of phenomena currently hamper access to fundamental rights and help create a dangerous, widespread sense of rupture between users – the disadvantaged in particular – and public services.

B. PUBLIC SERVICES INCREASINGLY DISTANT FROM USERS

A WORD FROM BERNARD DREYFUS, GENERAL DELEGATE TO PUBLIC SERVICES MEDIATION

Implementation of the "public" part of the New-Generation Prefectures Plan (PPNG) in late 2017 had calamitous effects throughout the first months of 2018.

Driving licences and vehicle registration documents are now obtained *via* the Internet rather than at prefecture and subprefecture counters.

This disastrous move, which left several hundred thousand of our fellow citizens without documents for months on end, teaches us three lessons.

First of all, once again, a "policy" provided for a deadline that had clearly not been discussed beforehand with the "technicians" concerned, and which proved too short to test out and validate the various possibilities.

We saw the same thing during setup of the Régime Social des Indépendants (RSI – Social Security Scheme for Self-Employed Workers) computer system, as well as with the Ministry of Defence's payroll software (Louvois), and yet politicians stubbornly persist in making bold announcements without thinking out the practical difficulties involved in implementations.

Secondly, there seems to be little understanding of the fact that, between access divides and digital use divides, a substantial percentage of the population feels excluded in its relations with public service in the best sense of the term, and that we need to support and, even more to the point, lose no time in re-establishing a proximity that is more than simply geographic.

Finally, we need to have an in-depth debate on the financial aspects of this type of universalisation of digitisation. We have sent the queues that once lined up at subprefecture counters to photographers and dealers (or to paying sites in the case of secondhand vehicles), which send your documents for a fee, whereas previously the service was free of charge.

BERNARD DREYFUS

Traditionally, a measure of distance was always kept between public services' action and users, intended to protect such services from pressures that might impair their neutrality and impartiality. Development of a user-service approach in the late 1980s, in particular in the field of public social services, led to a significant reduction in this distance, with introduction of counters receiving users directly, followed by phone helplines.

The Defender of Rights has observed a gradual reversal of this trend over the past few years. 2018 saw further accentuation of the phenomenon: 93% of complaints communicated to delegates concerned problems in relations with public services (84% in 2017). This phenomenon, which affects the nature of service relations as much as it does the reliability of exchanges between users and public services, hampers access to rights and calls a number of fundamental rights into question.

DEMATERIALISATION OF PUBLIC SERVICES: A SIMPLIFICATION TOOL THAT MAY HINDER SOME USERS' ACCESS TO RIGHTS

Dematerialisation of administrative procedures simplifies users' lives, as they can access information, rights and services in a few clicks without having to leave home: the Prime d'Activité (Employment Bonus) and tax returns are now exclusively the province of the Internet. It cannot be denied that dematerialisation improves public services' efficiency.

But the Defender of Rights' experience shows that although dematerialisation projects are usually intended to modernise public services for the benefit of all sectors of the public, they are also sometimes palliatives to reduction of public reception services guided by budgetary concerns.

Among other things, the thousands of complaints communicated to the Defender of Rights concerning problems encountered with the Agence Nationale des Titres Sécurisés (ANTS – National Agency for Secure Documents) regarding delivery of driving licences and vehicle registration certificates following abolition of counter reception at prefectures in the context of the Plan Préfectures Nouvelle Génération (PPNG – New Generation Prefectures Plan) and underestimation of the number of requests are telling illustrations of the phenomenon. Users were faced with such problems as software lockouts, difficulties contacting services or accessing digital points, and overlong processing times. As a result, several tens of thousands of people were unable to drive or use their vehicles for long periods without risking breaking the law, which they were sometimes led to do so as to avoid problems with their employers.

The Defender of Rights recommended that the Prime Minister and Minister of the Interior adopt concrete solutions (Decision 2018-226). The Ministry, which admitted that complaints received by the Institution had enabled it to remedy a number of problems and that certain aspects of the regulations governing delivery of vehicle registration certificates were poorly adapted to digitisation, reported back on measures taken (letter of 19 November 2018). The Defender of Rights will be monitoring the situation closely.

This "forced march" evolution of public services often creates further obstacles to access to rights on the part of many categories of individuals. Over 7.5 million of them do not have quality Internet coverage. This divide impacts small municipalities most of all. As the Defender of Rights has emphasised on more than one occasion, persistence of these "grey" and "white" zones hampers access to rights by people living in rural areas (Decisions 2017-083 and 2018-262). The situation is all the more serious in Overseas France, where households have not benefited from development of the same low-price flat-rate offers available in Metropolitan France.

Although digital exclusion affects all age and socioeconomic categories, almost half of all individuals combining economic precarity with isolation have difficulty finding administrative information on the Internet. Digital exclusion

leads to situations of non-take up of rights: confronted with difficulties that may sometimes be due to very simple technical problems (the impossibility of obtaining a registration certificate because the required attachments exceed 1 megabyte, for example), procedures are abandoned.

In its report *Dématérialisation et inégalités d'accès aux services publics (Dematerialisation and inequalities of access to public services)*, the Defender of Rights recommends that some of the gains resulting from dematerialisation be devoted to development of support actions and schemes ensuring that everyone has access to public services. Such support to people with no access to digital technology would not be the exclusive responsibility of associations, social services, or intermediate structures. The State must be the main provider of support to users in their appropriation of digital technology. Multichannel modes of communication, adapted to the diversity of users and needs, and ensuring contact in the event of malfunctions, must be set up and, in this respect, public services must maintain facilities for physical reception of users.

SILENCE ON THE ADMINISTRATION'S PART TOO OFTEN RESULTS IN ABANDONMENT OF ADMINISTRATIVE PROCEDURES

2018 saw a considerable increase in situations where public services failed to respond to users' requests. Over half the complaints handled by the Defender of Rights' departments concerned refusals to listen or take arguments into consideration, and long delays in or absence of response, with regard to initial and complementary requests alike. Cases of refusal to school children of Roma origin, for example, show that their parents, who generally receive informal dilatory responses, do not actually obtain any explicit responses.

In order to palliate such challenges to the fundamental right to education, contrary to the best interests of the child, the Defender of Rights recommended systematic delivery of a receipt making mention of the date on which the request was submitted and documents produced (Decisions 2018-005; 2018-011 and 2018-221).

Although, by virtue of the principle enshrined in Article L. 231-1 of the Code of Relations between the Public and the Administration (CRPA), "*the administration's silence shall be understood as acceptance*" (a principle whose actual scope is greatly reduced by the many exceptions made to it), the reality behind the complaints communicated to the Defender of Rights makes abundantly clear that silence all too often results in abandonment of administrative procedures, in particular by users in the most precarious situations.

CASES OF CUMULATIVE AND SUCCESSIVE NONRESPONSES: THE CASE OF UNACCOMPANIED MINORS

- Nonresponse from the public justice service, which does not hear applications for educational assistance, or only after unreasonably long delays in certain jurisdictions;
- Nonresponse from child welfare services to benefit claims from young adults; Some young people are dissuaded from submitting their claims in the first place, with child welfare staff explaining that the procedure is bound to fail (Decision 2018-137);
- Nonresponse from prefectures, which, on the pretext that an ad hoc administrator must be present, postpone the convocation *sine die*, or set very long periods of notice, put off from one month to the next, without delivering a receipt.

This phenomenon, nourished by the feeling that procedures and possible appeals will be ineffective, is by no means new. As the Defender of Rights emphasised on the occasion of its hearings during examination of the Bill *for a State at the service of a society of trust* (Opinions 18-01 and 18-04), non-take up of rights, i.e. the fact of a person not requesting the rights and services that he or she might justifiably claim; would seem to be a symptom of users' lack of trust in public services.

The Survey on access to rights – *Relations des usagères et des usagers avec les services publics: le risque de non-recours* (Users' Relations with the Public Services: the risk of non-take up), published by the Defender of Rights in 2017, showed that although most people who come up against difficulties continue with their procedures and recontact the administration or public service concerned (80%), 12% of them abandon procedures. Such abandonment is more likely among young people (21% of 18-24 y/o) and the least qualified (18% of individuals without the baccalaureate) and more frequent in sectors of the public suffering from marked socioeconomic difficulties or with poor command of the French language. The main reasons given for abandonment are the pointlessness of continuing and the complexity of procedures to be undertaken.

The Defender of Rights is now observing two worrying evolutions. Firstly, continuing reinforcement of obstacles to access to rights on the part of disadvantaged sectors of the public, for whom physical reception, which is a sine qua non for dialogue and exchange of information, is their preferred means of accessing rights. Secondly, the extension of public services' "nonresponse" to all users, who are all too often shunted from an inaccessible call centre to an equally inaccessible website. To such an extent that we can now only wonder whether the response, if it comes in time to be of use, is still part of relations with users.

WHAT ROLE FOR DIALOGUE AND MEDIATION?

In the face of the administrative silence that users are confronted with, the Defender of Rights provides an avenue of recourse.

In this respect, in 2018 the Defender of Rights found that lack of response from public services increasingly concerned requests from its departments, its delegates in particular.

These latter provide a free local service dedicated to reception of anybody having problems with asserting their rights, due in particular to situations of isolation, precarity or distance from public services. Delegates handle almost 80% of all complaints; in 7 out of 10 cases, they receive complaints during visits by the individuals concerned, and in 3 out of 10 cases via a letter or email or by telephone.

Delegates are impartial, neutral third parties who contribute to alternative settlements of disputes with public services through dialogue and mediation; their role has been significantly reinforced over recent years (Law 2016-1547 of 18 November 2016 on the modernisation of the 21st-century justice system, and Law 2018-727 of 10 August 2018 *for a State at the service of a society of trust*).

Even so, administrations' and public services' refusal to provide responses within a reasonable time; sometimes despite repeated reminders, undermines mediation undertaken by the Defender of Rights' delegates: How can such silences be interpreted as anything other than a refusal to engage in a "*structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator*" (Article L. 213-1 of the Code of Administrative Justice)?

Faced with this situation, delegates are forced to give up mediation initiatives and transfer files to the Institution's central departments, which are tasked with implementing the investigative powers conferred upon it by the Organic Law (formal demands and referrals to Judges in chambers).

In addition, the Defender of Rights has to wonder what role mediation plays in such a context: Will the abovementioned legal provisions succeed in initiating a culture of dialogue when public services are becoming ever more distant? Will institutional mediators be able to counter increasing numbers of nonresponses on the part of public services? On the contrary, might not the increasing powers of such institutional mediators help relieve public services of their obligation of response and information?

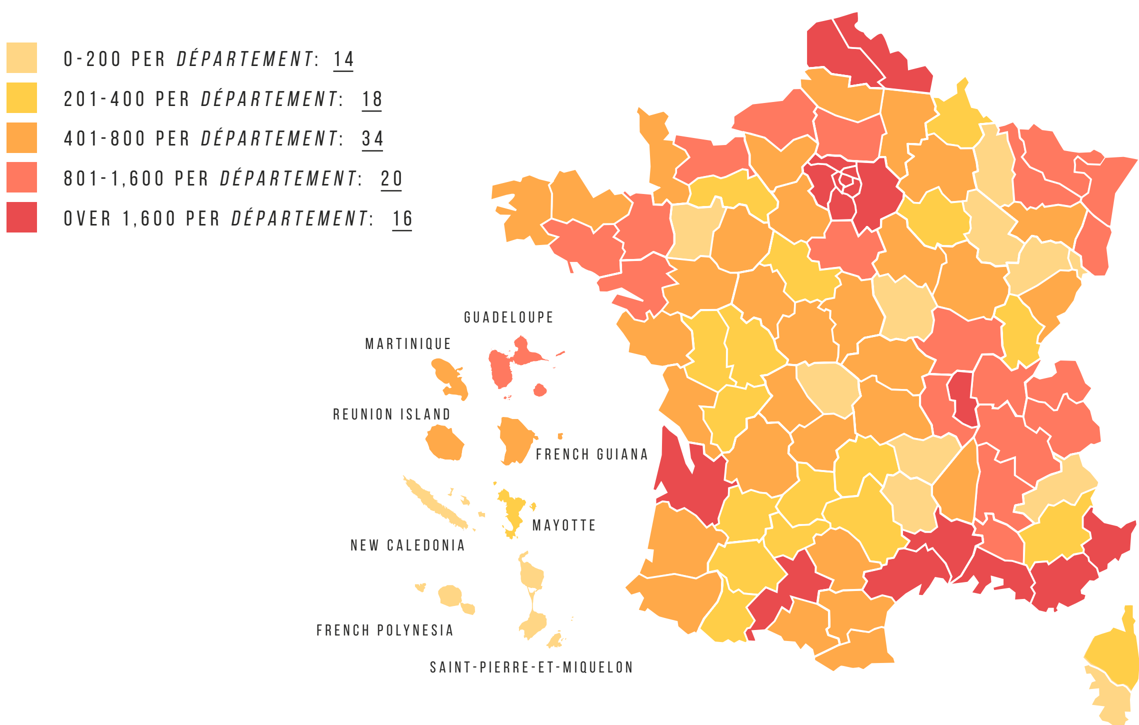
Whatever the case, the Defender of Rights must emphasise that although difficulties were already noticeable in prefectures, the public justice service and small rural municipalities, the movement is tending to spread to social welfare bodies, which were previously more open to conciliation procedures.

This is why the Defender of Rights, which places such importance on access to rights (above all the social rights designed to benefit the most disadvantaged), agreed to take part in the experimental "**Médiation Préalable Obligatoire**" (MPO – Compulsory Prior Mediation) scheme introduced by Decree 2018-101 of 16 February 2018.

The Defender of Rights and its delegates in six *départements* (Loire-Atlantique, Maine-et-Loire, Isère, Haute-Garonne, Bas-Rhin and Meurthe-et-Moselle) were given the responsibility of carrying out compulsory mediation before referral to administrative courts, for certain decisions relating to social rights: Revenu de Solidarité Active (RSA – Earned Income Supplement), Aide Personnalisée au Logement (APL – Personalised Housing Benefit) and Prime Exceptionnelle de Fin d'Année (Exceptional End-of-year Bonus).

Despite being compulsory, such free-of-charge mediation entrusted to an independent, impartial and neutral third party, takes place after other administrative remedies have been tried, so providing more disadvantaged sectors of the public, who often find it difficult to take their cases to court, with a real opportunity for dialogue favouring access to rights.

NUMBER OF REFERRALS RECEIVED IN 2018 (BY DELEGATES AND THE HEAD OFFICE), ACCORDING TO CLAIMANTS' *DÉPARTEMENT* OF RESIDENCE



C. PUBLIC SERVICES FALLING SHORT WITH REGARD TO USERS' NEEDS

Coupled with perpetuation of poverty and inequalities, reduction in the scope of public services is leading to a limited number of public services – essentially social in kind – being responsible for ensuring access to rights on the part of the poorest members of our society. Redistribution, reduction of inequalities and assistance to the poorest sectors of society is now essentially concentrated on public services, which must find ways of dealing with the influx of requests as well as with highly complex situations.

THE DIFFICULTY THAT PUBLIC SERVICES HAVE IN MANAGING THE INFLUX OF REQUESTS ONLY SERVES TO INCREASE USERS' DISAPPOINTMENT AND DEPRIVE THE MORE DISADVANTAGED AMONG THEM OF THEIR ESSENTIAL RIGHTS

Almost every year, the Defender of Rights' Activity Reports emphasise the difficulty that public services have in coping with the influx of requests. The situation becomes especially flagrant when new systems are introduced, most of them with little or no preparation beforehand, often putting the public officials responsible for them in difficult situations. The resulting delays penalise users all the more when their financial situations are precarious, whether they impact social protection, retirement pensions or payment of allowances.

Such, for example, was the case with the successive reforms of pension schemes from 1993 onwards. Changes in legislation followed one another at a steady pace. They led systematically to an increase in numbers of retirements and pension claims that many organisations were unable to process within a reasonable time, all the more so as, at the same time, Conventions d'Objectifs et de Gestion (COGs – Objectives and Management Agreements) signed between the State and the main Social Security schemes' national funds led to a reduction in such funds' capacities to meet claims. Insured parties therefore had to wait for liquidation of their old-age benefits for several months after they had retired, which caused major problems for those with low incomes. Most of the recommendations that the Defender of Rights made at the time, stressing the need for continuity of resources during the retirement process, were implemented. Nonetheless, a number of funds are still facing unresolved difficulties. Hence, on its own initiative, the Defender of Rights investigated the failure to liquidate pensions within a reasonable time in Île-de-France.

Despite the response provided by the Director of the Caisse Nationale d'Assurance Vieillesse (CNAV – National Retirement Insurance Fund), the Defender of Rights found that such difficulties now not only impacted basic pension claims but also applications for survivor's benefit and the Allocation de Solidarité aux Personnes Âgées (ASPA – Solidarity Allowance for Elderly People). The Defender of Rights recommended that everything necessary should be done to clear current stockpiles and ensure fluid management of future claims in order to re-establish the fundamental rights of those concerned (Decision 2018-322).

DIFFICULTIES ENCOUNTERED BY RESIDENTS OF OVERSEAS FRANCE

The Defender of Rights was referred to on numerous occasions by residents of Overseas France, most of them living on Reunion Island, with regard to non-payment of the Aide à la Continuité Territoriale (ACT – Territorial Continuity Aid) by branches of the Agence de l'Outre-mer pour la Mobilité (LADOM – Overseas Mobility Office). The ACT helps finance visits to Metropolitan France by private individuals living in Overseas France. Several years later, and despite repeated applications, most journeys made in 2013 and 2014 had not been even partly reimbursed, either because they had received no response to their claims or because there had been errors in processing applications and payments had been made to the wrong bank accounts. Almost four hundred people are still waiting for their claims to be processed.

The Defender of Rights recommended that LADOM take the necessary measures to insure that claims which had been examined and were awaiting payment were settled as rapidly as possible, and expedite an administrative inquiry at the branch in question in order to identify claims that had not yet been examined and ensure that they were processed (Decision 2018-274).

The Defender of Rights was also referred to recently with regard to late payment of the Prime à la Conversion des Véhicules (Vehicle Conversion premium) and aid to organic farmers.

But the finding also goes, for example, for disabled senior citizens whom Commissions des Droits et de l'Autonomie des Personnes Handicapées (CDAPHs – Committees for the Rights and Autonomy of People with Disabilities) sometimes direct to medicosocial institutions in Belgium due to lack of places in France.

In order to ensure that such individuals were not deprived of their pensions or, if applicable, the Solidarity Allowance for Elderly People (ASPA), the Defender of Rights stressed the need to specify that residence conditions were presumed to have been met in cases of elderly people who had to be placed in Belgian institutions, and for production of the certificate of existence to be facilitated for individuals placed in facilities aboard. A Ministerial Direction (D-2017-025411) to this effect was sent to all retirement funds.

As regards the public service dedicated to child protection, the Defender of Rights considers that it finds it an almost impossible task to fulfil its mission either administratively or judicially. Examples are numerous and on the increase: Judicial measures regarding educational assistance not carried out, long waits for hearings before children's courts, unsuitable care settings, Projets pour l'enfant (PPEs – Projects for the Child) not implemented, "child protection" medical consultants not yet designated – the list goes on. The situation is not helped by the structural shortcomings that have been raised on several occasions in Protection Maternelle et Infantile (PMI – Mother and Infant Protection) Services and School Medical Services. They hamper detection of problems encountered by children and their families and clearly help to increase them. Only 50% of nursery school pupils are given the medical examinations provided for in Article L. 2112-2 of the Public Health Code. Although Article L. 2325-1 of the Public Health Code provides for children being given health checks when they reach the age of six (last year of nursery school), only 71.7% of these pupils underwent such checks over the course of the 2014/2015 school year, including medical visits and checks by nurses. These worrying results must be put into perspective with the continuing decrease in numbers of school doctors.

The serious impact that these shortcomings have on children's safety and development requires priority action on the part of central and *départemental* administrations (see "Defence of the Rights of the Child" mission).

PUBLIC SERVICES' INABILITY TO MANAGE COMPLEX SITUATIONS IMPACTS THE MOST DISADVANTAGED INDIVIDUALS FIRST AND FOREMOST

Faced with rising poverty, public services, social services in particular, have attempted to cope with the influx of requests by developing mass processing of files. Standardisation of methods for processing benefit, allowance and pension claims, combined with a concern for performance on the part of the various operators assessed on the basis of quantifiable and statistical targets, hinders individualised processing of claims.

Yet the individual situations of the most disadvantaged individuals, genuine emergency cases, are often complex. They require time and the ability to adapt, as well as human contact with interlocutors.

Many complaints highlight the difficulties created by public services operating in silo, focusing solely on their fields of expertise and missions without any overall approach to users' situations being taken – a way of operating that is also accompanied by much of the workload being transferred to users. This is a movement that underlies all public services, and which even affects a number of sanitation services. As the Defender of Rights emphasised in its report *Valoriser les déchets ménagers sans dévaloriser les droits de l'usager (Recovering household waste without undermining users' rights* – 2018), the selective sorting desired by the public authorities requires consumers to become "ecoresponsible" and citizens to become "eco-citizens" – in other words, it makes public-service users central to the waste management system. Users are also asked to take it upon themselves to transport certain types of waste to collection facilities (collection by voluntary contribution), and act as substitutes for door-to-door collection.

For the Defender of Rights, which is committed to the idea that rights are a source of duties, reinforcement of the rights of the public waste collection service's users is a sine qua non *condition* for development of "eco-citizen" duties.

This is why the Defender of Rights made several recommendations aiming to better guarantee the fundamental right to public health and preservation of the environment in implementation of the service, better protect the principle of user equality and reinforce the waste collection and disposal service's users' right to information.

Transfer of responsibilities and costs may also impact public-service users' families.

MEDICOSOCIAL MONITORING OF DISABLED CHILDREN

Due to lack of funding and professional staff, in particular for speech therapy sessions, or owing to available practitioners' heavy workloads, medicosocial institutions and services responsible for preventive healthcare and support of disabled children, such as Services d'Education Spéciale et de Soins à Domicile (SESSADs – Special Education and Home Care Services), Instituts Médico-Educatifs (IMEs – Medico-Educational Institutes), Centres d'Action Médico-Sociale Précoce (CAMSPs – Early Medicosocial Action Centres) and Centres Médico-Psycho-Pédagogiques (CMPPs – Medico-Psycho-Pedagogical Centres), are unable to provide all the care required for effective monitoring of children. In order to avoid any break in treatment or overlong waiting periods, families are forced to consult private practitioners working outside such facilities. When parents asks their health insurance funds to reimburse treatment or transport costs relating to such externalisation, some funds refuse, deeming that it is for the medicosocial institutions responsible for the children in question to cover such costs, for which they are funded.

The Defender of Rights recommended to the Minister of State for Disabled People, attached to the Prime Minister, to take all necessary measures to remedy difficulties encountered by these families. A Direction was disseminated by the Caisse nationale de l'assurance maladie des travailleurs salariés (CNAMTS – National Health Insurance Fund for Salaried Workers) summarising conditions for taking financial responsibility for children.

GEOGRAPHICAL DISTRIBUTION OF PUBLIC SERVICES UNCORRELATED WITH USERS' NEEDS

IN THE FIELD OF JUSTICE

For the Defender of Rights, any reorganisation of public services or their removal from certain territories, whether rural or periurban, can only be carried out on the basis of assessment of the users' needs they are supposed to meet. Behind the budgetary rationale and concern for rationalisation that are leading to the closing of public services' counters on which the most disadvantaged citizens' access to rights depend, a great many individual situations take shape.

In order to avoid creation and extension of "legal deserts", "rights deserts" in fact, the Defender of Rights emphasised, in its Opinion 18-26 on the 2018-2022 Programming and Reform Bill for Justice, that abolition of local courts would create difficulties in taking cases to court, especially for the most vulnerable individuals.

Such courts handle everyday disputes, including cases affecting the most fragile individuals (protection measures, overindebtedness, residential leases, consumer credit, etc.).

They are geographically close to litigants, and simple and easily accessible as far as referrals are concerned. They are inexpensive, given that legal representation is not compulsory, proceedings are oral, and judgements are handed down in reasonable time.

OPINIONS 18-22 OF 26 SEPTEMBER AND 18-26 OF 31 OCTOBER 2018 ON THE 2018-2022 PROGRAMMING AND REFORM BILL FOR JUSTICE

The Defender of Rights alerted parliamentarians on the merger of high court and lower court litigations, courts' *départemental* specialisation, and the abolition of local court judges, who are judges of personal and economic vulnerabilities. This "simplification" of the justice system so ardently promoted by the Government risks distancing litigants from justice and creating "legal deserts" in a context where coverage by officers of the court, associations, and such institutions as Maisons de Justice et du Droit (MJDs – Legal Advice Centres) is by no means equally adapted across the territory.

Dematerialisation cannot be the only solution to this distancing, all the more so as it is not always immediately effective, as was evidenced by the difficulties encountered when vehicle registration documents were dematerialised. Therefore, it must never be exclusive and always carried out in stages. Consequently, adequate human resources will have to be made available to the single jurisdiction system and digital interfaces' efficiency and security guaranteed. The Defender of Rights wants to make certain that automation of processing of petitions and pre-examination of petitions by private delegatees will not be possible.

The Defender of Rights recommends that the greatest caution be exercised with regard to the “dejudicialisation” of settlement of disputes advocated by the bill, which must not prevent parties, often the most vulnerable individuals, from exercising their right of access to the judicial system, their right of redress and their right to a fair hearing, and from arriving at an impartial resolution of the problem.

For the Defender of Rights, if closure of courts is not envisaged, reorganisation of their territorial and material competences constitutes a radical development whose effects on users should be measured. Apart from the required matching of territorial location of courts with demographic evolutions, there will have to be consistency between judicial and administrative maps.

Territorial and material reorganisations will have to be accompanied by reinforcement of mechanisms for access to justice, by extending the role of Conseils Départementaux de l’Accès au Droit (CDADs – *Départemental* Councils for Access to the Law), for example, and location of Legal Advice Centres (MJDs) and Points d’Accès au Droit (PADs – Legal Access Points) in connection with Maisons de Service au Public (MSAPs – Public Service Centres). The State’s assumption of responsibility for provision of legal advice prior to requests for legal aid would also be an interesting possibility supported by the Defender of Rights.

Failing this, the measures envisaged could well result in infringements of fundamental rights. There can only be real respect of individual rights and freedoms if access to courts is guaranteed to all public justice service users, including the most vulnerable. Access to the courts is itself a right enshrined by law. The far-reaching changes in the pipeline may well result in a rollback.

Evolution of the Reform Bill for Justice followed up these observations, at least in part, by instituting judges of protection and opening up alternatives to digitisation.

IN THE FIELD OF HEALTH

The Defender of Rights is also referred to with regard to “medical deserts”, which have undeniable effects on the fundamental right to health. Its services are called upon through testimonies, “calls for help” from users unable to find a new general practitioner or specialist, or health visitor. In addition to the unequal distribution of physicians across the territory, the fact that they are growing older is also of concern. Some users complain of being unable to obtain a simple appointment with a private practitioner for renewal of a treatment, and are faced with health centre doctors’ refusal to take on new patients. They are also unable to declare general practitioners to social welfare bodies and so ensure they follow a coordinated care pathway. Yet there are numerous risks connected with noncompliance with such pathways: Lesser quality of medical treatment, lower reimbursement rates by Assurance Maladie (State health insurance), etc. The Defender of Rights also observes that, for the most vulnerable patients and those suffering from loss of autonomy, such difficulties sometimes result in abandonment of treatment or premature institutionalisation.

Although treatment is provided by the private sector in most cases, access to health services is very much dependent on the healthcare offer across the national territory. The Defender of Rights therefore drew the Minister for Solidarity and Health’s attention to the consequences of such inequalities, and in particular to discriminatory situations based on place of residence that are likely to arise.

In addition, the prohibition of acts of discrimination based on a person’s “*particular vulnerability resulting from economic situation, whether apparent or known to its perpetrator*” (Law 2016-832 of 24 June 2016) should enable imposition of penalties on private companies as well as on public bodies that refuse access to services on offer for such reason.

The Defender of Rights also handled a great many complaints highlighting the discriminatory character of refusal of care.

They show that the right to health is not yet fully effective, in particular for individuals in situations of precarity (Decisions 2018-259 and 2018-260).

PREVENTING HEALTH PROFESSIONALS FROM REFUSING TREATMENT

The Defender of Rights criticised refusal of access for recipients of Couverture Maladie Universelle Complémentaire (CMU-C – Complementary Universal Health Insurance), Aide à l’Acquisition d’une Complémentaire Santé (ACS – Assistance with Payment of Complementary Insurance) and Aide Médicale de l’État (AME – State Medical Aid), due to discriminatory provisions on online medical appointment websites. Following an investigation involving several physicians and two online medical appointment booking platform operators, the Defender of Rights confirmed the existence of discriminatory provisions and refusals of treatment specifically targeting CMU-C, ACS and AME recipients. Highlighting the inadequacy of the legislation governing operation of such platforms, the Institution’s Framework Decision 2018-269 published in December 2018 recommended that online information be subject to checks and that users should be able to report cases of refusal of care, while emphasising that platforms could be held liable.

In 2018, with a view to preventing such refusals, the Defender of Rights also developed two information tools in collaboration with various actors, including three Orders of health professionals (National Council of the Order of Physicians [CNOM], National Order of Dental Surgeons [ONCD] and Orders of Midwives), Assurance Maladie, and associations (FAS, Aides, APF, UNAF, etc.):

- a leaflet for health benefit recipients designed to help them assert their rights in the event of refusal of care.
- a sheet intended for health professionals, reminding them of their legal obligations and best practices.

D. COMPLEX PUBLIC SERVICES: ACCESSING YOUR RIGHTS IS WORTHWHILE BUT FATIGUING

In many cases, difficulties that users have to overcome in order to access their rights effectively are less to do with defects in the system than with obstacles set up more or less deliberately by the public authorities.

THE LAW VERSUS ACCESS TO RIGHTS

Paradoxically enough, in a society that promotes solidarity by setting up complex redistribution systems based on social contributions and benefits, the law may act as an obstacle to access to rights.

Due to the complexity of mechanisms in place, applicable law is sometimes incomprehensible to the public and even poorly understood by the officials responsible for implementing it. The endless changes in regulations and legislation can also have a dissuasive effect on users. The situation can be further complicated by conditions (sometimes not legally binding) that may be required by such-and-such a body and which may contribute to abrupt major deterioration in the living conditions of those concerned.

In addition to taxation, social security contribution systems illustrate this well. Apart from lack of coordination between the various systems, which has often been criticised by the Defender of Rights, a number of systems suffer from special difficulties of their own. Such is the case, for example, with calculation of numbers of complementary retirement points accumulated by self-entrepreneurs. With a view to redressing a legal gap in the system, the Caisse Interprofessionnelle de Prévoyance et d'Assurance Vieillesse (CIPAV – Interprofessional Fund for Pension Planning and Insurance) decided to refer to the provisions on State compensation that had not been intended to apply to actual calculation of insured parties' rights. This approach also had the effect of reducing self-entrepreneurs' rights (Decision 2018-001 – appeal still pending; Decision 2018-065).

The disparities between schemes announced as providers of new rights and improvements for users and a reality composed of administrative complexity, exceptions, non-implementation of legal provisions help further the distance between users and public services.

The situation may be seen as the effect of the public authorities' indifference to the real consequences that the decisions they take have on users. It may also show that effective access to rights and freedoms and the principle of equality are becoming of secondary importance in the very design of public services' missions.

This observation may undermine trust in institutions and lead to lassitude and defiance vis-à-vis the public authorities.

THE FATIGUE OF BEING A USER?

Playing on the title of a book by Alain Ehrenberg entitled *La fatigue d'être soi (The Fatigue of Being Oneself)* (1998), in which depression is connected with a generalised obligation of performance, Gilles Jeannot (*Informations sociales*, 2010/2) described the "fatigue of being a customer" of public services now open to competition, compelled to position themselves among offers that are impossible to compare, resist practices close to forced sale, come up with lower rates, survive screening by telephony servers in the event of dispute, etc.

Complaints addressed to the Defender of Rights show that public service users' status no longer maintains this trend. Normalisation of "nonresponses", reduction of public services, obstacles to access to rights: The changes made in public services, presented as improvements benefiting all users, may make people feel that they no longer enjoy the protection previously provided by the public authorities. Users must now show that they are able to "stand on their own two feet" in their administrative procedures. Responsible for their own choices and mistakes, which development of a rationale of suspicion too often tends to see as fraud, users are forced to fall back on their own incompetence.

Such developments can only serve to increase social inequalities in access to rights.

But the fatigue of being a user can also refer to the increasingly common feeling among certain sectors of the public that there is an imbalance in individual contributions to the operation of public services (taxes, paying services, time spent, etc.) and the ever fewer individual and collective benefits they afford. The gradual phasing out of public services, which, in France, are a key factor in consent to taxation, jeopardises redistribution of wealth and the sense of solidarity, progressively undermining social cohesion.

E. CONTINUING REGRESSION OF FUNDAMENTAL RIGHTS AND FREEDOMS

Last 10 December was the 70th anniversary of the Universal Declaration of Human Rights (UDHR), which, for the first time, guaranteed the fundamental rights of everybody, everywhere and at all times. The principles and values asserted by the international community following the Second World War were then given concrete expression through adoption of various binding legal instruments, enshrining individual rights and freedoms and committing States to respect them. The UDHR laid the foundations for international law on human rights as the basis for the Rule of Law.

However, the Declaration's aims are still far from being fulfilled today. In parallel with the rollback of public services, France saw the emergence of a policy of reinforced security and repression in the face of the terrorist threat, social unrest and fear of a migrant crisis fed by the country's retreat into itself. This disparity between the promise offered by the UDHR and reality, marked by the erosion of Europe's common core of principles and values and of fundamental freedoms is testified to by numerous complaints received by the Defender of Rights, and seems to have increased since institution of the state of emergency in 2015.

THE RULE OF LAW SINCE THE STATE OF EMERGENCY

Like a poison pill, the state of emergency, an "exceptional" regime that remained in force for almost two years, has gradually managed to contaminate common law, weakening the Rule of Law and the rights and freedoms on which it is based, as was highlighted in the report *Ce qui reste(ra) toujours de l'état d'urgence* (What still remains – and will always remain – of the state of emergency – February 2018), the result of research conducted by the Centre de Recherches et d'Etudes sur les Droits Fondamentaux (CREDOF – Centre for Research and Studies on Fundamental Rights) with the Defender of Rights' support.

The legal changes implemented, with an increase in incriminations targeting preparatory acts and assertion of new preventive purposes for criminal law, have helped blur the distinctions between administrative police, who focus on prevention, and judicial police, who focus on repression.

Dissemination of this rationale "*by capillary action in several branches of the law*", initiated in order to deal with an exceptional situation, has helped lay the foundations for a new legal order based on suspicion, in which fundamental rights and freedoms are in decline, weakened by security measures seeking in particular to develop control in the public space.

SOCIAL CONFLICTS IN THE FACE OF REINFORCED MAINTENANCE OF LAW AND ORDER

This rationale is all too apparent in supervision of demonstrations and maintenance of law and order. In the study it carried out at the request of the National Assembly, delivered in January 2018, the Defender of Rights noted that the resurgence of the terrorist threat and implementation of the state of emergency had led to security issues being given top priority, sometimes to the detriment of freedoms, including the freedom of demonstration.

The "Yellow-Vest" movement's demonstrations which have been taking place across the territory since November 2018, and confrontations between demonstrators and police have confirmed the acuity of the questions raised in the report. Unacceptable excesses and violence rightly call for a response from the security forces, in compliance with the rules governing necessary and strictly proportional use of force. However, the unprecedented number of people detained for questioning or held in police custody "for preventive reasons", for example, on 7 and 8 December, raises the Defender of Rights' doubts about the public order system in place, the legal framework for such actions, and the directives issued, which seem to be very much in the same vein as measures taken during the state of emergency. The same is true with regard to these measures' legality, in view of the rules set by our laws and the European Convention on Human Rights.

EXILES' FUNDAMENTAL RIGHTS IN THE FACE OF CRIMINALISATION OF MIGRATION

The security rationale also affects foreigners' rights. As the Defender of Rights emphasised in its report *Exilés et droits fondamentaux, trois ans après le rapport Calais* (Exiles and fundamental rights, three years after the Calais report – December 2018), rather than developing a real reception policy, the public authorities decided to implement a policy essentially based on "the policing of foreigners" and reflecting a form of "criminalisation of migration", to borrow the term used by Nils Muiznieks, the Council of Europe's former Commissioner for Human Rights. This approach, which now seems to be continuing through penalisation of assistance to migrants, is largely based on use of the security forces and has led to a number of violations of exiles' fundamental rights.

The fight against "fixation points", which has been explicitly defined as one of the public authorities' priorities, aims to dissuade exiles from making their home on French soil. To do so, the stepping up of police presence during evacuation of camps, once they spring up, is sometimes carried out within an unclear legal framework and such operations often show little respect for exiles' belongings. In a number of its Decisions, the Defender of Rights pointed out that teargas could be used as a repellent and sometimes inappropriately or unnecessarily. It also noted that identity checks were not being carried out for their intended purpose but rather in order to dissuade exiles from accessing assistance facilities or to evacuate them from settlements, and recommended that such checks be governed by a new Circular.

At national level, continuing obstacles to making asylum applications – including saturation of reception mechanisms and lack of information – also help swell the ranks of exiles forced to live in hiding, subjected to living conditions contrary to the dignity of human beings.

Yet, in parallel, the measures adopted in the Law 2018-778 of 10 September 2018*, bearing on controlled immigration, effective right of exile and successful integration*, have led to tougher treatment of asylum seekers and refugees, worsening their situation on the territory yet further. For several years now, the Defender of Rights has noted that these individuals, weakened by the journeys they have made and deprived of their fundamental rights, are forced to live in undignified conditions. Yet the authorities have obligations to such people in situations of extreme deprivation.

THE RIGHTS OF THE DEFENCE, A HINDRANCE TO THE "EFFICIENCY" OF THE JUSTICE SYSTEM?

Nor are the principles governing trial fairness and the rights of the defence spared by development of the security rationale and the quest for greater "efficiency" in the justice system. Several measures bear witness to this, including the opening of an annex to a high court in an airport zone, in order to bring foreign nationals held in the waiting area before liberty and custody judges, and location of secure cubicles in courtrooms for appearances by individuals who had been warned and charged whilst in custody. In parallel, a number of measures designed to reform the justice system, such as development of use of a single judge in criminal cases and videoconferencing of debates on provisional detention, tend to create imbalances in criminal procedure and lead to serious violations of defendants' rights.

This development has also permeated the practices of a number of public services, social services in particular, which have been encouraged to develop their antifraud policies by the public authorities. As the Defender of Rights pointed out in its report on *excesses in the fight against social benefit fraud* (2017), in order to be able to defend themselves, individuals suspected of fraud must be "*informed promptly [...] of the nature and cause of the accusation*" (Article 6 §3 of the European Convention on Human Rights and Fundamental Freedoms). In this context, they must be notified of the complaints made against them so that they can familiarise themselves with the factual and legal arguments likely to be used against them. Yet stepping up the fight against social benefit fraud, which reflects an extension of the field of suspicion, is based on financial penalties and the bodies concerned keeping files on users regarded as fraudsters and tends to break free of these fundamental rules.

Rollback of public services, increased inequalities, erosion of social cohesion, development of a security rationale and, finally, regression of fundamental rights and freedoms... As the whole of the Annual Report makes clear, the Defender of Rights cannot resign itself to this situation.

II. PROTECTING RIGHTS

THE DEFENDER OF RIGHTS' FIVE AREAS OF COMPETENCE

A. DEFENCE OF THE RIGHTS OF THE CHILD

In 2018, the Defender of Rights received 3,029 complaints relating to children's rights and the best interests of the child, stable in comparison with 2017, which had recorded an increase of over 13% compared with the previous year.

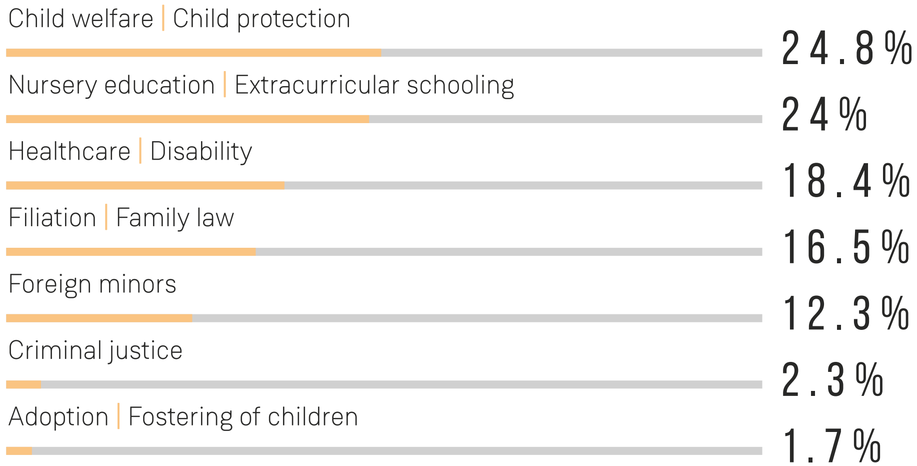
Child protection, 24.8% of reasons for referrals, and education, 24%, remain the two most common reasons behind complaints. An increase in complaints regarding health and disability was also noted (18.4% as against 16.4% for the previous year). There is still a high percentage of complaints regarding foreign minors: 12. 3%, showing a slight increase.

Although most complaints are sent in by mothers (32.7%), the Defender of Rights is pleased to see a steady increase in numbers of children among authors of complaints: 13.4% as against 11.2% in 2017 and 10% in 2016.

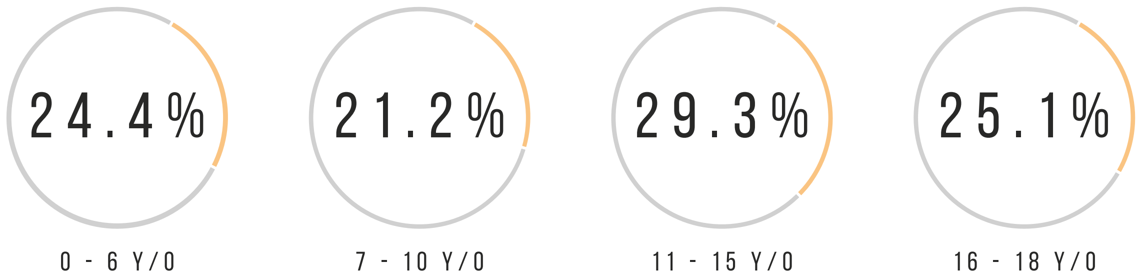
On the eve of the celebration of the 30th anniversary of the International Convention on the Rights of the Child (ICRC), there is still progress to be made before children's rights are fully respected across the territory.

There are still too many children who have a hard time getting accepted by schools in order to enjoy the fundamental right to education without being discriminated against. In addition to the Defender of Rights concerns with regard to the child protection system, attention should once again be paid this year to the situation of unaccompanied migrant minors, who are increasingly weakened and suffer from the unsuitability and limited scale of the schemes implemented on their behalf. Adding to these recurrent infringements of the rights of the child, we have recently seen development of the practice of keeping files on such children, violating respect for private life and the right to equality of individuals claiming to be minors and requesting protection as children in danger.

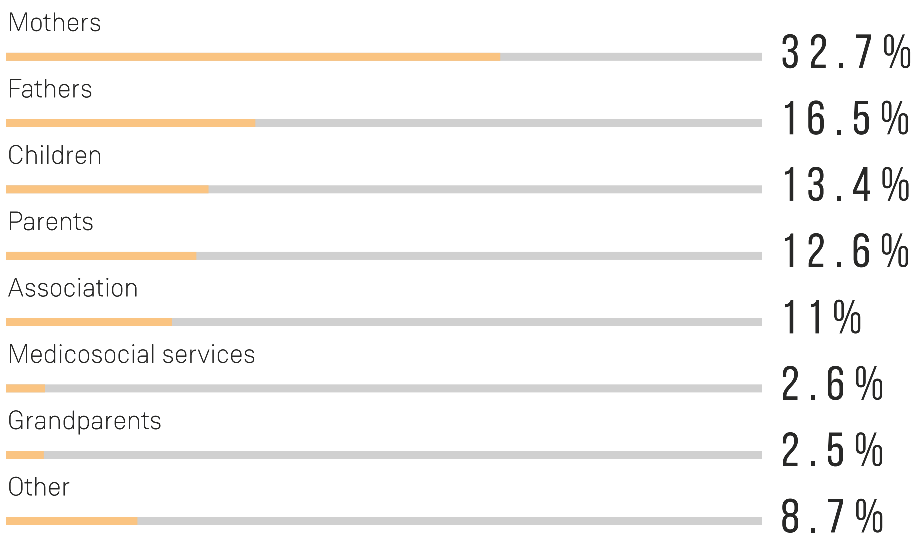
MAIN REASONS FOR COMPLAINTS HANDLED BY THE INSTITUTION IN THE FIELD OF THE DEFENCE OF CHILDREN BREAKDOWN ACCORDING TO TYPE OF COMPLAINT



BREAKDOWN ACCORDING TO CHILDREN'S AGES



BREAKDOWN BY AUTHOR OF COMPLAINT



PROTECTION OF CHILDREN AGAINST ALL FORMS OF VIOLENCE: A PRIORITY REASSERTED BY THE DEFENDER OF RIGHTS

Protection of children against all forms of violence first of all requires acknowledgement that, from birth, children are individuals in their own right and have their own rights.

Such acknowledgement is essential to a child's best possible development and is underlined once again by the Defender of Rights in its report published on 20 November, devoted this year to early childhood: "*De la naissance à 6 ans: au commencement des droits*" (From birth to six years old: at the beginning of rights).

The report seeks to analyse the way in which the rights of the very young are apprehended and implemented; and show how important it is for the State and institutional and professional stakeholders alike to take action on behalf of early childhood.

This is why the Defender of Rights considers that:

- A child has a legal existence and rights from its very first breath; This is theoretically acknowledged; however, society finds it hard to take account of the best interests of the child, and of each child individually. The interest of the adult soon prevails. This is made clear, for example, in the layout and design of all public spaces.
- Effectiveness of their rights is of key importance to children's development: This is by no means an ideological position; it is what we are taught by studies demonstrating the importance of a child's first 1000 days for brain development as well as of the social environment: Favourable living conditions in early childhood, including loving care and

education, will have positive repercussions throughout life. Such knowledge needs to be disseminated; professionals must appropriate it and decision-makers take it into account when developing public policies.

- The very young child must be considered as a whole rather than through the prism of "problems" (health, housing, education, etc.) that he/she encounters; in order to ensure that this happens, we need to set about decompartmentalising public policies through assertion of strong political determination in favour of the rights of very young children and level-headed coordination guided by the best interests of the child.
- In order to guarantee all children, including the most disadvantaged, equal respect of their rights and protect them against all forms of danger, we need to make prevention and support to parenting an absolute priority. In particular, this means ensuring long-term Mother and Infant Protection, as regards such services' public heath missions and medicosocial activities alike, by preserving their universal vocation.

Institutions responsible for children must be ready to pay their full part in ensuring their protection. In its Decision 2018-139 bearing on action taken by the National Education system's *départemental* services following allegations by children in the first year of nursery school, complaining of acts of violence perpetrated by their teacher, the Defender of Rights recommended that these services envisage suspending teachers when acts of violence reported appear to be based on fact and are sufficiently serious to merit such action, with degrees of seriousness assessed by taking full account of the young age of the children concerned. In this particular case, despite the children's numerous and similar allegations, the National Education system's *départemental* services had not initiated any protective measures or disciplinary proceedings.

More generally, in order for prohibition of corporal punishment and humiliating treatment to be more strongly asserted and children better protected in consequence, the Defender of Rights, in its Opinion 18-28 of 19 November 2018, reiterated the need for prohibition of corporal punishment in any context – whether at home, at school or in any institution taking in children – to be enshrined in law. It recommends that such prohibition should not only be included in the Civil Code, but also in the Education Code and the Social Action and Family Code.

CHILD PROTECTION: THE LEADING REASON FOR REFERRALS CONCERNING DEFENCE OF THE RIGHTS OF THE CHILD AND ONE OF THE DEFENDER OF RIGHTS' PRIORITY CONCERNS

In its 2016 Annual Activity Report, the Defender of Rights highlighted the extremely worrying situation of child protection faced with inadequate resources, from prevention to care of young adults. This year once again, it handled a great many complaints illustrating the persistence and even aggravation of difficulties. It has pointed out repeatedly, in its reports, decisions, letters, and public pronouncement, and those of the Defender's Deputy, the Children's Ombudsperson, that child protection must be a priority for all public authorities: State, *départements*, health sector and municipalities. Announced by the Government in late 2017, the child protection strategy, which started off with the appointment of a dedicated minister, is yet to be revealed. The Defender of Rights considers it to be a matter of urgency that national and *départemental* authorities finally pay child protection the attention it deserves.

On its own initiative, the Defender of Rights investigated the case of a two-and-a-half-year-old child who had died in hospital as the result of acts of violence perpetrated by her parents, when the court-ordered placement measure had been lifted less than a month and a half earlier; in its Decision 2018-197,

it concluded that there had been a violation of the child's right to be protected from danger and issued recommendations to the *Départemental* Council concerned. This situation illustrated how, in a context where resources are inadequate, the first actions that professionals and their supervisors fail to carry out are networking, sharing information, working on transitions in provision of care and developing a Project for the Child (PPE), all of which, in this case, had tragic consequences for the child.

FOREIGN MINORS: CONTINUING VIOLATIONS OF THEIR RIGHTS

All minors on French soil are children before they are French or foreign, and enjoy all the rights associated with their age and needs: right of residence, with the child welfare system taking responsibility for their health and safety, dignified housing conditions, educational monitoring, schooling, and right to a work permit enabling conclusion of an apprenticeship or professionalisation contract.

Apart from cases of refusal of schooling, which it has continued to see this year, as is evidenced by Decisions 2018-005, 2018-011 and 2018-221, the Defender of Rights observes that France's educational facilities are struggling to adapt to the complex reality of migration and homelessness.

The Defender of Rights supported and funded a study, carried out by the Institut National Supérieur de Formation et de Recherche - Handicap et Enseignements Adaptés (INSHEA – National Higher Institute for Training and Research on Special Needs Education) research team, delivered on 21 December 2018, in order to better understand actual schooling conditions, educational practices implemented and the pathways of newly arrived non-French-speaking pupils and children from homeless families and Traveller communities. The results of the research carried out led the Defender of Rights to reassert that the right to education is a fundamental right respect of which involves access to inclusive schooling for foreign children and children from homeless families and Traveller communities.

As illustrated by its Decision 2018-100, it also condemns the many violations of unaccompanied minors' right to education, highlighted by the complaints submitted to it. It is equally concerned by *Départemental* Councils' repeated refusals to grant Young Adult Benefits to unaccompanied minors who have reached the age of majority, heavily compromising their professional training and integration. It made observations before administrative courts ruling in interlocutory proceedings in several cases, deeming that there was serious doubt as to the legality of *départements*' refusals, which had no de jure or de facto basis. At the same time, it took the opportunity to raise the matter of the lack of support provided to unaccompanied minors entrusted to the child welfare service in their access to autonomy, in particular in carrying out the administrative procedures required to establish their civil status, and when a minor reaches the age of majority in the middle of a school year and is consequently no longer regarded as a minor in care, which is contrary to Article L.222-5 of the Social Action and Family Code (Decisions 2018-032, 2018-137 and 2018-166). In addition, it recommended a *Départemental* Council to revoke a decision to limit the granting of child welfare benefits provided for young adults to those who had been taken into care by the child welfare service before the age of sixteen, deeming that the decision was illegal and constituted an act of indirect discrimination based on criteria of origin and nationality (Decision 2018-300).

Furthermore, in view of the increase in numbers of unaccompanied migrant minors identified in *départements* and the lack of resources allocated to their reception, the Defender of Rights, in its Opinions of 15 March 2018 and 17 May 2018 bearing on the Bill for controlled immigration, effective right of asylum and successful integration, as well as in its Opinion of 11 October 2018 bearing

on appropriations allocated to the "solidarity, integration and equal opportunities" mission in the 2019 Finance Bill, reasserted the predominance of the International Convention on the Rights of the Child and the obligation of provision of care to unaccompanied migrant minors.

The Defender of Rights requests that an end be put once and for all to administrative detention of minors in administrative detention centres and facilities, contrary to the best interests of the child and Articles 3, 5 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). It also spoke out against use of bone-age testing to determine whether or not migrants are minors, presenting its observations before the ECHR (Decision 2018-138), and against creation of biometric files on unaccompanied minors in the context of its observations presented to Parliament as part of its Opinion 18-14 bearing on the Bill on controlled immigration, right of asylum and successful integration.

DISABLED CHILDREN: THE RIGHT TO ENJOY REASONABLE ACCOMMODATIONS MEETING THEIR NEEDS

Over the course of 2018, the Defender of Rights once again took major action to ensure inclusion of disabled children, both in the context of their schooling and training and their access to recreational activities.

Via a dozen or so Decisions and numerous amicable settlements, the Institution reasserted the right of all disabled children to full enjoyment of all fundamental rights on the basis of their equality with other children and prohibition of any form of discrimination based on a child's disability. According to the International Convention on the Rights of Disabled Persons, "*discrimination based on disability includes all forms of discrimination, including denial of reasonable accommodation*".

The obligation of reasonable accommodation consists of making any necessary and appropriate modifications or adjustments when required in a given situation, so that a disabled person can enjoy and exercise his or her rights. Consequently, the various actors in the fields of education and recreational activities are obliged to assess children's special needs with regard to their disability situations on a case-by-case basis, in order to consider appropriate measures to take to enable their reception. And, if applicable, to demonstrate the impossibility of making such accommodations.

The Defender of Rights made recommendations on this point this year, to the principal of a vocational lycée (Decision 2018-035), heads of State-contracted private schools, diocesan directors (Decisions 2018-046 and 2018-228), and the manager of an apprentice training centre (Decision 2018-231); and also with regard to recreational activities, to a mayor, concerning access to a stay at a leisure centre (Decision 2018-230), a company, concerning a language study holiday abroad (Decision 2018-057), and an association organising recreational activities (Decision 2018-229).

For several years now, the Defender of Rights has been active in ensuring disabled children's inclusion in leisure centres. Also, in the face of continuing difficulties as regards disabled children's access to such activities, the Institution decided to sponsor the "*Mission Nationale Loisirs et Handicap*" (Leisure and Disability National Mission) and make active contributions to its work, in particular by reasserting the legal framework governing reception of disabled children at leisure centres. The Mission's report was delivered to the Defender of Rights and the Minister of State for Disabled People on 14 December. It contains 20 concrete operational proposals for developing access to leisure centres on the part of disabled children and teenagers.

B. THE FIGHT AGAINST DISCRIMINATION

The issue is illustrated to perfection by the needs and aspirations of the disabled and the elderly. Hence, guaranteeing modifiability of housing from design stage onwards (a question only partially looked into over the course of 2018) and making means of transport accessible (a subject that will be tackled in 2019) help facilitate autonomy by carrying out the reasonable accommodations required.

A WORD FROM PATRICK GOHET, DEPUTY TO THE DEFENDER OF RIGHTS RESPONSIBLE FOR THE FIGHT AGAINST DISCRIMINATION AND PROMOTION OF EQUALITY

Territorial inequalities, social isolation, digital divide, "forced-march" dematerialisation of public services – so many obstacles to access to rights and equal treatment that have taken root and are growing steadily.

Yet, whether female or male, young or old, able-bodied or disabled, living in a city or in the country, all of us aspire to be as autonomous as possible while enjoying fully adapted protective support. It is this apparent contradiction that society is called upon to deal with. And it is this complementarity that the public authorities must guarantee. The origin and content of complaints referred to the Defender of Rights bear witness to this reality. The many meetings with voluntary operators and local government officers confirm this expectation.

Disability, age and state of health are all discrimination criteria prohibited by law. The first comes top of the list in our referrals. The other two are likely to become more prominent in the near future. This is especially true of old age. For many, longer life expectancy is expressed by a form of dependence that becomes greater with the passing years.

How does one ensure that senior citizens continue to live in their own homes – an aspiration shared by most of them? How does one help family caregivers? Or improve specialised institutions by turning them into living environments that guarantee the autonomy and support that elderly are also looking for? These are just a few of the challenges that have to be met.

The Defender of Rights is determined to play its part to the full! This is why it brought together the main organisations representing the elderly and sector professionals in 2018 and announced the upcoming creation of a Joint Committee, of the kind that already exists for a number of categories of citizens, including the disabled.

Acting on behalf of autonomy and support is to "combat discrimination and promote equality".

PATRICK GOHET

Among the 5,631 referrals received in 2018 that concerned acts of discrimination, disability (23%) was easily the most usual criterion cited for the second year running, well ahead of origin (14.7%) and state of health (10.5%).

Employment is still by far the most common field in which acts of discrimination occur, taking place throughout a victim's career, in the form of continuing low status and blocked careers due to nationality (the Chibanis (workers of Maghrebian origin): Decision 2016-188, Paris Court of Appeal, 31 January 2018, 348), discrimination at recruitment due to place of residence (Decision 2018-170), nonrenewal of contracts (Decision 2018-298) and dismissal of public officials working for local authorities due to their political opinions (Decision 2017-267, Bordeaux Administrative Court of Appeal, 25 October 2018).

The Defender of Rights still receives regular referrals from women complaining of discrimination due to pregnancy and family situation, both of which are governed by rights that are often disregarded by managers. It therefore requested Rennes Administrative Court to acknowledge the illegality of freezing numerical ratings during maternity leave and its discriminatory consequences for the careers of women working in the hospital civil service (Rennes Administrative Court, 4 May 2018, 1600025). It has also contributed to access to Assurance Maladie's maternity benefits on the part of women without steady employment(Decision 2018-202 on the rights of contract workers in show business), obtaining a commitment from the Minister for Solidarity and Health to carry out relevant reforms.

THE MAIN REASONS FOR COMPLAINTS HANDLED BY THE INSTITUTION (HEAD OFFICE AND DELEGATES).IN THE FIELDOF THE FIGHT AGAINST DISCRIMINATION

DISABILITY	3.9%	4.3%	4.5%	3.1%	5.4%	1.6%	22.8%
ORIGIN/RACE/ETHNIC GROUP	5.9%	2.7%	2.2%	1.7%	0.8%	1.6%	14.9%
STATE OF HEALTH	2.9%	4.6%	1.3%	1.0%	0.6%	0.1%	10.5%
NATIONALITY	0.8%	0.2%	7.1%	1.0%	0.4%	0.7%	10.2%
AGE	1.9%	1.1%	0.5%	0.8%	0.3%	0.4%	5.0%
SEX	2.6%	0.9%	0.4%	0.5%	0.1%	0.1%	4.6%
UNION ACTIVITIES	2.4%	2.0%	0.1%	0.1%	0.0%	0.0%	4.6%
FAMILY SITUATION	1.2%	0.9%	1.0%	0.4%	0.2%	0.7%	4.4%
PLACE OF RESIDENCE	0.4%	0.4%	1.0%	1.2%	0.6%	0.3%	3.9%
PREGNANCY	2.2%	1.1%	0.1%	0.1%	0.1%	0.0%	3.6%
RELIGIOUS CONVICTIONS	0.9%	0.3%	0.7%	0.5%	0.5%	0.1%	3.0%
PHYSICAL APPEARANCE	1.1%	0.3%	0.6%	0.5%	0.1%	0.0%	2.6%
SEXUAL ORIENTATION	0.6%	0.4%	0.5%	0.3%	0.1%	0.2%	2.1%
ECONOMIC VULNERABILITY	0.4%	0.3%	0.7%	0.3%	0.0%	0.4%	2.1%
BANK DOMICILIATION	0.2%	0.0%	0.4%	1.2%	0.0%	0.0%	1.8%
GENDER IDENTITY	0.2%	0.1%	0.7%	0.4%	0.1%	0.1%	1.6%
POLITICAL OPINION	0.1%	0.4%	0.2%	0.2%	0.0%	0.0%	0.9%
PATRONYMIC	0.3%	0.2%	0.1%	0.1%	0.0%	0.2%	0.9%
MORES	0.1%	0.1%	0.1%	0.1%	0.0%	0.0%	0.4%
GENETIC CHARACTERISTICS	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
LOSS OF AUTONOMY	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
OTHER	0.0%	0.0%	0.1%	0.0%	0.0%	0.0%	0.1%
GENERAL TOTAL	28.1%	20.3%	22.3%	13.5%	9.3%	6.5%	100%

DISCRIMINATION IN EMPLOYMENT AND RECOGNITION OF DISCRIMINATORY HARASSMENT

The 11th edition of the Barometer on Perception of Discrimination at Work, produced jointly with the International Labour Organisation (ILO), revealed the scale of the working population's exposure to harassment, and to remarks or behaviour that are sexist, homophobic, racist, connected with religion, handiphobic or connected with state of health, and likely to help create situations of discriminatory harassment.

One in every four members of the working population state that they have already been the victims of such remarks or behaviour over the course of the last five years.

No profession is excluded. According to its unpublished survey on working conditions and experiences of discrimination in the legal profession in France, carried out in partnership with the Fédération Nationale des Unions de Jeunes Avocats (FNUJA – National Federation of Young Lawyers' Unions), 38% of lawyers questioned (53% of women and 21% of men) reported experiencing discrimination over the course of the last five years. There are major disparities depending on sex, the fact of having children (69% of women between 30 and 39 y/o having a child), perceived origin (66% of men between 30 and 49 y/o perceived as black or Arab), and stated religion (74% of Muslim women between 30 and 49 y/o).

For several years now, the Defender of Rights has been using all methods of intervention at its disposal in order to ensure general recognition of the concept of discriminatory harassment when the facts show a connection between an act of harassment and a discrimination criterion prohibited by law, in the light of the definitions provided in Articles 1 and 2 of Law 2008-496 of 27 May 2008, which include in discrimination any conduct connected with a discrimination criterion when it violates the victim's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment.

A single serious action may be enough to qualify as discriminatory harassment. If an action is qualified as discriminatory harassment, assimilated to an act of discrimination, this enables a request for the decision to be pronounced invalid and more consequent compensation demanded.

Women are still very much exposed to the risk of discriminatory harassment, in particular in the context of return from maternity leave. It often takes the form of unfavourable measures relating to working conditions or assignments to new positions (Decision 2018-169, Versailles Court of Appeal, 27 September 2018). The Court agreed with the Defender of Rights' observations and ordered the claimant to receive compensation for the harm she had suffered.

The civil service is not excluded. In the wake of the Defender of Rights' observations (Decisions 2017-157 and 2016-217), Administrative Courts sanctioned two municipalities for acts of harassment based on pregnancy, brought to light by the Institution's investigations (Lille Administrative Court, 9 October 2018, 1603140; Reunion Island Administrative Court, 5 July 2018, 1600663).

Investigations conducted by the Institution also highlight the fact that discrimination is often combined with other forms of unfavourable behaviour, noting an intermingling of stigmatising remarks and behaviour, experiences of discrimination and situations of undervaluing work carried out. Discriminatory harassment is fed by a continuum of simultaneous devaluation and hostile behaviour in the guise of humour and hazing (Decision 2017-005, Clermont-Ferrand Administrative Court, 14 May 2018, 1701134). Once again, the Administrative Court considered that the acts of discriminatory harassment were corroborated by the Defender of Rights' investigation.

Discriminatory harassment can also take the form of work overload or isolation (Decision 2018-104, Paris Conseil de Prud'hommes (CPH – Industrial Tribunal), 27 July 2018, RG 17/03619), with the CPH agreeing with the whole of the Defender of Rights' reasoning – or of absence of posting or reclassification (Decision 2018-004).

As regards public officials, while three decisions were taken by the Defender of Rights on complaints received in 2015 and 2016, the number of complaints increased significantly in 2018, and administrations improved their responsiveness to reports, sometimes communicating the facts brought to their knowledge to the Public Prosecutor themselves, pursuant to Article 40 of the Code of Criminal Procedure.

Following the various investigations it was able to carry out, the Defender of Rights decided to publish its information sheet "Harcèlement discriminatoire au travail" (Discriminatory harassment at work), in order to help public and private employers identify situations of discriminatory harassment and react in compliance with the exacting requirements of their safety obligation of result.

Over the course of 2018, specifically with regard to sexual harassment, the Defender of Rights noted increased public discussion and greater awareness of the problem on the part of the public authorities.

However, in too many cases, it still observed a tendency to underplay the seriousness of acts in question and the suffering of victims of sexual harassment, along with the inadequacy of measures taken against its perpetrators. The awareness-raising tools launched by the Institution in February 2018 enable action to be taken against sexual harassment in the workplace.

Essentially, the Defender of Rights advocates implementation of a "zero tolerance" policy and provision of support to victims in its Opinion 18-12 of 11 May 2018 on Bill 778 stepping up the fight against sexual and sexist violence, as well as in its various consultations.

The ministerial Circular on sexual and sexist violence in the civil service, issued on 9 March 2018, and the training guide published by the civil service have the same ambition. "Practical information sheets on how to behave in situations of sexual harassment in the civil service" were developed with the Defender of Rights' help.

Employment is not the only field concerned. For the first time; the Defender of Rights applied this notion to goods and services, in the face of the behaviour of a physician who had made racist remarks to one of his patients. Its intervention led to her being compensated, by proposing a civil transaction to the alleged offender (Decision 2018-239 of 26 September 2018).

#UNEFEMMESURCINQ: A CAMPAIGN TO PUT AN END TO SEXUAL HARASSMENT

In August 2017, the Defender of Rights launched a short-film competition on the subject of sexual harassment at work, shortly before the #MeToo movement that encouraged female victims of sexual violence to speak out.

The competition led to three short films being rewarded on the occasion of a theme-based matinee held at the Defender of Rights' Head Office on Tuesday 6 February 2018, bringing together academics, associations, professionals and lawyers specialising in prevention and prosecution of sexual harassment at work.

At the same matinee, the Defender of Rights launched an awareness-raising campaign on sexual harassment at work, entitled #UneFemmeSurCinq in reference to a survey

the Institution had carried out in 2014 which revealed that one in five women has been subjected to sexual harassment at work and that most victims took no steps to assert their rights.

The campaign aimed to remind people that sexual harassment at work is a form of discrimination prohibited by law and to show that the Defender of Rights is an effective avenue of recourse for victims.

To achieve its aim, a poster, leaflet, short film and mini-website were disseminated on social networks and to any party likely to take in sexual harassment victims and help them seek redress, including associations, unions, the Order of Lawyers, Access to Rights Points (PADs), preventive medicine physicians and the Labour Inspectorate.

The campaign reached almost 4.4 million internet users on Twitter, Facebook and LinkedIn, and the short film "*Je tu il nous vous elles*" (I You He We You They), which won first prize in the Defender of Rights' competition, has been viewed over 600,000 times on YouTube.

The extent of everyday acts of discrimination in access to goods and services is also worrying, all the more so because they create major obstacles to the exercise of fundamental rights when a person's origin prevents him or her from renting an apartment (Decision 2018-212***) and raise problems in relations with the police (Decisions*** 2018-257 and 2018-077***), when disability is used as a basis for access to consumer credit (Decision*** 2018-088***), or when gender identity poses a problem of access to bank documents (amicable settlement*** 2018-98***).***

ACTS OF RELIGIOUS DISCRIMINATION SYMPTOMATIC OF THE BLURRING OF THE NOTION OF SECULARITY

In 2018, discrimination suffered by young Muslim women who wear the veil was the subject of a good many referrals to the Institution and the focus of much of its activity.

The participation of women wearing the veil in training courses delivered at higher educational and vocational training institutions is regularly called into question. Such institutions' internal regulations generally serve as the basis for banning the wearing of veils, in contradiction to jurisprudence. Access to vocational training is of major importance in guaranteeing equality in professional integration and career development. By intervening with the institutions concerned, the Defender of Rights succeeded in obtaining reintegration of students and modification of internal regulations (Decisions 2018-013 and 2018-126).

As is illustrated by Decision 2018-289 concerning a broken promise to recruit, and Decision 2018-130 on an attempt to dismiss an employee and a demotion, the fact of wearing a veil still plays a part in discrimination in employment, despite the clarifications made by the Court of Cassation on 22 November 2017 (Cass. Soc., 13-19855).

There are also difficulties arising from Muslims or people assumed to be so being suspected of radicalisation, as is shown by Decision 2018-298 concerning nonrenewal of the contract of a public official who, on no real grounds, was suspected of having failed in her obligation of neutrality.

Such exclusions are also evident outside the professional sphere. Customers' wishes or illegal internal regulations have resulted in women wearing the veil being refused access to a gym (Decision 2018-290), and others wearing burkinis being barred from a holiday centre (Decisions 2018-297 and 2018-301) and a nautical centre (Decision 2018-303).

The Defender of Rights systematically stresses that wearing a veil or burkini when practicing sports cannot be prohibited on the basis of a rule of neutrality, knowing that, in such cases, accusations were unable to establish any real needs with regard to hygiene or security.

Finally, children's rights are also violated by this continuum of discrimination against Muslims: the Defender of Rights was referred to concerning several decisions to do away with meals substituting for dishes containing pork in school canteens, taken in the name of the principles of secularity and neutrality. Yet although municipalities are not obliged to provide such menus, neutrality does not prohibit certain accommodations being to the service's operation in order to ensure respect of beliefs and religions. They cannot abolish them simply for reasons of canteen services' general organisation. In this case, the Mayor's decision had specifically targeted the Muslim faith, in particular during his much publicised announcement, and the Defender of Rights therefore considered it discriminatory due to religious belief (Decision 2017-132). On 23 October 2018, the Lyon Administrative Court of Appeal confirmed the overturning of the decision disputed for error of law (17LY03323 and 17LY03328).

RECOMMENDATIONS TO PARLIAMENT

OPINION ON THE BILL ON BUSINESS GROWTH AND TRANSFORMATION

In 2018, in addition to the referrals the Institution handled, the Defender of Rights delivered proposals for reform and took positions on various legislative or regulatory projects, in particular to promote implementation of non-financial indicators relating to discrimination in the context of the PACTE Bill (Opinion 18-20).

Based on the finding that, over 15 years after transposition of Community directives regarding the fight against discrimination, there is continuing widespread discrimination in employment, which is still one of the structural factors in inequalities in France, the Defender of Rights deemed that its essential legal repression had to be combined with action to improve prevention schemes central to companies' social responsibility. Progress made with regard to gender equality and integration of the disabled shows the effectiveness of mechanisms measuring and uncovering acts of discrimination in companies when they are the subject of legal obligations. Considering that this type of initiative must concern all situations of discrimination, in particular those connected with origin, the Defender of Rights proposed that the consolidated management report provided for in Article L 225-100-2 of the Commercial Code present an analysis including indicators "*with regard to the fight against discrimination*". It also proposed that, following in the footsteps of reports in support of gender equality, Articles L 2312-18 and L 2312-36 of the Labour Code be amended to explicitly provide for data on the fight against discrimination being included in the economic and social database and in the social audit, in accordance with methods to be set by Council of State decree.

The fight against discrimination cannot only be based on action taken by victims; in order to make a structural change in the situation, it must also get companies and social partners to take action.

OPINION ON THE "ELAN" BILL BEARING ON THE EVOLUTION OF HOUSING, DEVELOPMENT AND DIGITAL TECHNOLOGY

In another field, the Defender of Rights made proposals for improving provisions on the ELAN Bill's accessible new housing units (Opinion 18-18).

The Defender of Rights observed a noticeable erosion of the right to housing for the disabled, in contradiction to the principles and rights recognised by the International Convention on the Rights of Persons with Disabilities (ICRPD).

This question is a major social issue, but the various operators in the housing sector have taken far too long to take action and have not yet anticipated the social and economic consequences of longer life expectancy and the growing number of elderly people in loss of autonomy.

Accessibility is nonetheless a means of combating discrimination by enabling disabled individuals, whatever their disability, and the elderly to live independent lives and participate fully in all aspects of life on the basis of their equality with other people. Individualised assessment of their needs must continue to be the rule, whatever type of housing is chosen.

Against the Defender of Rights' advice, the legislature decided to modify the rules governing accessibility of multifamily residential buildings, partially replacing the obligation to produce accessible housing units with an obligation to produce so-called "modifiable" units. The Defender of Rights pointed out that this could well lead to increasing discrimination in access to rented housing, as lessors might be afraid of having to carry out work at the request of disabled tenants. Moreover, as the system does not guarantee total accessibility, the Defender of Rights recommended removing any ambiguity regarding the possibility of creating only partial accessibility following completion of "simple works".

It also stressed that lifts had to be installed in all buildings with more than two storeys, by amending Article R.111-5 of the Construction and Housing Code.

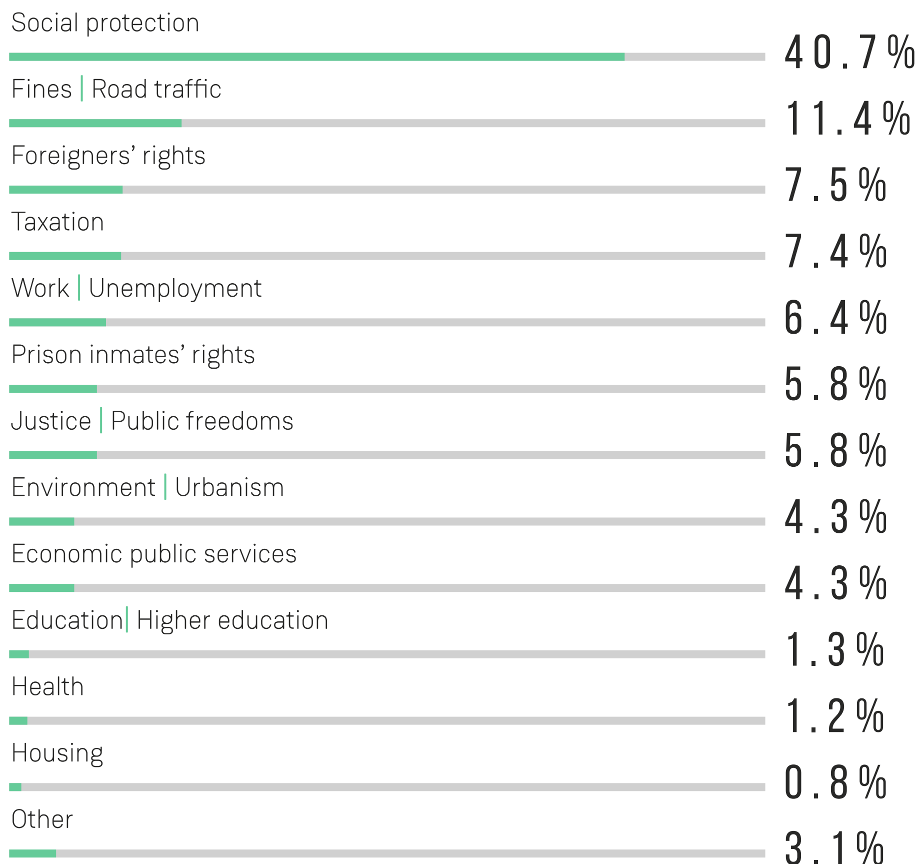
In addition, the Defender of Rights recommended creation of an inventory of accessible housing units available or under construction in a given area, requiring accurate information on accessibility to be included in databases and documentation relating to construction of new housing units. There must be full access to such information, so that dematerialisation of offer visibility does not hinder many disabled users' access to rights.

C. DEFENDING THE RIGHTS OF PUBLIC SERVICE USERS

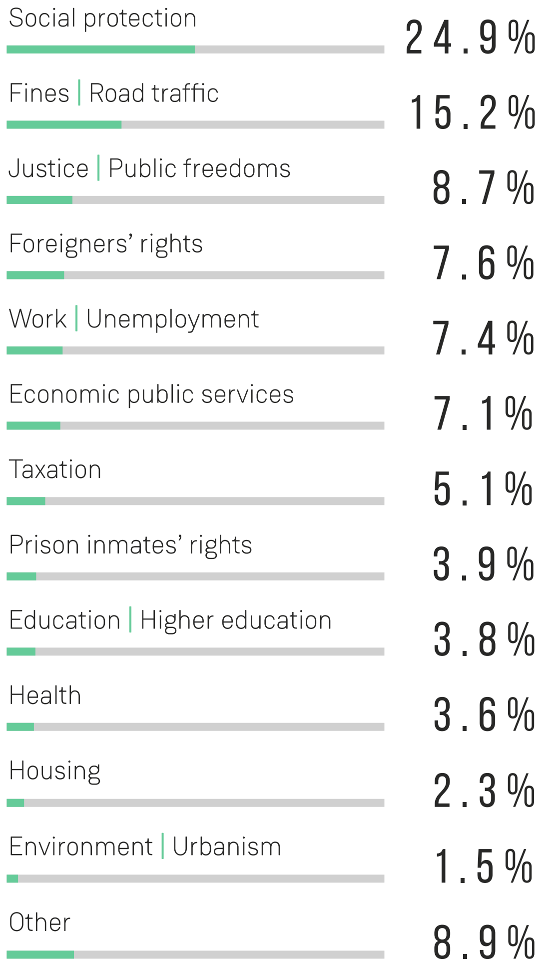
Defence of public service users' rights and freedoms accounts for 84% of complaints addressed to the Institution. This year, the Defender of Rights received over 76,000 complaints in this regard, essentially involving deconcentrated State services and bodies governed by private law entrusted with public-service missions, both far ahead of local authorities and public institutions.

Equal access to public services is a key social issue. This is why the Defender of Rights paid particular attention this year to improving equality of access to rights, not only by the poor, disadvantaged and excluded, but also by "precluded" users, confronted with special difficulties connected with their reduced autonomy, whether disabled individuals, protected adults, elderly people residing in health facilities, or prison inmates.

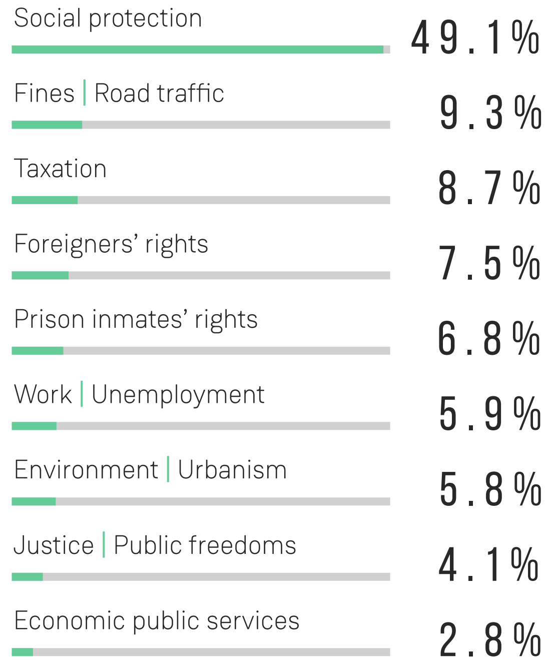
THE MAIN REASONS FOR COMPLAINTS HANDLED BY THE INSTITUTION IN THE FIELD OF PUBLIC SERVICES



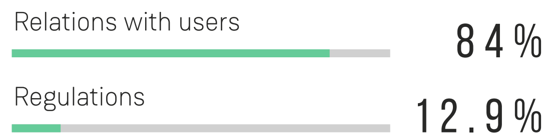
BREAKDOWN OF FILES (HEAD OFFICE)



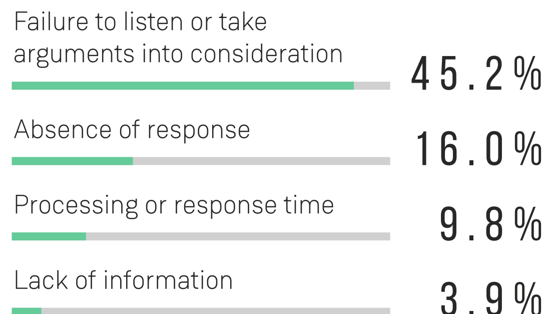
BREAKDOWN OF FILES (DELEGATES)



TYPOLOGY OF MAIN VIOLATIONS OF RIGHTS



MAIN VIOLATIONS CONNECTED WITH USER RELATIONS



GUARANTEEING THAT ALL CHILDREN HAVE EQUAL ACCESS TO SCHOOL CANTEENS

Every year, the Defender of Rights receives a great many complaints relating to access to the public school catering service. In 2018, in addition to the question of the discriminatory character of abolition of substitute meals, the Institution took it upon itself to investigate the decision of a Mayor, widely reported in the media, to have children whose parents had not paid their canteen bills served meals largely consisting of ravioli, different from those served to other children. It criticised the measure as being contrary to the best interests of the child, stigmatising the children concerned and constituting an act of discrimination based on special economic vulnerability, prohibited by Article 1 of Law 2008-496 of 27 May 2008. It noted that the measure had been cancelled and reminded all parties concerned of the need to reconcile the school canteen pricing system with the best interests of the child. It also recommended the Association des Maires de France (AMF – French Mayors Association) to disseminate this decision (2018-063) to all its members, condemning the importation into France of the practice of *"lunch shaming"*, developed in the United States.

The Defender of Rights was also referred to over a set of internal regulations providing for limited access to the school catering service by children with at least one unemployed parent. It deemed that such provisions were contrary to Article L. 131-13 of the Education Code, based on Law 2017-86 of 27 January 2017 bearing on equality and citizenship, which states that "*enrolment in primary school canteens, where the service exists, is a right for all schoolchildren. No discrimination may be made on the basis of their or their families' situations*" (Decision 2018-234). The judge in chambers before whom the Institution presented its observations suspended the decision (Montreuil Administrative Court Order of 12 September 2018).

Applying an "external" canteen rate to a child being schooled in a Local School Inclusion Unit (ULIS) on the decision of the départemental Maison des Enfants Handicapés (MEH – Disabled Children's Home), higher than the rate applied to children living in the municipality, although he could not attend such a class in the municipality where he lives, constitutes an act of indirect discrimination due to disability and a violation of the best interests of the child. Following the Defender of Rights' recommendations, the municipality modified its internal regulations (Decision 2018-095).

EXCESSES IN THE FIGHT AGAINST SOCIAL BENEFIT FRAUD: PUTTING THE RIGHT TO MAKE MISTAKES INTO PRACTICE AND COMPLYING WITH THE FRAUDULENT DEBT REPAYMENT PLAN

In September 2017, the Defender of Rights published the report *Lutte contre la fraude aux prestations sociales: à quel prix pour les usagers? (The fight against social benefit fraud: at what price for users?)* in which it criticised the violations of beneficiaries' rights caused by the toughening up of related public policy. It made recommendations designed to remedy the situation, requesting the public authorities to modify the provisions of Article L. 114-17 of the Social Security Code so that fraudulent intention becomes a constituent part of fraud and mistakes are no longer assimilated to fraud. This has now happened, with Law 2018-727 of 10 August 2018 for *a State at the service of a society of trust* introducing the right to make mistakes in the abovementioned Article. Nonetheless, the Defender of Rights will be monitoring application of the new provisions closely.

Modernisation of the administrative apparatus and its modes of intervention remains a project in which the question of equality of users' access to public services and fundamental rights should be of key importance.

The Defender of Rights still receives numerous complaints from Revenu de Solidarité Active (RSA – Earned Income Supplement) recipients suspected of fraud. Its examination of complaints often reveals that fraud is not proven and that there are no grounds for the recovery procedures implemented by Caisses d'Allocations Familiales (CAFs – Family Allowance Funds) and *Départemental* Councils. The Institution therefore decided to present observations before administrative courts (Decision 2017-332 and Rouen Administrative Court's ruling of 12 January 2018, 04-02, recognising the claimant's good faith and cancelling undue payments; Decisions 2018-033 and 2018-034, which led the bodies concerned to delay their decision prior to the hearing). It also takes action via recommendations. As a result of one of them, a CAF paid a claimant benefits due of over 22,000 euros (Decision 2018-094).

The Institution also tries to ensure that such bodies take full account of recipients' financial capacities and family situations when recovering fraudulent debts. If they fail to do so, and if the measures taken affect children, the Defender of Rights deems that such action contravenes Article 8 of the European Convention on Human Rights, on the right to respect for private and family life, and Article 3-1 of the International Convention on the Rights of the Child, which requires that account be taken of the best interests of the child. Hence, the Defender of Rights recommended a CAF to reconsider the personalised repayment plan that it had implemented (Decision 2018-184).

REMOVING BARRIERS TO ACCESS TO RIGHTS BY "PRECLUDED" USERS

A great many individuals in a wide variety of situations nonetheless have the fact of only being able to enjoy reduced autonomy in common. Their access to public services is hampered as a result.

The Allocation Personnalisée d'Autonomie (APA – Personal Independence Allowance) scheme enshrines the right of elderly people in loss of autonomy to provision of care adapted to their needs. Any approach that includes assessments made by medicosocial teams upstream contravenes the allowance's personalisation principle This being so, the Defender of Rights deemed that a *Départementa*l Council could not use directives to encourage medicosocial teams responsible for assessing needs to prioritise home-based interventions in "proxy" mode, which is less costly for the municipality but often less favourable to the individuals concerned. It therefore recommended cancellation of the directives in question and improvement of information provided to individuals and their families, so as to enable them to fully assess the various existing aid systems (Decision 2018-206).

The Defender of Rights also ensures that exercise of individual rights and freedoms is guaranteed to all patients residing in medicosocial institutions. Over 20% of complaints handled by the investigation division concerned highlight cases of maltreatment or neglect of vulnerable individuals. This being so, the Defender of Rights delivered an Opinion on institutional maltreatment, considered as such when an institution allows bad treatment to continue or repeat itself without taking action. It made several recommendations aiming at better knowledge of the phenomenon and prevention of situations of maltreatment (Opinion 18-24).

In 2016, the Defender of Rights had published a report on *legal protection of vulnerable adults*, reminding its readers of France's international commitments and itemising the changes required in the French system. In compliance with its recommendations, the right to vote was re-established in the 2018-2022 Programming and Reform Bill for Justice, currently being debated in Parliament, which also provides for facilitating protected adults' exercise of the right to marry and divorce, and requires that a multidisciplinary assessment be carried out before any referral to a court, in order to limit the number of judicial measures taken. Nonetheless, this protection system still calls for implementation of a comprehensive mechanism establishing presumption of the individual's legal capacity (Opinions 18-22 and 18-26).

Detainees' access to emergency care and above all to specialised care is made all the more difficult owing to the low number of medical specialists, which results in very long waiting periods (RA-2018-174). Removal of inmates under guard in order for them to receive care outside prison walls is subject to constraints that sometimes lead the individuals concerned to forego treatment (RA-2017-183). Their detention also deprives detainees of the right to free choice of health professional, as well as the right to refuse or consent to treatment. Responses to requests for access to treatment often take a long time in coming, and it is not unusual for such requests to receive no response at all. The Defender of Rights was also referred to regarding a case in which an appointment scheduled by the prison health unit was not communicated to a detainee, and another in which a detainee was not escorted to the health unit on the day his appointment was scheduled' (RA-2018-011).

LIGHT ON... THE DEFENCE OF FOREIGNERS' FUNDAMENTAL RIGHTS

Rollback of public services, increasing inequalities and erosion of social cohesion often lead to a search for scapegoats. The figure of the foreigner, which concentrates a whole range of fears, is often singled out. But, as users of public services themselves, foreigners also suffer from their rollback At all events, as far as the Defender of Rights is concerned, respect of foreigners' rights is a key marker of the degree of protection and effectiveness of rights and freedoms in our country.

Numbers of complaints addressed to it in this regard increase steadily, highlighting the extent of the difficulties that foreigners have to cope with. They concern rights of residence, asylum, accommodation, access to healthcare, education, transport and social protection alike.

In 2018, the Defender of Rights delivered a great many parliamentary opinions, a sign of the current extreme instability of the rules of law devoted to foreigners, as well as the ongoing movement to toughen up migration policy, legislation and practices. The difficulties raised by the Dublin III Regulation and refusal of visas, sources of numerous complaints and interventions, are clear illustrations of this movement.

THE INSTABILITY OF LAWS ON FOREIGNERS, SYMPTOM OF THE TOUGHENING OF LEGISLATION: OPINIONS TO PARLIAMENT

In the space of a single year, the Defender of Rights delivered five parliamentary opinions on law relating to foreigners (including Opinion 17-14 of 15 December 2017 on the results of the Law of 7 March 2016 and Opinions 18-09 and 18-14 on the Law of 10 September 2018, as well as being heard on 14 September 2018 with regard to the opinion report "Immigration, Asylum and Integration" presented by the National Assembly's Foreign Affairs Commission on the 2019 Finance Bill).

In this context, the Defender of Rights first of all emphasised the shortcomings of the asylum procedure, which is entirely focused on rapidity and confines requests to expeditious processing to the detriment of asylum seekers' procedural guarantees. It also regretted the deterioration of material reception conditions due to the stepping up of control measures.

It also criticised the unprecedented reinforcement of coercive means used in the fight against illegal immigration, including the increase of maximum length of detention to 90 days – accompanied by significant reduction in procedural guarantees for foreigners subjected to deportation measures – and the considerable toughening up of sanctions likely to be imposed.

With regard to residence, the Defender of Rights emphasised the improvements contained in the various draft texts, such as consolidation of the rights of international protection beneficiaries and their families, increased protection of victims of conjugal and family violence, and the revision of Titre d'Identité Républicain (TIR – Identity Document of the French Republic) systems and the Document de Circulation pour Etranger Mineur (DCEM – Travel Document for Foreign Minors). However, it regretted the new restrictions guided by a rationale of suspicion and all too likely to impact the effectiveness of certain fundamental rights in their heavy-handed targeting of parents of French children and conditions for delivery of the "visitor" card.

Finally, the Defender of Rights argued that the various texts under debate provided missed opportunities for reinforcing foreigners' rights, either by removing all restrictions on asylum seekers' access to employment, by putting an end to administrative detention of minors and the sanctioning of solidarity, or by extending access to civic service to all legally resident young foreigners.

MOBILISING ALL THE INSTITUTION'S POWERS IN THE FACE OF DIFFICULTIES EXPERIENCED BY ASYLUM SEEKERS SUBJECTED TO THE DUBLIN REGULATION

Application of the "Dublin" Regulation has given rise to a great many complex complaints requiring urgent action, as asylum seekers only have 15 days to appeal against transfer decisions, and just 48 hours if they have been placed in detention or under house arrest. By intervening, the Institution aims to request re-examination of interested parties' legal situations so that France agrees to take responsibility for their asylum requests either because of the situation in their countries of origin or because of their personal situations. Failing amicable settlement of such situations, the Defender of Rights may be led to present observations before the courts concerned (Decision 2016-115 – favourable ruling by the Paris Administrative Court of Appeal, 25 September 2018).

The Institution intervened systematically with regard to complaints concerning transfers back to Hungary or Bulgaria, both of which countries are marked by systemic defects, and more recently to Italy, as several domestic courts have stressed the deterioration of reception conditions, and even the existence of such defects. It also took action in support of Afghan asylum seekers, given the risk they run of being subjected to inhuman and humiliating treatment in the event of their being returned to their country of origin, and Sudanese nationals set to be transferred back to Italy, due to the Italian authorities' possible collaboration with the Sudanese authorities (RA-2018-100 and RA-2018-189).

In its Opinion 18-02 bearing on the proposed law enabling proper application of the European asylum system, the Defender of

Rights repeated its recommendation that France suspend application of the Regulation or, failing that, apply it to the full by bringing the discretionary clause provided for in Article 17 into play, pursuant to which, if special circumstances pertain, a State may decide to examine a request for asylum coming under the competence of another State.

The Defender of Rights also presented observations before the Constitutional Council, emphasising once again the low number of transfer decisions that had actually been carried out and successive governments' stubborn insistence on wanting to save the scheme by increasing the coercive means made available to the administration. The escalation of measures infringing individual freedom and designed to maintain a mechanism of uncertain relevance has adverse effects on especially vulnerable individuals, the legitimacy of most of whose requests for international protection has never been examined in depth (Decision 2018-090).

REMINDING THE AUTHORITIES OF THEIR OBLIGATIONS: THE STATE'S DISCRETIONARY COMPETENCE WITH REGARD TO VISAS AND RESPECT OF FUNDAMENTAL RIGHTS

Linked to a State's sovereign power to determine its own conditions for entry to and residence in its territory, delivery of visas is a highly discretionary competence. However, the wide margin of discretion that States enjoy is now governed by European Union law and international standards with regard to fundamental rights.

Required in order to stay in France for a period less than three months, short-stay visas are often refused on the suspicion that they might be used for migration purposes: Foreigners in question are suspected of actually wanting to make a permanent move to France. Such refusals prevent family visits and even certain professional visits.

The Institution successfully requested re-examination of the situation of a researcher invited to speak at a conference held in France, insofar as he had all the guarantees required to prove that he would return to his own country before his visa expired (RA-2018-187).

As the aim of a long-stay visa is to enable a foreigner's long-term stay on French soil, consular authorities' discretionary powers are extensive. However, the Defender of Rights makes certain that applicants' situations are examined with regard to respect of their fundamental rights, including their right to lead a normal family life.

It had the opportunity to present observations before an Administrative Court with regard to refusal of visas to minors entrusted to French nationals by court order or fostered under the kafala system. According to Council of State jurisprudence, the best interests of the child consists in principle of living with the holder of parental authority when, as in the case in question, material conditions for the child's reception comply with such interest. In three rulings delivered on 1, 16 and 22 February 2018, the Court overturned the refusal decisions and instructed the Ministry of the Interior to issue long-stay visas to the children concerned.

The Defender of Rights also successfully requested re-examination of the situations of two foreigners who had requested visas for their wives and children, one in the context of a family reunion, and the other – a refugee – in the context of a reunification. For the first case, the Institution reminded the consular authorities of the obligation of information and dispatch incumbent upon them, and, for the second, of the fact that civil status documents drawn up by the Office Français de Protection des Réfugiés et Apatrides (OFPRA – French Office for the Protection of Refugees and Stateless Persons) had genuine value. In decisions delivered on 29 March and 27 September 2018, the competent authorities let the Defender of Rights know that, following its intervention, long-stay visas had been issued (RA-2018-188 et RAR-2018-165).

D. SECURITY ETHICS

A WORD FROM CLAUDINE ANGELI-TROCCAZ, DEPUTY RESPONSIBLE FOR THE ETHICS OF SECURITY

In January 2018, following several violent episodes during the course of demonstrations, the Defender of Rights published a report on the current situation with regard to crowd control management and the ways in which it is changing.

The report highlighted an upsurge of tensions during crowd control operations and a measure of confusion as to whether the missions entrusted to security forces should focus on prevention of violence and control of public demonstrations or on arresting and removing troublemakers, to the detriment of the exercise of freedom of demonstration and the philosophy underlying "French-style" law enforcement.

Recurrent difficulties connected with the use of "intermediate force" weapons during demonstrations were also noted, and the dangerousness of these "nonlethal" weapons was emphasised in view of the serious injuries, disabilities and even deaths that they cause.

We therefore recommended prohibition of use of "LBD 40x45" defence-ball launchers in law enforcement operations.

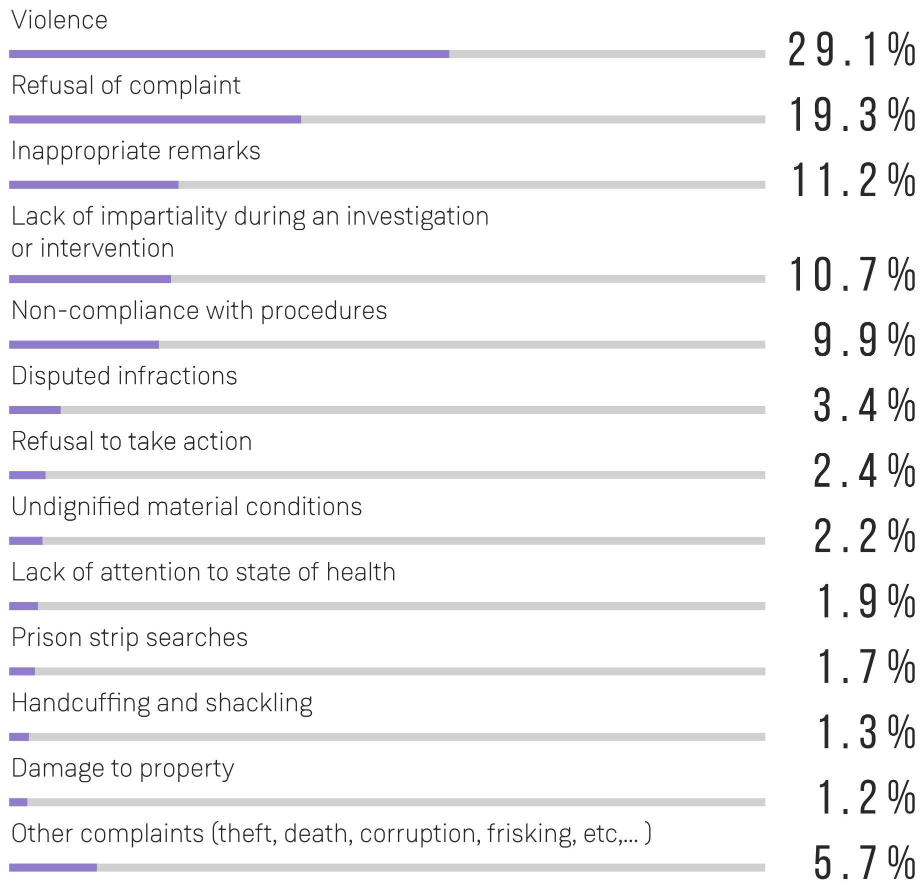
The serious events that took place during evacuation of the Notre-Dame-des-Landes ZAD (Zone à Défendre / Zone to Defend) and the "Yellow-Vest" demonstrations in late 2018 have unfortunately confirmed the relevance of our findings and urgency of our recommendations, and rekindled debate on use of weapons in law enforcement.

Hence, in addition to banning use of defence-ball launchers in such operations, a proposal that has been widely welcomed, including by law-enforcement officials, the question of use of GLI-F4 explosive grenades during demonstrations has been raised once again. A French specificity in European law enforcement, these grenades, which contain TNT, a very powerful explosive, are among the most dangerous weapons in our security forces' arsenal and present disproportionate risks in management of demonstrations. Their use would therefore seem inappropriate in this context, and a decision to remove them from the list of weapons allocated to the security forces should be made before another dramatic incident occurs.

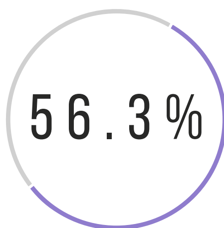
These days, the problems of law enforcement should be apprehended less in terms of resources or "overkill" and more in terms of a peacemaking approach on the part of city police, in compliance with the fundamental principles of democratic management of large gatherings of protesters, and as an essential preliminary to any legitimate exercise of legal force.

CLAUDINE ANGELI-TROCCAZ

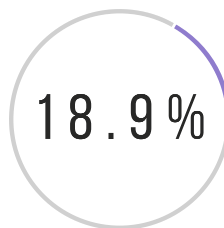
THE MAIN REASONS FOR COMPLAINTS HANDLED BY THE INSTITUTION IN THE FIELD OF SECURITY ETHICS



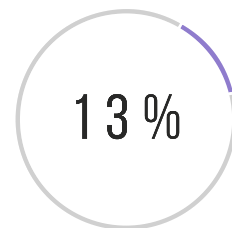
MAIN SECURITY ACTIVITIES IN QUESTION



COMPLAINTS CONCERNING THE NATIONAL POLICE



COMPLAINTS CONCERNING PRISON ADMINISTRATION



COMPLAINTS CONCERNING THE NATIONAL GENDARMERIE

Two main subjects for concern once again arise from the Defender of Rights activity this year: law enforcement and lack of consideration with regard to certain categories of the population.

Special attention is paid to the place of children, and the ways in which their care is provided for is a subject that the Defender of Rights monitors closely.

THE RECOMMENDATIONS MADE IN THE REPORT ON LAW ENFORCEMENT, IN THE LIGHT THE 2018 DEMONSTRATIONS

The Defender of Rights delivered its report on law enforcement to the President of the National Assembly in January 2018. In particular, it criticised the lack of dialogue and collaboration between those responsible for public order management, the ever increasing role of the judicial police in this context, and the use of a whole range of "intermediate force" weapons, some of which are a cause for concern as regards the exercise of public freedoms and physical integrity[1].

2018 saw a good many law enforcement operations, what with the demonstrations against the ordinances reforming labour law, evacuation of the Notre-Dame-des-Landes ZAD, protest movements in lycées and universities, the "Yellow-vest" movement, and the dismantlement of various migrant camps.

The Institution played its part in all these operations, whether as an observer, in order to process complaints, or by delivering opinions to Parliament (Opinion 18-19)[2].

Following investigations carried out on referrals connected with demonstrations against the so-called "labour" law(54), the Defender of Rights requested that disciplinary action be taken for violent behaviour by certain

[1] Defender of Rights' report on "Law enforcement management in the light of rules of conduct", December 2017.
[2] Opinion 18-19, 26 July 2018, delivered following its hearing of 25 July 2018 by the Senate Law Commission's Information Mission: "*Shedding light on the events occurring during the Paris demonstration on 1 May 2018*". Hearing of the Defender of Rights on the proposed Law 575 (2017-2018) aiming to prevent acts of violence during demonstrations and punish their perpetrators, 25 July 2018.

police officers in 9% of cases (5) and found that there had been no infringements in 9% of them (5). It was able to identify perpetrators of the acts complained of in 27% of cases (15) and decided that no action should be taken in 40% of them (22), due to lack of any clear proof of what had actually taken place. Seven cases requiring further investigations are still being handled. Difficulties in identifying accused police officers and gendarmes are a real obstacle to successful conduct of an inquiry.

In a number of cases that the Defender of Rights is currently working on, it has noted a higher than usual number of arrests and legal proceedings. Similarly, in the context of "Yellow-vest" demonstrations, massive use of defence-ball launchers and explosive grenades was noted, along with a large number of arrests. The Defender of Rights pays close attention to such cases, on which it hopes to be able to deliver its conclusions over the course of 2019.

The Defender of Rights reasserts that it supports a non-confrontational approach designed to protect individual freedoms. In this respect, a study of a "de-escalation" strategy likely to help improve police-population relations was undertaken in 2018.

Finally, as regards the migrant camp evacuation operations that the public authorities have been carrying out on a regular basis over recent years, the Defender of Rights published a report on 19 December 2018 in which it criticised operations carried out under the guise of provision-of-shelter initiatives, which were "*far from complying with legal requirements of the right to unconditional accommodation and, owing to their temporary character, only contribute to setup of new camps*".

SECURITY FORCES AT THE SERVICE OF THE WHOLE POPULATION

The Code of Ethics applicable to police officers and gendarmes states that their mission is to ensure compliance with laws and protection of individuals[3], and that they are at the service of the population[4].

However, on several occasion this year the Defender of Rights noted a lack of consideration on the part of some members of the security forces with regard to certain categories of individuals (Roma, homeless people, etc.), mostly expressed by use of inappropriate vocabulary during exchanges and investigations, restraining actions, and even use of force outside the legal framework. Such behaviour results in stigmatisation of a part of the population, limiting exercise of its rights and distancing it from public services.

Hence, via three decisions delivered this year, the Defender of Rights observed that reports drawn up by RATP employees (Decision 2018-077 of 21 February 2018), exchanges of emails between gendarmes (Decision 2018-147 of 11 May 2018), elected officials and police services, and municipality management staff and municipal police officers (Decision 2018-196 of 17 September 2018), revealed that individuals labelled as "migrants" "Roma" or "NFA" were regarded as undesirables in some areas. The Defender of Rights recommended that the officers concerned in the first two cases be reminded of the texts bearing on equal treatment and prohibition of discrimination, and that disciplinary action be taken in the third case.

In three other situations, similar behaviour included the exercise of constraints on such individuals, either by the carrying out of identity checks or eviction from where they were living (Decisions 2018-286, 2018-014 of 8 March 2018 and 2018-281).

[3] Article R. 434-2 of the Internal Security Code.
[4] Article R. 434-14 of the Internal Security Code.

In all these situations, the individuals targeted were deprived of their rights. Those evicted were unable to enjoy support from the public services, in particular with regard to accommodation, healthcare and schooling[5]. In the context of its observation and investigation of respect for exiles' fundamental rights, the Defender of Rights noted the very worrying frequency of such evictions with no support provided[6].

The Institution also observed that identity checks, not carried out for their intended purpose on foreign minors close to humanitarian aid facilities, were likely to deprive them of the help they had come to seek (Decision 2018-281 du 7 December 2018).

In these situations, State security forces are no longer carrying out their role as protectors of the population; they no longer seem to be a public protection service, and their action sometimes further distances the individuals concerned from any response to their most basic needs.

Other cases also bear witness to actions carried out outside the legal framework, whereas compliance with the law on the part of the security forces and, more generally, State representatives and anyone vested with public authority, is a key condition for a relationship of trust between these latter and the general population. It is the top ethical requirement and a guarantee against arbitrary action on the part of the public authorities.

Individuals who have undergone identity checks or been evicted have no real avenues of recourse once their rights have been violated. The Defender of Rights wanted to see the chain of command made individually accountable: a prefect (Decision 2018-014 of 8 March 2018) and a police commissioner (Decision 2018-286 of 7 December 2018), by recommending disciplinary proceedings.

THE SECURITY FORCES ALWAYS TAKING FULL ACCOUNT OF THE BEST INTERESTS OF THE CHILD

In a number of cases, the Defender of Rights found that children and respect of their rights had been directly impacted by action taken by the security forces. The latter sometimes cited legitimate reasons, such as amicable settlement of a situation or the wish to keep them safe from harm.

Nonetheless, the Defender of Rights reasserts that, despite such praiseworthy objectives, minors' inherent vulnerability requires that special care be taken. It therefore considered that the action on the part of gendarmes who took a 13-year-old minor suspected of throwing stones at a dog to their headquarters, with no legal justification, in order to lecture him before returning him to his mother, constituted a lack of discernment (Decision 2018-258 of 18 December 2018).

In the same spirit, the Defender of Rights deemed that the way in which police officers provided shelter to unaccompanied minors was neither effective nor opportune. It recommended that, rather than their being taken to the police station by the security forces, associations working in the field should be contacted in order to take them into their care (Decision 2018-281 of 7 December 2018).

In some situations, minors felt that action on the part of the police was in no way impartial. As an example, several secondary school pupils who had been subjected to identity checks at a railway station, when they were returning from a school outing with their class, accompanied by their teacher, considered that they had been victims of discriminatory checks. They took their case to the Paris High Court, before which the Defender of Rights had its say (Decision 2018-257 of 18 October 2018). The Court rejected their claim on 17 December.

[5] The Circular of 26 August 2012, relating to anticipation of and support to operations to expel occupants from illegal camps, defines the public authorities' obligations as regards preparation of evacuation and provision of support with regard to healthcare, accommodation, professional integration and schooling. The Circular stresses the need to ensure equal and dignified treatment of all people in situations of social distress.

[6] Report on *Exilés et droits fondamentaux, trois ans après le rapport Calais (Exiles and fundamental rights, three years after the Calais report)*, p.58.

In other cases, children were indirect victims of painful situations involving their parents. The police and gendarmerie must therefore take various precautions before, during and after operations. In a case regarding the deportation of illegal aliens by air, it was noted that the parents had been taken to the aircraft in horizontal positions, restrained by handcuffs and velcro strips affixed to their legs, in the presence of their children, who were minors. The Defender of Rights recommended that such techniques be prohibited in the context of deportations, and stressed that the best interests of the child should always be taken into account, including in situations where parents were being deported (Decision 2017-174 of 24 July 2017). This recommendation has not yet received a response from the Minister of the Interior Similarly, in cases where the police evicted families from where they were living, in the presence of children, the Defender of Rights not only noted implementation of illegal procedures, but also lack of provision of support with regard to healthcare, accommodation, professional integration and schooling (Decision 2018-286 of 7 December 2018; Decision 2018-014 of 8 March 2018).

The Defender of Rights stresses that involvement of a child, whether direct or indirect, in a police operation has major repercussions on his or her development. If such operations are carried out in fair and rigorous fashion, in full compliance with ethical principles, they may possibly help imbue the children concerned with a respect for the law and those responsible for ensuring its application. If they are seen as being violent and arbitrary, however, they may have a lasting influence on children's image of authority.

E. PROTECTION AND ORIENTATION OF WHISTLEBLOWERS

Law 2016-1691 of 9 December 2016, commonly known as the "Sapin Law", led to awareness of the role that each and every citizen could play in development of reporting and moralisation of public life.

The Defender of Rights notes that, in the 155 cases recorded by the Institution over the space of two years, 85% of the individuals who refer to it claiming the status of whistleblower are in some sort of work relationship (employees or public officials). Whistleblowing concerns very varied fields in private and public sectors alike, as the Law of 2016 did not set any limitations.

In the context of the Defender of Rights' orientation and protection mission, the legislature entrusted the Institution with the role of helping whistleblowers to better understand the tenor of the system so as to be able to carry out each step in their procedures successfully and assert their rights (Organic Law 2016-1690 of 9 December 2016).

It therefore has to explain the conditions to be met in order for reported acts to be regarded as genuine alerts. Many claimants are unaware of the fact that the whistleblower protection system does not apply to acts they report when they are personally involved in conflicts with their employers, as this casts doubt upon the disinterestedness of their actions. Other individuals attempt to prevent wrongdoing by reporting acts that they have no personal knowledge of, contrary to legal requirements.

The Defender of Rights not only acts to direct individuals to the authorities to which their reporting should be addressed in order to ensure that a stop is put to the criminal acts in question, it also has the job of informing them of the obligations – including the obligation of confidentiality – that they must be ready to assume in order to take advantage of the protection system provided for by law.

As regards their protection, modification of the burden of proof is certainly a major asset as far as the whistleblowers are concerned.

When a whistleblower presents matters of fact enabling presumption that his report has been given in good faith and that he has personal knowledge of acts constituting a serious threat to the general interest, it is up to his employer to provide evidence that the unfavourable measure complained of (wage cut, dismissal, disciplinary sanctions, etc.) was based on objective factors, unconnected with the alert.

The Defender of Rights' investigations seek to clarify the circumstances in which disputed unfavourable measures were implemented and any possible connection they might have with the alerts concerned, which are key factors in examination of submissions. The Institution will then be able to provide the court with useful information if an individual decides to seek a judicial remedy.

Jurisprudence protects whistleblowers who are victims of reprisals for action taken prior to the Law of 9 December 2016.

In its Ruling 17-80485 of 17 October 2018, based on the principle of the retroactivity of a more lenient criminal law, the Court of Cassation overturned a decision by the Chambéry Court of Appeal on the grounds that the trial judge had not assessed whether the criminal irresponsibility of an individual in a case of breach of protected secrecy, instituted by the Law of 9 December 2016, could make "*the alleged acts not punishable (...)*". Although the law was enacted well after the actions in question and after the Appeal Court's ruling, there is a principle in criminal law according to which "new provisions are applicable to offences committed before their coming into force and which have not led to a res judicata conviction, when they are less severe than the previous provisions" (Criminal Code, Article 112-1). Appeal Courts will have to examine whether an individual fulfils the conditions for application of whistleblower status and consequent protection as provided for by the Sapin 2 Law in order to decide or otherwise on his or her criminal irresponsibility.

IN ORDER TO BETTER PROTECT WHISTLEBLOWERS: ADD TO THE INFORMATION PROVIDED

It is essential to de-isolate whistleblowers.

With the Law of 9 January 2016, whistleblowers are still in a fragile position as it is their ability to appropriate and comply with the applicable rules that will finally entitle them to take advantage of the protection system provided for in the Sapin 2 Law in the event of unfavourable proceedings or measures.

As an illustration, in a ruling of 17 February 2018, the Châlons-en-Champagne Administrative Court removed the legal protection granted to civil servants by the provisions of Article 6 ter A of the Law of 13 July 1983 and confirmed the sanctioning of a municipal officer because, after having rightly reported a public health risk, he had contacted the press even though the local authority had taken the necessary measures to remedy the situation within reasonable time (1701162).

In order to ensure that whistleblowers were fully informed, the Defender of Rights published a guide explaining the system. However, it considers that resources allocated to dissemination of such information should be increased.

Public and private employers' obligation to inform whistleblowers, provided for by Article 6 of Decree 2017-534 of 19 April 2017 bearing on alert collection procedures is not sufficiently complied with, even though it has been obligatory since 1 January 2018. The Institution therefore undertook to question ministries, regions, *départements* and France's thirty most highly populated cities in order to get to know their whistleblowing systems and eventually make such information available to the public.

In addition to handling individual situations, the Defender of Rights works to improve whistleblowers' rights and freedoms.

It drew the public authorities' attention to the need to harmonise the various whistleblowing systems.

The Law of 9 December 2016 has not done away with a number of sectoral whistleblowing systems (intelligence, business secrecy, etc.), nor has it provided for their articulation, so creating real complications in identifying applicable whistleblowing systems and leaving a measure of uncertainty as to the extent of the protection that whistleblowers may lay claim to.

OPINION OF 10 APRIL 2018 ON PROTECTION OF UNDIVULGED BUSINESS KNOWHOW AND INFORMATION AGAINST ITS ILLEGAL OBTAINMENT, USE AND DIVULGATION, OR "BUSINESS SECRECY"

Delivered on the occasion of examination of the proposed law on business secrecy transposing a European Parliament and European Council directive, the Defender of Rights took action to ensure consistency in the level of protection afforded to whistleblowers between the legal text creating a general whistleblowing system, adopted on 9 December 2016, and the special system set to be instituted by the proposed law on business secrecy.

The proposed law provided for exceptions to business secrecy, firstly in cases of illegal activity, misconduct or wrongful acts, and secondly where a legitimate interest greater than business secrecy has to be protected. However, the protection system provided to whistleblowers is not as comprehensive as that provided by the Law of 9 December 2016.

This being so, the Defender of Rights proposed introduction of coordination provisions in order to provide protection identical to the Sapin Law's. It recommended that protection of whistleblowers for divulging business secrets be extended to criminal irresponsibility and to the protections afforded in Articles 10, 11, 12 and 15 of the Law of 9 December 2016, and that the sanctions for abusive whistleblowing provided for in the Commercial Code be coordinated with the Law of 2016. Its advice was not heeded, as the new Law 2018-670 of 30 July 2018 has created yet another new system to be added to the many already in existence.

The Defender of Rights is continuing its exchanges with the public authorities with a view to reshaping the legislation, making it clearer, more operational and more easily interpreted, in order to provide whistleblowers with all the necessary guarantees of protection.

Améliorer les relations
entre les usagers et les services publics

Défendre
et promouvoir les droits des enfants

Promouvoir l'égalité
et combattre les discriminations

déontologie de la sécurité

Orienter

69 39 00 00

III. PROMOTING RIGHTS

BETTER TRAINING IN RIGHTS, BETTER AWARENESS OF RIGHTS

A. TRAINING PROGRAMMES IN SUPPORT OF CHANGES IN PROFESSIONAL PRACTICES

The Defender of Rights organises initial and continuing training courses, as well as teacher-training courses with a number of objectives:

- Fostering change in professional practices through better knowledge of the law (non-discrimination law in particular) and professional rules by the actors in question (security forces' professional ethics, for example), along with the best practices promoted by the Institution;
- Participating in professionalisation of operators in the Defender of Rights' fields of intervention and helping to create more efficient collaboration;
- Fostering the emergence of referrals more specific to the Institution's fields of competence.

Such training actions – which should be distinguished from awareness-raising actions – are essentially intended for four types of audiences: The security forces, actors in school and higher education, actors in the world of employment, and justice and law professionals.

Several implementation modes are employed:

- Classroom-based courses
- Coordination of training actions carried out by the Institution as a whole
- Development of distance-training tools with such partners as the Ecole Nationale de la Magistrature (ENM – National School for the Judiciary) and the Centre National de la Fonction Publique Territoriale (CNFPT – National Centre for the Territorial Civil Service)
- Assessment of training models
- Expert assessment of a module following an external request (from a university, public training body, etc.).

SUMMARY OF COURSES DELIVERED BY THE DEFENDER OF RIGHTS IN % BY TYPE OF ACTOR (JULY 2017-JUNE 2018)

26% **Actors in school and higher education**: school principals, inspectors and trainers in the National Education system; university HRDs; participants in scholastic and extracurricular activities.

22% **Security forces**: railway security officers / Université de la Sûreté (SNCF); police officers (ENSP – Ecole Nationale Supérieure de la Police / Higher National Police School); Gardiens de la Paix (Police Constables) (ENP – Ecole Nationale de la Police / National Police School); National Police trainers (National Police); Directors of the Municipal Police (INSET - Institut National Spécialisé des Etudes Territoriales / Specialised National Institute for Territorial Studies).

15% **Actors in employment**: labour inspectors (INTEFP - Institut National du Travail, de l'Emploi et de la Formation Professionnelle / National Institute for Labour, Employment and Vocational Training); Union organisations.

15% **Justice and law professionals**: Court registrars (ENG – *Ecole Nationale des Greffes /* National School of Court Registrars); judges(Ecole Nationale de la Magistrature (ENM – National School for the Judiciary).

22% **Various actors** (associations; elected officials and local authorities): territorial civil servants (CNFPT – Centre National de la Fonction Publique Territoriale / National Centre for the Territorial Civil Service a management centre's executive committee

Between July 2017 and June 2018, **365 classroom sessions** were delivered by Defender of Rights officers – a total of almost **1,400 hours of courses** resulting in the training of **10,500 people**.
To accomplish this, 70 Defender of Rights officers in all were involved in training actions, including 27 specifically targeting external audiences. For its part, the training team (3 officers) delivered **53 classroom courses** to external participants in 2018, training **4,544 individuals**.

B. RIGHTS PROMOTION PROGRAMMES FOR YOUNG PEOPLE

For the Defender of Rights, vigilance in the face of normalisation of stereotypes, prevention of discrimination, and knowledge of the law and rights must be learned as soon as possible; in order to train our young people in the culture of rights, so that they will assert their rights and take an active part in combating discrimination. In order to help raise young people's awareness of their rights and the law, the Defender of Rights implemented two educational programmes designed to provide more opportunities for children and young people to give thought to the law and their rights.

YOUNG AMBASSADORS OF RIGHTS FOR CHILDREN OR FOR EQUALITY (JADES)

The "Jeunes Ambassadeurs des Droits auprès des Enfants ou pour l'Égalité" (JADEs) programme is a Defender of Rights scheme promoting education of young people by young people on their rights.

It enables young civic service volunteers between 18 and 25 y/o to commit to spending nine months in the Defender of Rights' service in order to promote children's rights and equality in the eyes of young people, in such settings as classrooms, leisure centres and hospitals. Although JADEs were initially tasked with acquainting very young audiences with their rights by sharing the values enshrined in the International Convention on the Rights of the Child (ICRC), the Defender of Rights has developed the programme over the last five years to include upper secondary-school students and apprentices, with a view to raising their awareness with regard to non-discrimination law and promotion of equality.

This awareness-raising programme on rights is the result of a national commitment and is implemented across French soil (in Metropolitan and Overseas France alike) with the support of the Defender of Rights' territorial network, and thanks to support from the National Education system, local authorities and major civic-service approved associations (Unis-Cité, Concordia and Centres d'Entraînement aux Méthodes d'Éducation Active (CEMEAs – Training Centres for Active Education Methods)). In addition to action in educational bodies, city youth services and associations, JADEs take part in a wide range of events promoting the rights of the child and equality.

Apart from its awareness-raising activities, the JADE programme bears witness to the Defender of Rights' focus on supporting and training young people from very varied backgrounds in citizenship (see JADE Annual Activity Report 2017/2018).

THE JADE PROGRAMME IN FIGURES

100 young civic-service volunteers, trained in promotion of the rights of the child and non-discrimination, carrying out awareness-raising actions.

50 Defender of Rights officers and 130 s external trainers participate in training programmes throughout the year.

22 *DÉPARTEMENTS* and **2 METROPOLISES** (Lyon and Grenoble) committed to supporting the programme.

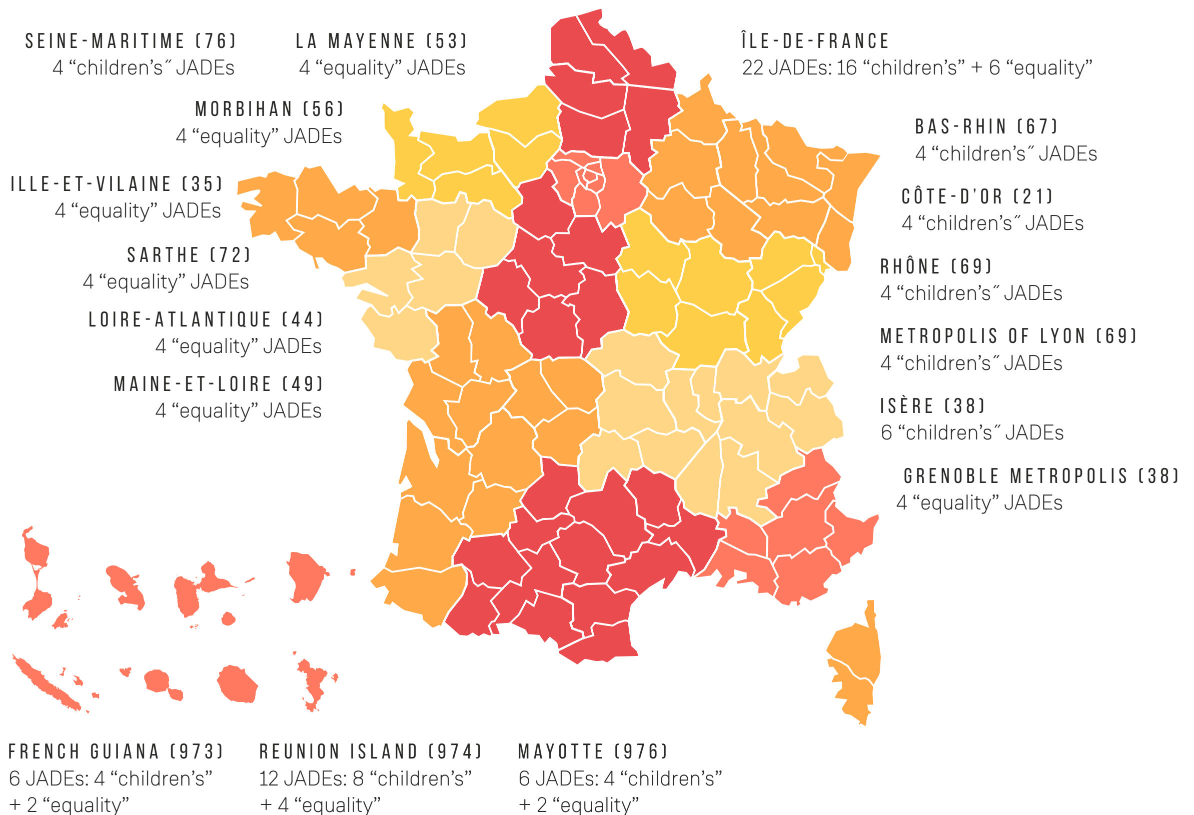
28 DELEGATES responsible for supervising JADEs active in their areas.

OVER 500 OPERATING LOCATIONS taking in children and young people who have been made aware of their rights.

OVER 62,000 CHILDREN AND YOUNG PEOPLE MET WITH during the 2017/2018 school year, and already over 20,000 for 2018/2019.

12,000 INDIVIDUALS MET WITH in 2018 during **120 DIFFERENT EVENTS** held in partnership with a range of bodies in various cities across France, including: a stand at the event celebrating the 30th birthday of the Sauvegarde du 93 association; participation in various Educapcity parcours citoyen d'orientation (citizen orientation circuits) in 4 different cities; running the Defender of Rights' stand at the Solidays Festival, talks at 4 Young Workers' Hostels, in Le Mans, Lorient, Angers, Laval and Villeneuve Saint Georges; talks to young members of the Conseils de Vie Lycéen (CVLs – Lycée Student Councils) in the Lyon and Rennes educational authority areas; training young civic-service volunteers at Unis-Cité, the Ligue de l'Enseignement (League of Education) and Concordia in Paris, Nantes, Angers, Le Mans, Rennes, Rouen and Lyon.

TERRITORIAL PRESENCE OF JADES IN 2018/2019
22 *DÉPARTEMENTS*, 2 METROPOLISES AND 28 SUPERVISING DELEGATES



THE EDUCADROIT PROGRAMME

The Defender of Rights also initiated an educational programme designed to raise children's and young people's awareness on rights and the law. Developed to counter young people's lack of knowledge of the law and their rights, the programme was launched in September 2017. Educadroit is organised around ten key themes: "What exactly is the law?", "Who creates the law?", "Are all equal before the law?", "Are rights the same in all countries?", etc. Goals: help children and young people to understand the key rules of law required for our society's operation, using non-academic language; provide individuals who work with children and young people with appropriate tools by giving them access to educational resources and external speakers qualified in the subjects in question; arouse debate and foster thought on rights and encourage the adversarial spirit. The Educadroit.fr website provides:

- Two educational pathways, one for 6-11 y/o and the other for 12 y/o and above, in the form of videos for younger children and an exhibition for older participants;
- A resource centre listing over two hundred teaching tools;
- A directory of speakers, enabling anyone to request input from a professional in the field of law or access to rights and the law;
- A space dedicated to training containing a training handbook and online training modules, intended for any adult who might wish to address young audiences on the subject of law.

A whole range of tools enabling teachers, educators, facilitators, parents and law professionals, in school, afterschool and extracurricular settings, to broach the great issues of our society with children and young people, including equal rights and discrimination, by fostering exchange of viewpoints.

THE EDUCADROIT PROGRAMME IN FIGURES

17 SETS OF THE "DESSINE-MOI LE DROIT" (DRAW ME THE LAW) exhibition, created in partnership with the Cartooning for Peace association and made available free of charge to any institution requesting them.

AROUND 35 LOANS to schools, town halls, Maisons de la Justice et du Droit (MJDs – Justice and Law Centres), courts, etc.

SOME SIXTY VARIED EVENTS: Conference on Citizenship in Rennes, and on Child Protection in Nantes; open days at Grenoble High Court, and Heritage Day at the Ministry of Justice in Paris; local meetings of Protection Judiciaire de la Jeunesse (PJJ – Youth Protection and Juvenile Justice) professionals, and numerous events focusing on the rights of the child.

60 INDIVIDUALS TRAINED in the use of our educational tools during six training sessions.

57 SIGNATORIES TO THE CHARTER for education on the rights of and law on children and young people.

Over **500 EDUCADROIT HANDBOOKS** distributed.

272 TOOLS listed.

THE "LA PETITE HISTOIRE DES GRANDS DROITS" CAMPAIGN

Between 6 July and 26 August 2018, the Defender of Rights carried out a campaign entitled "La Petite Histoire des Grands Droits" (The Little Story of Big Rights), designed to raise awareness among children between the ages of 6 and 14 on the fact that it is not because they are "little" that they have little rights, and to remind everyone that the rights of the child apply everywhere, whatever the child's situation, up to his or her 18th birthday, for a child is a person in his or her own right, protected by the law.

The campaign, designed to raise the population's awareness on the all too often ignored rights of the child, was a result of the conclusions reached by the "Survey on access to rights, place and defence of the rights of the child in France", conducted by the Defender of Rights in May 2017, which emphasised that knowledge of the existence of the rights of the child enables better identification of situations in which their rights are not respected, and therefore helps to reduce such situations.

Two radio spots were broadcast on Radio Vinci Autoroute 107.7: the story of Lana who dreams of being a fireman, and the story of Loïc whose participation helps beautify the beach. Over the space of two months, the spots were heard over 76 million times.

A mini-website containing games and examples of violations of children's rights was shared on social networks, generating 650,000 postings.

In parallel, a special version of the game Les Incollables® (The "Unbeatables") on the rights of the child, containing 108 questions / answers and a poster, along with games to play on car journeys, was distributed to children in a dozen sports facilities every Friday and Saturday during the summer. A total of 40,000 such campaign supports were disseminated, reaching over 500,000 people in all. 1 million highway toll tickets in the campaign's colours were also distributed.

A national competition was launched, with the child who sent in the best "little story of big rights" becoming the voice of the Defender of Rights' next radio spot. Finally, the campaign was reinforced by a partnership with the Secours Populaire association for the Journée des Oubliés des Vacances (translatable as "The Day for those the holidays forgot") and in the associations' Copain du Monde villages, to which 40,000 more campaign supports were sent, so widening the audience reached by the campaign.

This awareness-raising initiative on the rights of the child and the Defender of Rights' role in their effective implementation enjoyed widespread success:

- 61.1% of people questioned said they felt interested in the Institution after seeing the campaign;
- 90.7% of people questions regarded the Institution as being "of public utility" after seeing the campaign;
- Over half those questioned said they were ready to recommend the Institution following the campaign, in other words, ready to become active "spokespersons".

discrimination

discrimination **connected with origin**
discrimination **connected with disability**
discrimination **connected with place of residence**
discrimination **connected with gender**
discrimination **connected with physical appearance**
discrimination **connected with loss of autonomy**
discrimination **connected with sexual orientation**

C. MULTIPLICATION OF DISCRIMINATION CRITERIA

On 18 and 19 January 2018, in partnership with the Mission de recherche Droit et Justice (MrDJ – Law and Justice Research Mission (Ministry of Justice and CNRS)), the Defender of Rights held an international multidisciplinary (law, sociology and political science) colloquium on its premises, entitled "*Multiplication des Critères de Discriminations. Enjeux, effets et perspectives*" (Multiplication of discrimination criteria. Issues, effects and perspectives)*.

An innovative combination of legal and social sciences, the colloquium provided a floor for fifteen speakers (in French and English) to shed light, in unprecedented fashion and taking a comparative viewpoint (France, Europe and the United States), on the various effects that multiplication of discrimination criteria has on the effectiveness of non-discrimination law. The question of such criteria's effectiveness had not previously benefited from comparative exchange of viewpoints (France, Europe and the United States) on the part of researchers, law practitioners and elected officials.

This scientific event was based on the observation that development of non-discrimination law, especially in France, goes hand-in-hand with an ongoing increase in prohibited criteria. Although European Union law includes seven criteria targeted by directives on the fight against discrimination, French law recognises between 25 and 30 discrimination criteria, according to Code (Criminal, Labour, Health Insurance, Education, etc.). The rationale of increasing numbers of prohibited criteria, which varies from one national legislation to another, is also shared by other European States (including Cyprus, Denmark, Ireland, Holland and the United Kingdom).

* Under the decisive impetus of Nathalie Bajos, then Director of Promotion of Equality and Access to Rights, and her team.

An initial theme, "Origin and extension of lists of prohibited discrimination criteria" took a retrospective look at the legal, social and political dynamics at work in the emergence and multiplication of reasons for discrimination.

The second, "The social and legal life of discrimination criteria", set about examining criteria operationality from legal and socio-political points of view, through strategies deployed by legal intermediaries (lawyers in particular), voluntary sector professionals and trade-union stakeholders.

The third, "The list of prohibited criteria, between multiple discrimination and intersectional discrimination", enabled an analysis of the scope of multiple combinations of such criteria to be put into perspective.

The two days saw speakers exchanging their viewpoints on the basis of the paradoxical finding that although multiplication of discrimination criteria seeks to better recognise the diversity of discrimination experiences, it also raises concern over the risk of seeing non-discrimination law weaken, calling into question its efficiency, effectiveness and clarity. Among other things, the exchanges that took place led to discussion of the legal, social and political consequences of extending criteria: easier understanding or dilution of the legal meaning given to the notion of discrimination? Better account being taken of unusual cases of discrimination and of the plurality and intersectionality of reasons, or an obstacle to action on the part of litigants? Easier or more complex legal interpretation on the part of law professionals?

By holding this event, the Defender of Rights wanted to reassert its commitment to dialogue with the scientific community.

In addition, the Defender of Rights wishes to stress that the fight against discriminations, in a context where it is scarcely able to keep its place in the political agenda, is an action central to its mandate and which should be of concern to the entire population as well as law professionals. The Defender of Rights also wishes to contribute to recognition of multiple, intersectional acts of discrimination, an issue that must be addressed and provided with legal instruments to combat it.

The colloquium's proceedings were published on the event's anniversary in January 2019.

D. PUBLIC-AWARENESS ACTIONS TARGETING ALL SECTORS OF SOCIETY

The Defender of Rights and its delegates instigated a number of communication and awareness-raising actions throughout the year, with a view to spreading the word on the Institution's competences and the help it could provide to individuals.

ANSWERING QUESTIONS ON LAW IN OUEST-FRANCE

Since February 2018, the Defender of Rights has been publishing a weekly column in *Ouest-France*, France's most widely read regional daily paper, answering questions on law sent in by users and advising them on how to go about asserting their rights.

Its column draws inspiration from actual cases handled by the Institution's lawyers and delegates, such as "What do I do if my water supply is cut off?" or "How do I set about getting my vehicle registration documents despite difficulties I come up against on the online platform?".

Its column provides the Defender of Rights with an opportunity to provide clear presentations of points of law, inform readers of it fields of competence and show how the Institution may be useful to users on an everyday basis. The aim is to produce a piece with a maximum of 1,500 characters that helps readers s identify how the situation presented constitutes a violation of rights and the remedies available to them.

During these visits, Jacques Toubon presented the Institution to professional, voluntary and institutional actors, via meetings, theme-based lectures and field visits. In Roubaix, for example, the Defender of Rights organised a meeting focusing on gender equality, while in Lille, exchanges concentrated on solidarity policies. In Fort-de-France, the accent was on inclusion and homophobia at school, while in Pointe-à-Pitre, the Defender tackled the subject of access to public services, and in Basse-Terre, he worked on the question of access to water. During his visit to Guadeloupe, Jacques Toubon also inaugurated the first delegate's office in Marie-Galante.

As all these operations enjoyed great success among inhabitants, professionals and the regional press, the Defender of Rights plans to continue going to meet inhabitants in 2019, with a view to raising their awareness on the question of their access to rights.

Forty columns were published, appearing every Tuesday in Ouest-France's "Everyday Life – Rights – Consumption" pages from the beginning of 2018 onwards; they may be consulted online on the *Ouest-France* and Defender of Rights websites.

THE SECOND AND THIRD EDITIONS OF "PLACE AUX DROITS!"

Following the success of the "Place aux droits!" operation launched in Toulouse in October 2017, the Defender of Rights wished to try out the experiment again, visiting Lille, Roubaix and Tourcoing in June and eight towns in Martinique and Guadeloupe in November 2018.

In order to raise the general public's and professionals' awareness of the Defender of Rights, its missions and its powers of intervention, while encouraging people to refer to it free of charge if they think their rights have not been respected, the Institution took to the road on two occasions to provide free advice across French soil. Hence, lawyers and delegates took over Place Rihour in Lille for three days and crisscrossed the Antilles for almost a week aboard a coach sporting the Defender of Rights' colours.

"PLACE AUX DROITS!" IN FIGURES

1,500 PEOPLE met with in Lille;
8 stop-offs to meet inhabitants in the Antilles.

PURCHASING SPACE: 2 full pages in the Guadeloupe edition of *France Antilles*.

OVER 336 RADIO SPOTS broadcast on 20 stations in 6 Overseas territories.

240 POSTERS alongside motorways.

THE CINÉMA DES DROITS: PROMOTING RIGHTS THROUGH DEBATE AND FILM SCREENINGS

At the beginning of November, the Defender of Rights launched a series of cinema-debates, the "*Cinéma des droits*" (Cinema of Rights) in partnership with the Centre National du Cinéma et de l'Image Animé (CNC – National Centre for Cinema and the Moving Image). Preview film screenings of documentaries and animated films are held several times a year, followed by debates on subjects connected with the Defender of Rights' five fields of competence. The Cinéma des droits makes use of films to highlight various social issues and underline the Institution's expertise in the defence of fundamental rights.

The partnership kicked off with a preview screening of "Les Chatouilles" (Little Tickles), directed by Andréa Bescond and Eric Metayer, which is about sexual and psychological abuse of minors. After the screening, there was a debate with guests specialising in treatment of child victims of maltreatment and sexual abuse.

The second edition of the Cinéma des droits took place on 12 December with a preview screening of Louis-Julien Petit's "Les Invisibles", (The Invisibles), which tells the story of four social workers' fight to reintegrate homeless women back into society before their reception centre is closed down. The debate held after the screening focused on reception of homeless women and their access to rights.

Défense

IV. INCREASING THE DEFENDER OF RIGHTS' PRESENCE ACROSS THE TERRITORY

THE DELEGATES, A LOCAL PUBLIC SERVICE

Article 37 of the Organic Law bearing on the Defender of Rights enables it to "*appoint, across the national territory, delegates, placed under its authority, who may, within their geographical areas, examine complaints and participate in settlement of problems reported as well as in actions [of information and communication carried out by the Institution] (...)* ".
This network of volunteers carries out a free local service open to all comers.

A. NATIONAL COVERAGE GUARANTEEING ACCESS TO RIGHTS

Out of the 10 French *départements* that sent the most complaints to the Defender of Rights this year in relation to their number of inhabitants, 7 were rural *départements*: Ariège, French Guiana, Gard, Savoie, Drôme, Alpes-de-Haute-Provence and Lozère. Yet 94% of complaints received by its *départemental* delegates were about public services. The question of proximity of public services is therefore of major concern to Defender of Rights' delegates.

The same concern was already one of the main reasons, 40 years ago, for the creation of a network of an initial 9 volunteer *départemental* correspondents by the former Médiateur de la République (Mediator of the Republic, whose powers were taken over by the Defender of Rights).

There are currently **501 delegates with offices in 874 highly diverse locations**, in close proximity to claimants in order to best meet their requests for access to their rights.

Since 2009, delegates also intervene in France's 171 prisons, in order to reach amicable settlements requested by inmates, whether awaiting trial or already serving their sentences. The main reasons behind referrals to delegates are connected with everyday life in prison, loss of belongings during transfers, prison canteens, external medical visits not undertaken, access to work or vocational training, remuneration, upkeep of family ties, access to healthcare and renewal of residence permits.

PLACES WHERE DELEGATES ARE PRESENT

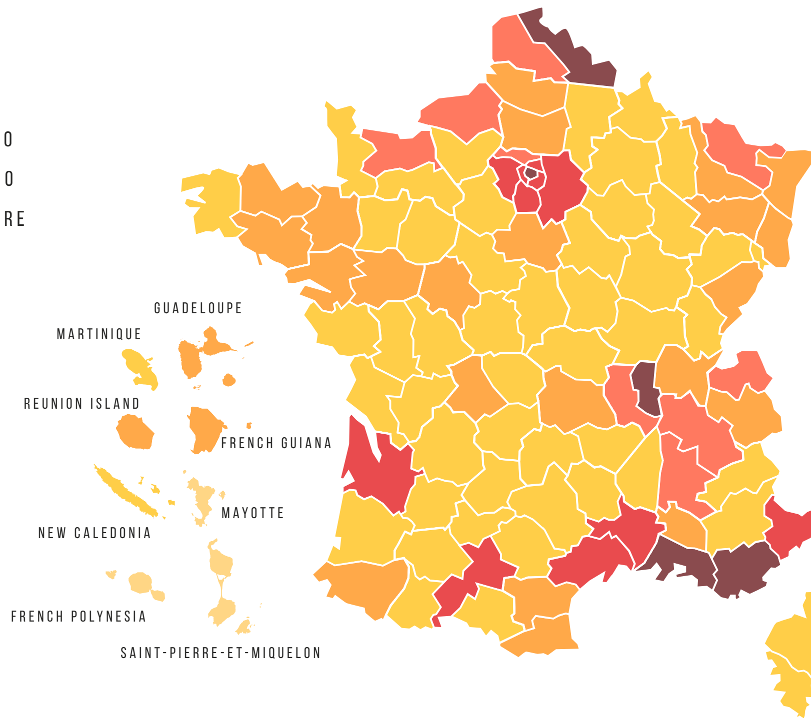
Place	Number
Municipal premises	180
Maisons de Justice et du Droit (MJDs – Legal Advice Centres)	174
Prisons	171
Prefectures	98
Points d'Accès au Droit (PADs – Citizen's Advice Centres)	87
Subprefectures	74
Maisons des services au public (MSAPs – Public Service Centres)	72
Départemental Councils	16
High Commissions	2

LOCAL PROCESSING OF FILES BY DELEGATES IN 2018

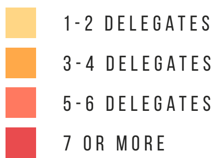
COMPLAINTS	43,556	57 %
RELATIONS WITH PUBLIC SERVICES	41,866	93.3 %
THE FIGHT AGAINST DISCRIMINATION	1,636	3.6 %
DEFENCE OF THE RIGHTS OF THE CHILD	1,056	2.4 %
SECURITY ETHICS	315	0.7 %
INFORMATION	32,736	43%
RELATIONS WITH PUBLIC SERVICES	21,089	64.4 %
THE FIGHT AGAINST DISCRIMINATION	894	2.7 %
DEFENCE OF THE RIGHTS OF THE CHILD	755	2.3 %
SECURITY ETHICS	188	0.6 %
OTHER REQUESTS	9,810	30.0 %
TOTAL OF REFERRALS	76,292	100 %

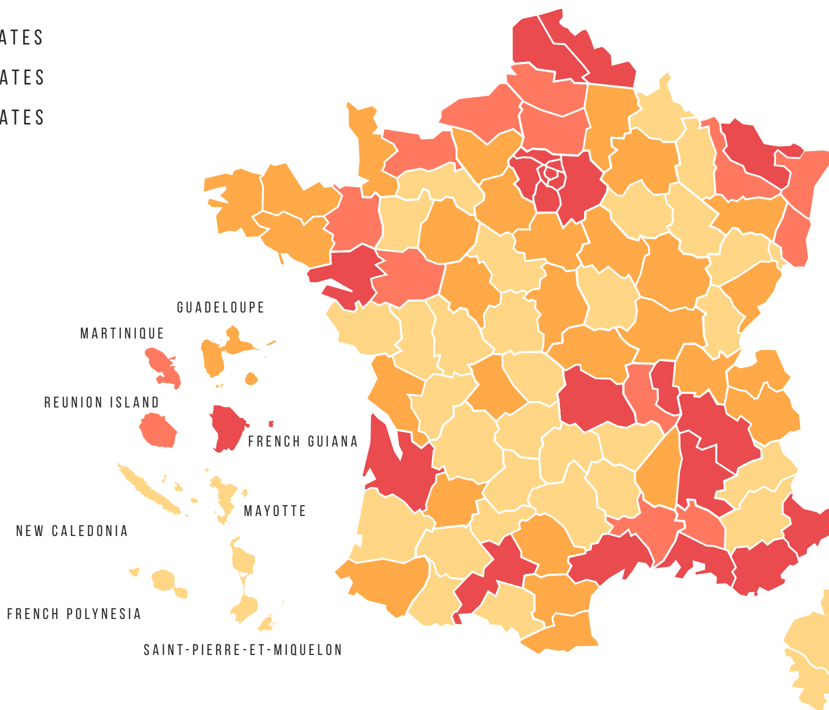
Account should be taken of the fact that the figure is not the same as the total number of complaints received, due to multiqualified submissions.

NUMBER OF REQUESTS ADDRESSED TO DELEGATES BY *DÉPARTEMENT* IN 2018



BREAKDOWN OF DEFENDER OF RIGHTS DELEGATES BY *DÉPARTEMENT* IN 2018





TRUE STORY

One November afternoon, Madame E came into the Defender of Rights delegate's office and, with an air of resignation, said "I don't know if you'll be able to do something for me, my life's just too complicated".

"Don't worry, we'll sort it out together." Rather more at ease, the complainant talked about her life and how much she loved her job as a primary school teacher at a State school in the south of Ille-et-Vilaine. Then the woman, a mother scarcely forty years of age, added, "You know, I've been registered as disabled since 2008. They agreed to me give me a suitable teaching position".

That famous anonymous "they" so often spoken by complainants, behind which the cause of their problem is often hidden!

The delegate pointed out to Madame E that the very fact of arrangements having been made for her to continue in her job was already a positive point. "Yes", she acknowledged, "but I suffer from a rare degenerative disease and I'm gradually losing my sight". The disease didn't prevent her from carrying out her work with children, though: "I managed to adapt and everything's fine in that respect". Her problem lay in the fact that she was not allowed to drive when it was dark and the school where she worked was ten kilometres from where she lived.

In the beginning, the local education authority had agreed to help with the cost of a taxi to take her to and from work.

Then, when she had to put in a new cost estimate for the taxi, Madame E explained to her employer that she had asked the taxi driver to take her little daughter as well and drop her off at school. When the administration learned of this, the assistance was withdrawn. Madame E's partner, a hospital nurse who worked mornings or evenings, was unable to take her daughter to school himself. Up against a wall, Madame E was forced to stop working despite herself.

The delegate contacted the local education authority, which confirmed that, as it stood, her present medical prescription did not prohibit Madame E from driving except during autumn and winter.

The delegate suggested various solutions without success, and Madame E's file went back and forth from the local school inspectorate to the education authority and from the medical service to the social service without anyone taking a decision. "It would be so much simpler if I just resigned", Madame E concluded.

The delegate based his request for mediation on three arguments. Madame E would be unable to continue as a teacher in any real sense unless the administration continued its "efforts" on behalf of her transport. Withdrawal of assistance with transport had prevented Madame E from attending a compulsory training course held in the evening, with negative consequences on her future career. And finally, the fact that her mother was disabled should not prevent the little girl from going to school in winter months.

After a few weeks, the local education authority's social services finally accepted his arguments and once again authorised Madame E to go to work by taxi, with the cost defrayed, and to drop off her daughter at school along the way.

This story is not untypical of several situations that the delegate had come across relating to individuals suffering from debilitating rare diseases. All too often, they come up against administrations that do not work in partnership enough or in crosscutting fashion, hampering any proper overall assessment of their lives. Many of them are unable to gain recognition of their rights and are consequently insidiously discriminated against.

THE CONVENTION

The Defender of Rights delegates' biennial convention was held on 17 and 18 October 2018. Bring together 441 Defender of Rights delegates, it provided an opportunity for exchanges on practical issues with the Head Office's lawyers during workshops devoted to the delegates' various missions and to professional practices.

The Convention saw thought being given to two subjects central to delegates' daily concerns: the future of mediation and the ongoing dematerialisation of public services. They were tackled via a roundtable including Jean-Marc Sauvé, former Vice-President of the Council of State, Catherine Becchetti-Bizot, national and higher education mediator, Jean-Louis Walter, national mediator for Pôle Emploi, and Mr Patrick Mindu, Loire-Atlantique delegate and former President of the Administrative Court of Appeal, as well as via a talk by Mounir Mahjoubi, Minister of State for the Digital Sector, attached to the Minister of Economy and Finance and the Minister of Public Action and Accounts, which was followed by a debate.

This 4th convention of Defender of Rights delegates was also a unifying event for the Institution, 7 years after its creation.

B. PROMOTION ACTIONS CARRIED OUT BY THE DEFENDER OF RIGHTS' DELEGATES

All year long, throughout French soil, delegates carry out large numbers of communication actions and are also busy raising awareness on rights, children's rights in particular, and non-discrimination.

TOTAL NUMBER OF PROMOTIONAL AND PUBLIC-AWARENESS ACTIONS CARRIED OUT BY DELEGATES IN 2018 (AT 16 DECEMBER 2018)

ACTIONS PROMOTING RIGHTS	2018	%
RELATIONS WITH PUBLIC SERVICES	396	23 %
PROMOTION OF CHILDREN'S RIGHTS	385	23 %
PREVENTION OF DISCRIMINATION	275	16 %
PUBLIC-AWARENESS ACTIONS ON THE PART OF THE DEFENDER OF RIGHTS	651	38 %

V. SHARING AND DEVELOPING THE DEFENDER OF RIGHTS' EXPERTISE

INCREASING NUMBERS OF EXCHANGES AND PARTNERSHIPS IN FRANCE AND ABROAD

A. THE DEFENDER OF RIGHTS' BOARDS

The Defender of Rights is assisted by three Boards, advisory bodies whose members give thought to specific areas of competence and bring their expertise to bear in the examination of new questions.

DEFENCE AND PROMOTION OF CHILDREN'S RIGHTS

The Defender of Rights chairs the Board that assists him in exercising his powers with regard to defence and promotion of the rights of the child (Article 11 of the Organic Law bearing on the Defender of Rights). Geneviève Avenard, Deputy to the Defender of Rights, is Vice-Chair of the Board for Defence and Promotion of the Rights of the Child.

The Board is composed of six members:

Dominique Attias, former Vice-President of the Paris Bar and a member of its Council, Christian Charruault, President of the Honorary Chamber of the Court of Cassation, Eric Legros, psychoanalyst and former child protection association director, Anne-Marie Leroyer, Professor at the Sorbonne Law School and specialist in individual and family law, Jean-Pierre Rosenczveig, Honorary Magistrate at Bobigny Children's Court, and Françoise Simon, former Director for Childhood and the Family at Seine-Saint-Denis *Départemental* Council.

The Board met four times and was consulted on various projects to do with school life, in particular on questions of disability (2018-46); 2018-35), collective catering (2018-095), and international adoption (2018-180). The Board also gave its opinion on draft decisions in the field of child protection (2018-31 and 2018-197) and concerning foreign minors (2018-45).

COMBATING DISCRIMINATION AND PROMOTING EQUALITY

The Defender of Rights chairs the Board that assists him in exercising his powers with regard to combating discrimination (Article 11 of the Organic Law bearing on the Defender of Rights). Patrick Gohet, Deputy to the Defender of Rights, is Vice-Chair of the Board for the Fight against Discrimination and Promotion of Equality.

The Board is composed of eight members:

Rachid Arhab, journalist, Gwénaële Calvès, Professor of Public Law at Cergy-Pontoise University and specialist in non-discrimination law, Yves Doutriaux, State Councillor, Dominique Guirimand, Honorary Counsellor at the Court of Cassation, Françoise Laroudie, Secretary General of Arche en France, Pap Ndiaye, historian, Françoise Vergès, researcher, and Mansour Zoberi, Director of Diversity and Solidarity, Casino Group.

The Board for the Fight against Discrimination and Promotion of Equality met four times in 2018. Among other things, it debated questions raised by reconciliation of the principle of non-discrimination with other principles, including the "Decolonial Camp" and other non-mixed events. In addition to these exchanges, the Board was consulted on numerous cases relating to employment, including a draft decision concerning a refusal to hire based on residence (2018-176). The Board also discussed a number of decisions on discrimination in access to goods and services (2018-136; 2018-142).

SECURITY ETHICS

The Defender of Rights chairs the Board that assists him in exercising his powers with regard to ethics in the field of security (Article 11 of the Organic Law bearing on the Defender of Rights). Claudine Angeli-Troccaz, Deputy to the Defender of Rights, is Vice-Chair of the Board for the Ethics of Security

The Board is composed of eight members: Nicole Borvo Cohen-Séat, Honorary Senator, Nathalie Duhamel, former Secretary General of the CNDS, Jean-Charles Froment, Professor of Public Law and Director of the Grenoble IEP, Sabrina Goldman, lawyer at the Paris Bar, Jean-Pierre Hoss, honorary State Councillor, Yves Nicolle, honorary Commissioner-General[7]; Cécile Petit, Honorary First Advocate-General at the Court of Cassation, and Valérie Sagant, judge, Director of the Law and Justice Research Mission.

Consulted four times over the course of the year, this Board, like the two others, was led to pronounce on a number of projects at summary note stage, upstream of draft decisions, in order to obtain its opinion on the legal grounds under consideration. In this context, the Board examined the file on conditions under which foreign minors were subjected to identity checks near a voluntary help centre, a matter also discussed with the Board for Defence and Promotion of Children's Rights. The Board also delivered opinions on recurrent problems with regard to disproportionate use of force during arrests (2018-155), demonstrations (2018-190) and expulsions (2018-014).

In addition to the meetings held by each of the Boards, the Defender of Rights brought together all 22 members on 24 September 2018 in order to discuss confessional meals in hospitals, prisons and schools, and to prepare or specify the Defender of Rights' positions in the context of the upcoming re-examination of the law bearing on bioethics; in particular on access to origins, self-conservation of oocytes, surrogate motherhood and filiation.

[7] Who replaced Sarah Massoud, former Investigating Judge at Créteil High Court, in 2018.

B. JOINT AND LIAISON COMMITTEES

The Defender of Rights organises regular dialogue with actors in civil society, associations and representatives of the professional world, with 107 partners meeting as members of "Joint" and "Liaison" Committees (8 committees for dialogue, meeting 18 times in 2018).

Complementing the individual complaints handled by the Institution, these bodies are tasked with improving the Defender of Rights' knowledge of difficulties encountered by our fellow citizens. Hence, they provide up-to-date assessments of difficulties encountered in the field, redirect referrals, advise on the positions taken by the Institution, foster organisation of workgroups, and assist in drawing up proposals for reforms.

Joint Committees concern individuals who encounter difficulties in accessing their rights, and are therefore composed exclusively of associations.

There are currently six of them in all (Disability, LGBTI, Child Protection, Gender Equality, Health and Origins).

In contrast, Liaison Committees bring together actors potentially concerned with infringements of rights, and are therefore composed of representatives of the professional world. There are two such Committees: the Committee for Liaison with Employment Intermediaries and the Committee for Liaison with Actors in the Private Housing Sector.

These Committees provide a mechanism for reciprocal dialogue and exchange of information with associations and professionals; they act as vectors for feedback from actors in the field and dissemination of all the Defender of Rights' decisions, tools and actions. In particular, they help raise awareness among civil society with regard to the risks of infringement of rights and the Defender of Rights' competences.

C. CONVENTIONS AND PARTNERSHIPS

The Defender of Rights cannot carry out its wide-ranging missions alone. It therefore implements its partnership policy both formally – 53 conventions, including 3 signed in 2018 – and informally, through regular exchanges with all actors likely to be involved in its fields of competence. In 2018, while continuing to cooperate with its many longstanding partners, the Defender of Rights further extended its partnership network, in particular in the context of the Educadroit programme (see Educadroit, page 73).

In 2018, the Institution signed a convention with the École Nationale de la Magistrature (ENM – National School for the Judiciary) with a view to joint development of a training tool.

Following the part played by the Association Française des Managers de la Diversité (AFMD – French Association of Diversity Managers) in the "Equality against Racism" mobilisation launched by the Defender of Rights in 2015, in which some forty voluntary, institutional and business actors participated, the Defender of Rights mobilised the Association once again, this time on tools for action against racism in companies, and contributed to the book "*Le racisme et la discrimination raciale au travail*" (Racism and Racial Discrimination at Work) published by the AFMD in November 2018.

D. ACTING ON THE INTERNATIONAL SCENE

The gradual erosion of public services in France, along with regression of fundamental rights and freedoms threatened by establishment and unprecedented development of a security rationale, is by no means an isolated phenomenon. The Defender of Rights' mobilisation goes alongside action taken by its counterparts in other countries, with which it interacts in the context of various European, Francophone and Mediterranean networks, as well as the analyses and concerns of European and international organisations responsible for monitoring implementation of commitments on fundamental rights and freedoms signed and ratified by States, and which confirm the existence of such trends.

THE DEFENDER OF RIGHTS' COMMITMENT WITHIN ITS NETWORKS OF COUNTERPARTS

The Defender of Rights also continues working in its various fields of competence in the context of several networks of counterpart institutions. These networks acts as forums for exchange that contribute to the Defender of Rights' comparative work and in particular, thanks to cases handled by their members, enable assessment of the state of rights in such specific areas as children's mental health, the ENOC (European Network of Ombudspersons for Children) network's central focus in 2018.

CHILDREN'S MENTAL HEALTH AT THE HEART OF THE EUROPEAN NETWORK OF OMBUDSPERSONS FOR CHILDREN (ENOC)

A WORD FROM GENEVIÈVE AVENARD, CHILDREN'S OMBUDSPERSON, DEPUTY RESPONSIBLE FOR THE DEFENCE AND PROMOTION OF CHILDREN'S RIGHTS

This year, as President of ENOC, I was responsible for the organisation and carrying out of the network's annual work, which focused on the subject of children's and adolescents' mental health.

The theme was taken up by all our 42 members, independent institutions for defence of children's rights, as a subject of key importance that gives rise to major concerns. A number of reports have succeeded one another in France these past few years, highlighting the particularly worrying situation of child psychiatry in our country, which we also criticised unequivocally in our 2015 assessment report to the UN Committee on the Rights of the Child.

Whence the interest aroused by our work, in particular at European and international level, finally enabling us to have an initial comparative overview available, based on a survey among our Network members, developed and exploited by our Defender of Rights teams.

Our report, published during the Network's annual conference held in Paris from 19 to 21 September 2018, shows that similar difficulties exist in other countries, mainly characterised by: inadequate coordination between the health sector and the world of education; social and territorial inequalities that are only getting worse; overburdened health services; a critical shortage of structures and professionals specialising in provision of care to children…

With observation of serous denials of children's rights and of the discrimination that many children with mental disorders suffer from.

This is why the ENOC network was led to define child mental health as "*a state of wellbeing that allows children to develop and become aware of their own unique personality, to build their own identity, to fulfil their own potential, to cope with the challenges of growing up; to feel loved, secure and accepted as unique individuals and to be able to be happy, play, learn and to participate and contribute to family and community*".

Consequently, in its Final Declaration, ENOC recommends:

- Defining and implementing comprehensive national strategies relating to children, based on continuous consultation of children;
- Combating stigmatisation by awareness-raising and preventive actions;
- Promoting inclusive, child-centred schools and stepping up the fight against bullying;
- Taking full account of children's rights in hospital services, in particular by guaranteeing the obligation to obtain the child's informed consent to his/her hospital treatment and by putting an end to the practice of admitting children to services intended for adults.

In France, this Declaration was communicated to the Minister for Solidarity and Health, as well as to the European authorities, stressing the pressing need to act immediately in order to meet children's and adolescents' mental health needs.

"They told us that the norm was normality! Just perfect! What does being perfect mean? Or normal! What does being normal mean? Forget the labels and be yourself."

Translation of an extract from the song "Monde Solidaire" (Inclusive World) – ENOC – Paris Conference – September 2018.

GENEVIÈVE AVENARD

In the context of its work with its counterparts regarding security ethics as a member of the Independent Police Complaints Authorities' Network (IPCAN), the Defender of Rights wished to raise the question of the role played by the police in implementation of asylum and immigration policies – a role that has been increased at European and national levels alike. In most of its Member States, the European Union's emphasis over the past few years on security policies and increased control of its external borders[8] has been to the detriment of fundamental rights and implementation of asylum and reception policies that respect individual rights and comply with treaties and conventions ratified by Member States.

In 2018, in addition to questions bearing on the regression of fundamental rights, exchanges within the Defender of Rights' networks highlighted situations in which defenders of rights themselves could be weakened by measures introduced by their governments jeopardising their independence and their resources, two conditions essential to their work's effectiveness. The Defender of Rights committed itself to the Equinet network's work and initiatives, with the aim of getting the European Commission to adopt a recommendation on standards of independence and the effectiveness of authorities tasked with combating discrimination. The recommendation was adopted on 22 June 2018 and should enable provision of support to authorities whose independence is threatened. In the same perspective, the Defender of Rights spoke at the annual Seminar held by the European Commission against Racism and Intolerance (ECRI) on General Policy Recommendation no.2 (GPR 2) published in February 2018, whose new general guiding principles bear on the strengthening of bodies promoting equality and responsible for combating discrimination and intolerance.

THE QUESTION OF "SECURITY FORCES' ETHICS IN THEIR RELATIONS WITH MIGRANTS IN EUROPE"

IPCAN NETWORK, 2018

On 14 December 2018, the Defender of Rights organised the 4th IPCAN Seminar in Paris; IPCAN is an informal network of authorities responsible for citizens' relations with public and private security forces, of which the Institution is the coordinator. This year's Seminar focused on "*security forces' ethics in their relations with migrants in Europe*".

Members of the network had the opportunity to present and share with the European and international institutions represented (Council of Europe, European Agency for Fundamental Rights, Frontex and the UN) the finding that there is an increasingly marked "stalling" of fundamental rights applicable and applied to foreigners compared with those reserved for national populations. In particular, cases handled by counterparts revealed inequalities in security forces' treatment of nationals and exiled foreigners, as well as violations of foreigners' rights while in administrative detention or during implementation of deportation procedures.

These findings were the result of alliances partly enabled by the existence of networks of counterparts enabling coordination of actions on the European scene.

[8] On 28 June, on the occasion of a European summit in Brussels, the European Council chose to prioritise "effective control of the EU's external borders", "stepping up the effective return of irregular migrants", continuing implementation of "regional disembarkation platforms", "controlled centres" and an increase in resources allocated to Frontex, the "European body responsible for coordination of operational cooperation at external borders".

THE 20TH BIRTHDAY OF THE ASSOCIATION DES OMBUDSMANS ET MÉDIATEURS DE LA FRANCOPHONIE (AOMF – ASSOCIATION OF OMBUDSPERSONS AND MEDIATORS OF LA FRANCOPHONIE)

The Association des Ombudsmans et Médiateurs de la Francophonie (AOMF – Association of Ombudspersons and Mediators of La Francophonie) focused on analogous themes when it met to celebrate its 20th birthday during the Congress held in Brussels and Namur from 6 to 9 November 2018. On this occasion, Ombudspersons and Mediators discussed the independence of the Mediator, the Rule of Law, and respect of the rights of administration users, the disabled, migrants and victims of discrimination. The AOMF's 10th Congress concluded with adoption of the Declaration of Namur, which is designed to consolidate mediation institutions.

It also encourages initiatives fostering an inclusive society that respects all its members' fundamental rights. 2018 also saw its adoption of a Guide to ethical values and principles, enabling mediators and ombudspersons to work at building up users' trust in them.

Over recent years, the AOMF network has ensured that protection of children's rights is incorporated into mediators' missions. Since 2012, Francophone Mediators and Ombudspersons have been adding to their knowhow and resources in this field. In 2018, a Practical Guide on implementation of the right to participation was drafted, as the right to be heard (Article 12) is a guiding principle of the ICRC that is often ignored.

A report on implementation of the rights of the child, drawn up by members of the AOMF, also provided an overview of the current situation, highlighting the fact that most referrals to Francophone Mediators are on this subject but that resources and public interest remain limited and that few children refer directly to institutions.

The work carried out by networks of mediators is key to speeding up the sharing of issues arising at national level. At the 10th birthday celebrations of the Association des Ombudsmans de la Méditerranée (AOM – Association of Mediterranean Ombudspersons), its members expressed their wish to work on the Association's role "*as protector of social, cultural and environmental rights*". The resulting Declaration of Skopje bears on Ombudspersons' commitment to mobilise on behalf of fundamental rights and use all available means to ensure States' compliance with their commitments.

THE DEFENDER'S CONTRIBUTIONS TO THE WORK OF EUROPEAN AND INTERNATIONAL INSTITUTIONS

The Defender of Rights plays a central role in monitoring implementation of the numerous international commitments ratified or approved by France that fall within its fields of competence. In this respect, it has obligations of reporting to international human rights organisations and appearing before them to provide expert opinions.

Hence, as it did for the International Convention on the Rights of the Child, the Government designated the Defender of Rights as an independent mechanism tasked with monitoring application of the Convention on the Rights of Persons with Disabilities (CRPD) (Article 33.2). In this respect, its job is to ensure protection, promotion and monitoring of the

Convention with the help of a National Committee made up of the Commission Nationale Consultative des Droits de l'Homme (CNCDH – National Advisory Commission on Human Rights), the Conseil Français des Personnes Handicapées pour les Questions Européennes et internationales (CFHE – French Council of Disabled People for European and International Affairs) and the Conseil National Consultatif des Personnes Handicapées (CNCPH – National Advisory Council of Disabled Persons). The State, represented by the Secretary-General of the Comité Interministériel du Handicap (CIH – Interministerial Committee for Disability), also participates in the Committee's monitoring work as an observer.

In the context of the workgroup for the 12th presession of the Committee on the Rights of Persons with Disabilities (CRPD), which is set to take place in Geneva in September 2019, a presession in which it will be participating as Article 33.2 mechanism, the Defender of Rights made a study visit to Brussels in September 2018 in order to meet once again with the European Commission, federations of European associations (European Disability Forum, EDF, and the European Association of Service Providers for Persons with Disabilities (EASPD)), and the Institution's Belgian counterpart, the Interfederal Centre for Equal Opportunities (UNIA), and actors in the Belgian disability sector (Inclusion Europe and the Belgian Disability Forum (BDF)). He also took part in a seminar held in Riga by the European network of National Institutions for Human Rights (NIHRs), the European Network of National Human Rights Institutions (ENNHRI) and Equinet, bringing together the independent mechanisms of Article 33.2 of the International Convention on the Rights of Disabled Persons (ICRDP) and members of the Committee[9], the ICRDP Secretariat, and European associations promoting the rights of the disabled.

Finally, he presented the Institution's work on reasonable accommodations at the Conference of EU Ombudspersons for Persons with Disabilities, held in Vienna on 15 and 16 November 2018.

As an expert in the field of discrimination, the Defender of Rights was referred to by the Comité Directeur des Droits de l'Homme (CDDH – Steering Committee on Human Rights) with regard to the recommendation made by the Committee of Ministers of Member States on measures designed to combat discrimination based on sexual orientation and gender identity. In its Opinion 18-21 of 18 September 2018, the Defender of Rights made a highly qualified assessment of the recommendation's implementation in France. Despite recent progress and extensive mechanisms intended to guarantee equality, discrimination suffered by LGBT individuals continues in many fields (schools, employment, goods and services, etc.). Furthermore, as it stands, criminal prosecution of offences connected with sexual orientation and gender identity appears inefficient.

In addition, in the context of the procedure for assessing France's performance in implementing the Council of Europe's Convention on preventing and combating violence against women and domestic violence, adopted in Istanbul on 11 May 2011, the Defender of Rights was heard by the Council of Europe's group of experts on 11 October 2018. During the hearing, he made mention of acts of gender violence perpetrated on minors (female genital mutilations and forced marriages) as well as violence suffered by women at work (discrimination, and sexist and sexual harassment). He also provided an update on the problems encountered by foreign women who are victims of violence and human trafficking. Finally, the Defender of Rights stressed the need to improve security forces' handling of victims and step up the penal response, which is currently inadequate and, in many aspects, poorly adapted to the purpose.

[9] The UN Committee on the Rights of Persons with Disabilities (CRPD).

5

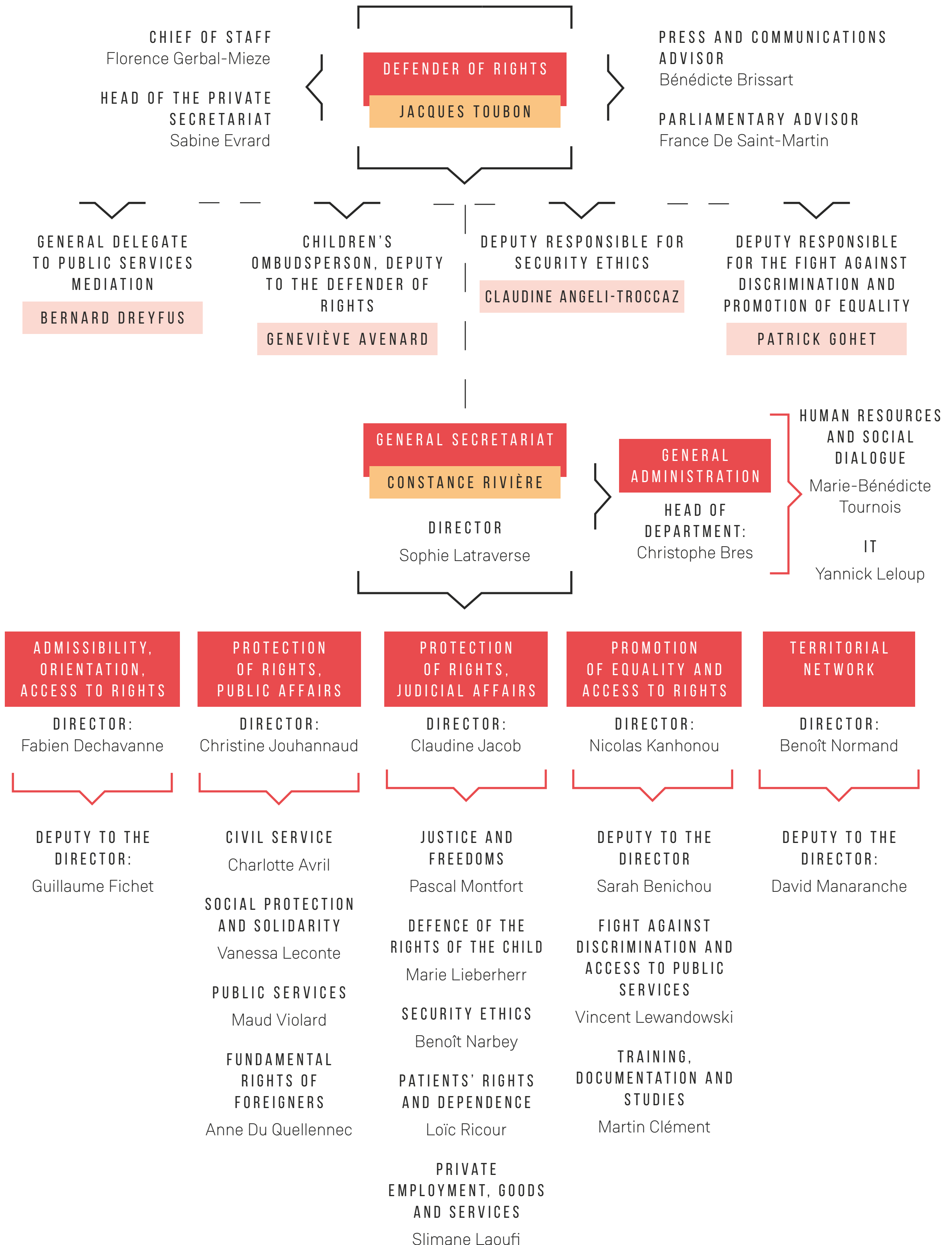
Défenseur

VI. MAKING THE UTMOST OF AVAILABLE SKILLS AND ENSURING EFFICIENT MANAGEMENT OF THE INSTITUTION'S RESOURCES

With almost unchanged human and financial resources at its disposal, the Institution once again succeeded in coping with the regular increase in its activities in 2018. The fact that it was able to do so was largely due to internal reorganisations undertaken over the past few years, pooling of various general administration resources with the Prime Minister's services, and efforts to rationalise its work methods. This highly efficient, economical form of management has been recognised and commended as such by the national representation. Nonetheless, the Institution's level of resources was stretched to its limits in 2018, with all appropriations consumed, and only an increase in its means in 2019, in human resources in particular, will enable the Defender of Rights to avoid seeing its activity impaired.

In 2018, the Defender of Rights' human resources policy focused on improving work organisation, in particular through development of telework, promotion of professional gender equality, and development of continuing training following pooling of training provision with the Direction des services administratifs et financier du Premier Ministre (DSAFP – Prime Minister's Department of Administrative and Financial Services).

THE INSTITUTION'S ORGANISATION CHART IN 2018



THE INSTITUTION'S STAFF: A FEW FIGURES

At 31 December 2018, the Defender of Rights' Institution comprised 226 employees, made up of 157 contract staff, 57 seconded civil servants and 12 officers "mis à disposition" (MAD – made available) by other external bodies.

In 2018, the Defender of Rights took in a total of 73 trainees, assigned in priority to investigation departments. Recruitment was carried out via two half-yearly campaigns for 60 remunerated trainees from universities and grandes écoles.

Over the course of 2018, pooling of various support functions supports continued, resulting in transfer of 3 officers to the DSAFP.

The 2018 payroll appropriation (Initial Finance Law, Title 2) came to €15,706,408 after reduction of the 0.5% reserve. Title 2 appropriations were 99% executed, in particular for the funding of 14 short-term contracts.

The percentage of women working at the Defender of Rights is far higher (77%) than that of men, roughly the same as in 2017. Similarly, the percentage of women is significantly higher than in the civil service (62% women, 55% in the State civil service) and private sector (46%)[10].

WORKFORCE BY STATUS AT 31 DECEMBER 2018

FIXED-TERM CONTRACTS (CDDS)	65
PERMANENT CONTRACTS (CDIS)	92
SHORT-TERM CONTRACT	0
SECONDMENT	57
MAD NON-REMUNERATED	4
TITLE 3	8
GENERAL TOTAL	226

MEN/WOMEN BREAKDOWN AT 31 DECEMBER 2018

WOMEN	173
MEN	53
GENERAL TOTAL	226

BREAKDOWN OF STAFF BY HIERARCHICAL CATEGORY AND GENDER

	WOMEN	MEN	TOTAL	% OF WOMEN
CATEGORY A+	16	14	30	53 %
CATEGORY A	110	29	139	79 %
CATEGORY B	31	6	37	84 %
CATEGORY C	16	4	20	80 %
TOTAL	173	53	226	77 %

[10] Data from *Chiffres-clés de la fonction publique 2017 (Key Figures for the Civil Service)* published by the DGAFP.

A. IMPROVEMENT OF WORKING CONDITIONS CENTRAL TO THE HUMAN RESOURCES POLICY

TELEWORK, IMPROVEMENT OF WORK ORGANISATION, AND A BETTER LIFE

In 2018, two half-year campaigns were organised with a view to identifying new candidacies as well as requests for renewal of the scheme for a maximum of two days a week.

At 31 December 2018, the Institution had 126 staff members involved in telework, 56% of the Institution's workforce (40% in 2017), including:

- 92 officers engaged in telework one day a week
- 29 officers engaged in telework two days a week
- 5 line managers engaged in telework two days a month

Investigation departments have developed this new mode of work organisation across the board:

- ROAD (Admissibility, Orientation and Access to Rights Department): 79% of workforce
- DPD – Judicial Affairs: 76% of workforce
- DPD – Public Affairs: 66% of workforce

PROMOTION OF PROFESSIONAL GENDER EQUALITY AT THE INSTITUTION

In 2018, the Defender of Rights' action plan included two main focuses for promotion of gender equality:

- Reconciling personal and professional life and combating sexism, in particular by adopting best practices;
- Ensuring gender wage equality.

The Institution's action plan, focused on two proprieties, was organised into 13 actions to be implemented, including systematic recruitment of casual staff to replace staff members on maternity leave and the choice of a wage revaluation policy designed to identify and reduce gender inequalities.

APPROPRIATE, REWARDING CONTINUING PROFESSIONAL TRAINING

On the occasion of contract renewals, continuing training offers were pooled with the Prime Minister's services in 2018.

In 2018, 226 staff members attended one or more training courses, with an overall training budget of €142,000 consumed.

Training delivered comprised 50 group sessions, mainly focusing on legal questions, and 23 individual sessions preparing for diplomas or competitive examinations.

2018 saw the introduction of a new, transparent procedure for allocation of tailor-made personalised individual training sessions.

Work continued on a number of priorities already committed to in 2017, including:

- provision of individual support to staff members concerned in pooling or reorganisation of services;
- Access to the Skills Assessments and Validation des Acquis de l'Expérience (VAE – Validation of Prior Experience) scheme;
- Prevention of psychosocial risks, which formed the subject of a more comprehensive prevention plan with a view to drafting the Document Unique d'Evaluation des Risques Professionnels (DUERP – Single Professional Risk Assessment Document).

B. BUDGET RESOURCE MANAGEMENT FOCUSING ON CONTROL OF PUBLIC EXPENDITURES

In 2018, appropriations made available to the Defender of Rights for Programme 308 “Protection of Rights and Freedoms” were to the tune of €21,618,096 in commitment appropriations (CAs) and €21,652,782 in payment appropriations (PAs). 73% of appropriations consumed were devoted to staff costs.

€21,582,163 in CAs and €21,486,985 in PAs were consumed, a 100% execution rate for CAs and 99% for PAs compared with the available budget.

A budget of €1,982,100 in operational appropriations was also allocated to the Defender of Rights by the DSAFP to cover its needs, pooled with the Prime Minister’s services (logistics, training, social action, a portion of IT costs, and mission expenses).

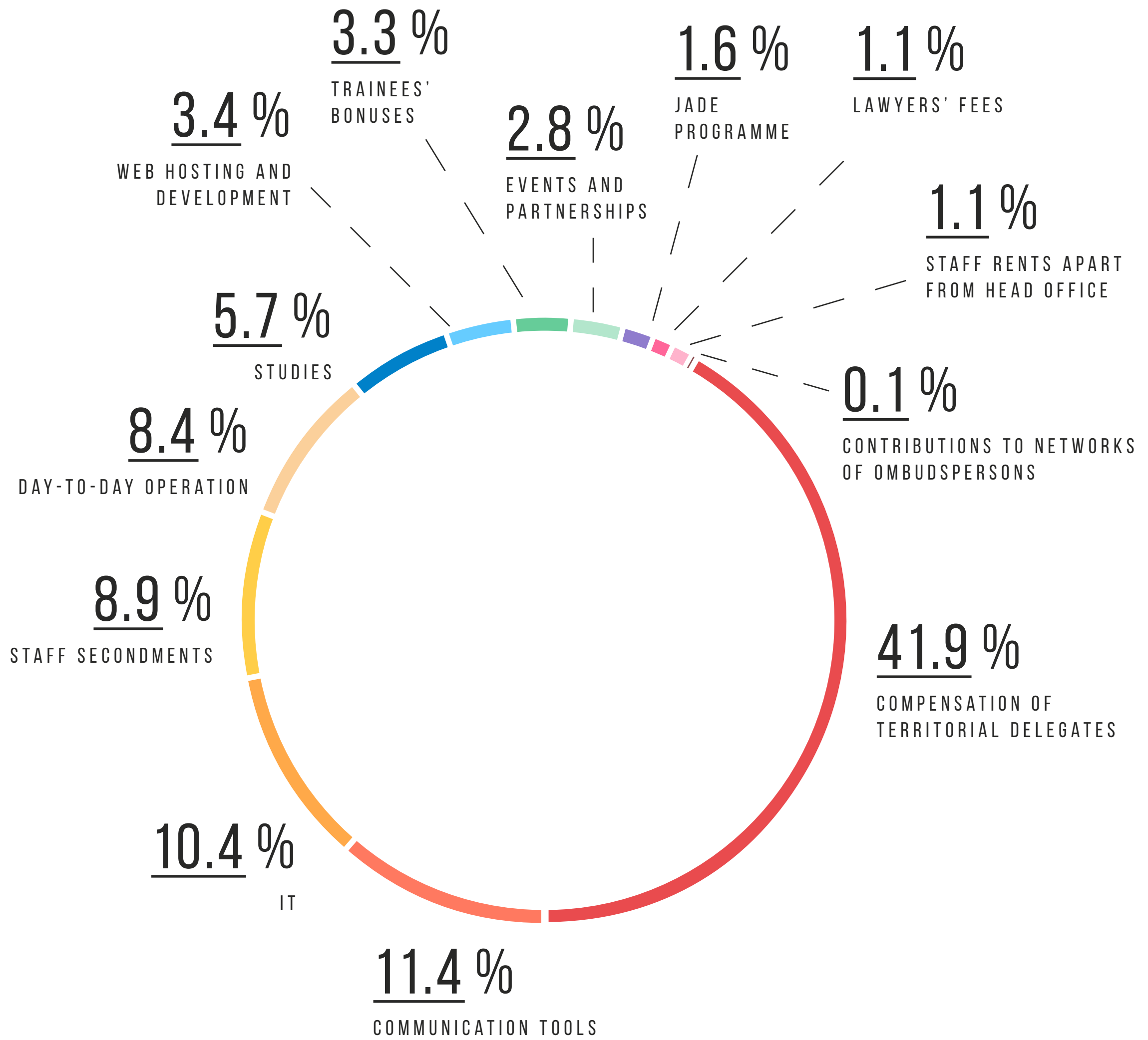
The structure of operational, investment and intervention expenditures remained largely unchanged from 2017 to 2018. In order to respond to complaints as effectively as possible in a context of ongoing growth of activity, further increased by implementation of Compulsory Prior Mediation (MPO), additions were once again made to the territorial network in 2018. As a result, the share of the budget devoted to compensation of delegates, the top expenditure item after the payroll, has continued to increase. The Institution is organised to cope with further concentration of its network with no increase in funding.

While continuing with its proactive policy on promotion of rights, the Defender of Rights is endeavouring to rationalise its operating costs with a focus on controlling public expenditures and transparency of purchases, by making use, whenever possible, of the Prime Minister’s services’ pooled interministerial procurement contracts, and of the Union des Groupements d'Achats Publics (UGAP – Union of Public Purchasing Groups).

	STAFF COSTS (TITLE 2)	OTHER EXPENDITURE (APART FROM TITLE 2)		TOTAL BUDGET	
IN €	CAS=PAS	CAS	PAS	CAS	PAS
IFL BUDGET	16,036,591	6,401,468	6,401,468	22,438,059	22,438,059
AVAILABLE BUDGET	15,706,408	5,911,688	5,946,374	21,618,096	21,652,782
CONSUMED BUDGET (1)	15,690,483	5,891,680	5,796,502	21,582,163	21,486,985

(1) in CAs, real consumption, adjusted for the effect of withdrawals of legal commitments made in previous years.

NATURE OF THE INSTITUTION'S EXPENDITURES (APART FROM STAFF COSTS) IN 2018



Defender of Rights

TSA 90716 - 75334 Paris Cedex 07

Tel.: +33 (0)9 69 39 00 00

www.defenseurdesdroits.fr

All our news:

www.defenseurdesdroits.fr

Défenseurdesdroits
RÉPUBLIQUE FRANÇAISE

© 03-2019 | Defender of Rights