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Annual activity report **2022**

Ensuring that the law forgets no one

Défenseur des droits
RÉPUBLIQUE FRANÇAISE

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EDITORIAL

Year upon year, the number of complaints submitted to the Defender of Rights institution increases. In addition to this increase, these situations, experienced by people in temporary or more profound difficulties, reveal the many and various assaults on the principles on which our society is based.

Through this new annual report, I have sought to highlight the need to reach out to those who have the least access to their rights; for people in vulnerable situations are particularly exposed to the risk of violation of their rights. In such cases, the Defender of Rights serves as a means of redress.

However, all too often we find that people do not dare to approach us, or even think of doing so. In an attempt to address this, we are introducing various initiatives aimed at them; for example, by setting up delegate clinics throughout France, in various types of structures, for reaching out to everyone, regardless of their age, social condition or difficulties. Our communication campaigns, the simplification of our written material and our telephone platforms are also geared towards this objective: to be increasingly accessible, in order to ensure that everyone's rights are respected.

By making people in vulnerable situations our priority, we are making ourselves available to serve everyone, because every infringement of rights or the principle of equality alters our social cohesion.

What this annual report reveals are the flaws and blind spots in public policies that directly or indirectly affect people and violate their rights.

For example, the worrying state of child protection, or the obstacles that still stand in the way of children with disabilities and their families. Consideration of the best interests of the child is a key requirement that informs all the work done by my institution.

“By making people in vulnerable situations our priority, we are making ourselves available to serve everyone, because every infringement of rights or the principle of equality alters our social cohesion.”

For example, the remoteness of public services and the brutal effects that excessive dematerialisation can have. When a public service does not respond, it prevents people from exercising their rights.

For example, foreign nationals whose fundamental rights are too often ignored. In 2022, the number of complaints concerning them will reach a level unprecedented in the institution's history. People find themselves in illegal residency situations simply because they are unable to make an appointment at the prefecture, or because they cannot get an answer.

For example, the extent of discrimination and its unbearable impact on the people who are subjected to it.



What this annual report also reveals is the tireless involvement of the agents and delegates of the Defender of Rights in bringing about successful mediations, improving the rights of people everywhere, constantly reminding us where our “red lines” of acceptability lie and how, in practical terms, to remedy rights violations.

On the strength of its detailed knowledge of the real-world problems faced by our fellow citizens through the individual complaints it receives, my institution is committed not merely to resolving these cases, but also to addressing their systemic causes in order to prevent the emergence of similar issues elsewhere and thus advance the rights of everyone.

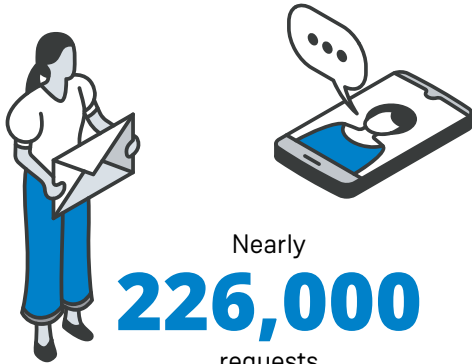
In order to achieve this, the Defender of Rights must be provided with adequate tools.

To live up to the commitment enshrined in the Constitution, France must have a strong, independent Defender of Rights institution that is available to all. Only then can it continue to act as the French Republic’s guiding compass for ensuring respect for rights and freedoms.

This report gives a voice to those who are experiencing, or have experienced, difficulties in having their rights upheld. Giving them that voice is not only a democratic requirement, but also the only way we can restore confidence in our public services and our institutions.

Claire Hédon
The Defender of Rights

2022 IN FIGURES



Nearly

226,000

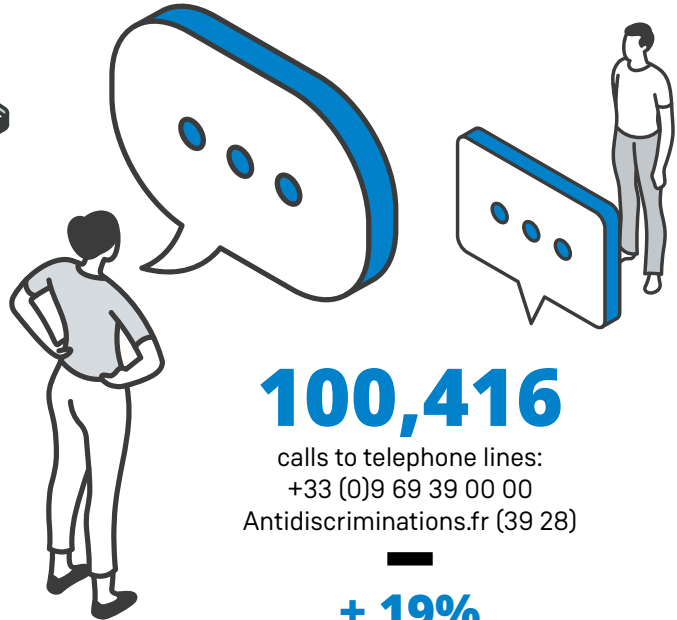
requests

125,456

complaints, requests for information and guidance

+ 9%

between 2021 and 2022



100,416

calls to telephone lines:
+33 (0)9 69 39 00 00
Antidiscriminations.fr (39 28)

+ 19%

between 2021 and 2022



249

officers

231 at head office and **18** in the regions

94

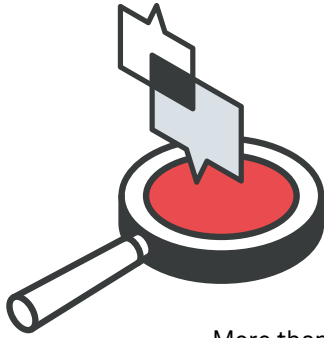
Jeunes ambassadeurs et ambassadrices des droits de l'enfant et de l'égalité (JADEs) in civic service

Working in **22** departments and **2** metropolitan areas

570

delegates at

990 contact points throughout the country



More than
75%
of mediations resulted in
an amicable settlement

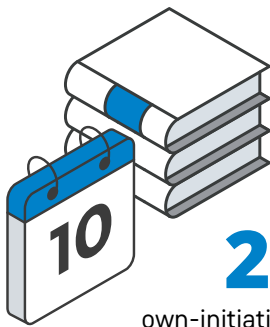


221
decisions
including **110** with observations
before the courts

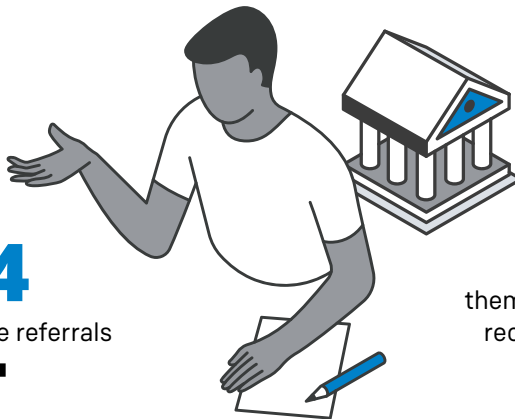


302
legal reminders to offenders
with no need for legal action

11
third-party interventions before
the European Court of Human Rights,
the Court of the Council of Europe and the
UN Committee on the Rights of the Child



24
own-initiative referrals



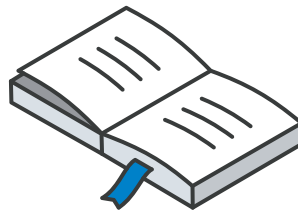
5
thematic reports with
recommendations



3
notices to public prosecutors

1
practical guide

7
notices to Parliament



4
published studies



Éric Deleamar, George Pau-Langevin, Pauline Caby, Claire Hédon, Mireille Le Corre, Daniel Agacinski, Cécile Barrois de Sarigny

A HUMAN CONTACT IN RESPONSE TO REQUESTS

At the end of the phone

The Defender of Rights' general telephone line, +33 (0)9 69 39 00 00, has seen call volumes increase year on year, in parallel with the strong increase in complaints that the institution has experienced for several years. In 2022, an average of 8,000 calls per month were received, with a pick-up rate of more than 90%, in response to general public requests for information and explanations.

In addition, since the Covid-19 crisis, given the need for improved telephone contact during this period, a specific line for detainees has been in operation. As the costs of communication within prisons can be particularly high, it is accessible free of charge through a short number, 31 41, which will be introduced in early 2023.

Finally, the anti-discrimination 39 28 telephone line, created in February 2021, also saw call volumes increase in 2022.

Designed as a listening and support service, with legal advisers specifically trained in anti-discrimination issues, it handles more than 700 calls per month, mainly in the field of employment and discrimination linked to an actual or supposed place of origin, disability and health status. Victims are offered support in writing the referral information if they require such help.

In case of referral to the institution

The directorate in charge of the admissibility of the case files qualifies them and carries out an initial analysis. Every day, approximately 130 complaints are received at the headquarters of the Defender of Rights, mostly via the online complaint form, but also by ordinary mail, not counting the 5 to 10 direct referrals submitted by the regional delegates every day. This head office-based directorate deals with cases requiring further preparation (requests for documentation), referral to another contact person, or cases where there is no infringement of rights. It is also active in amicable settlement and rapid intervention in the area of combating discrimination and upholding the rights of foreign nationals. Complaints in this area have quadrupled over the last two years.

Nearly half of the complaints are answered within a few days for the simplest situations, or within a few weeks. The same is true of requests which, although initially addressed to the head office, are then forwarded to the territorial delegates for local processing through mediation.

Finally, complaints of a more complex nature and/or requiring the use of the institution's other powers (investigations, on-site inspections, hearings, particularly with a view to recommendations and observations in court) are forwarded, if necessary after a preliminary examination, to the specialised divisions within the two investigating directorates.

The main challenge stems from the continuous increase in complaints, of the order of 15% per year, and particularly in the area of the rights of foreign nationals, which will become the leading subject of complaints to the institution by 2022.

PERMANENT CONTACTS WITH THE PUBLIC AND CIVIL SOCIETY

3 Advisory Committees

Provided for under the *loi organique* [framework law], they are composed of 22 personalities qualified in their field, who assist the Defender of Rights in taking decisions by providing her with a new and multidisciplinary perspective:

- “Security Ethics” Committee: this deals with the rules of good conduct for law enforcement officials, whether public or private;
- “Defence and Promotion of the Rights of the Child” Committee: this is the competent committee for all matters concerning the interests of children;
- “Anti-Discrimination and Promotion of Equality” Committee: this works to defend victims of discrimination and provide universal access to rights.

7 Committees of Understanding

They have met 12 times, providing a forum for non-profit stakeholder associations as part of consultation and discussion bodies.

- Committee of Understanding on Advancing Age
- Committee of Understanding on Gender Equality
- Committee of Understanding on Disability
- Committee of Understanding on Origins
- Committee of Understanding on Child Protection
- Committee of Understanding on Health
- Committee of Understanding on LGBTI

2 Liaison Committees bringing together professional stakeholders

- Liaison Committee for employment intermediaries
- Private Housing Liaison Committee: in 2022, two new members representing real estate professionals, the Guy HOQUET and ERA groups, joined the Committee.

Four Liaison Committee meetings were held in 2022.

59 Partnership Agreements

Mainly with public organisations whose missions are related to that of the Defender of Rights.

Committee of Understanding on LGBTI: the inclusion of new non-profit organisations

In 2022, in order to strengthen its representativeness, the Committee of Understanding on LGBTI was enlarged to include three new non-profit organisations:

- *Les Enfants d’Arc-en-Ciel* (“Rainbow Children”), which supports LGBT people in their plans to become parents and in the associated legal procedures, and has developed expertise in questions of parentage for LGBT couples;
- Acceptess-T, which aims to combat all forms of exclusion or discrimination linked to gender identity and to produce information and training tools on these issues;
- The *Collectif Intersexe Activiste* (“Activist Intersex Collective”), the only non-profit organisation by and for intersex people in France.

GENERAL STATISTICS

Changes in the number of complaints received by the Defender of Rights, 2020-2022

	2020	2021	2022	2021-2022
Complaints, information and guidance	97,220	115,397	125,456	+ 9%
Head office	24,941	29,465	33,273	+ 13%
Complaints	23,210	26,805	31,164	+ 16%
Information and guidance	1,731	2,660	2,109	- 21%
Delegates	72,279	85,932	92,183	+ 7%
Complaints	43,530	52,587	58,495	+ 11%
Information and guidance	28,749	33,345	33,688	+ 1%
Calls to the telephone lines*	69,705	84,599	100,416	+ 19%

Note: figures for 2020 and 2021 differ slightly from those presented in previous activity reports, due to the continuous updating of case files.

* Calls to the general line (+33 (0)9 69 39 00 00) and the Antidiscriminations.fr address (39 28) are counted here; calls not directly linked to the platform (wrong numbers, internal calls, suppliers, etc.) are excluded.

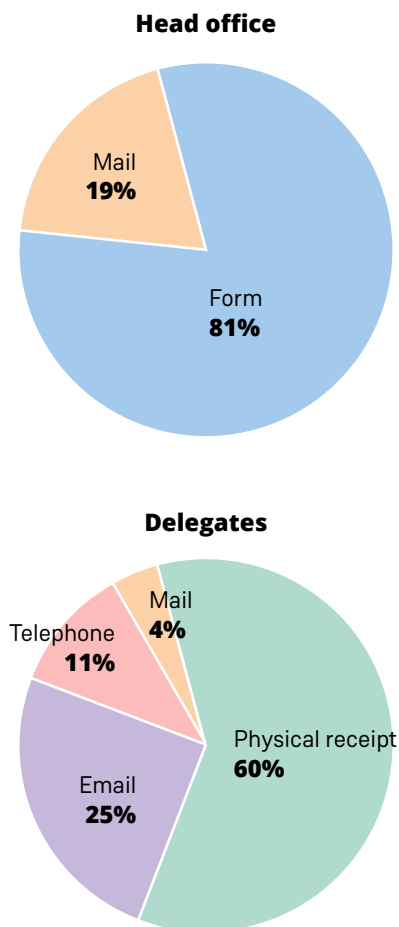
Breakdown of complaints received by the Defender of Rights by area of competence, 2020-2022

	2020	2021	2022	2021-2022
Relations with public services	60669	72,304	82,202	+ 14%
Defence of the rights of the child	2,772	2,989	3,586	+ 20%
Combating discrimination	5,215	6,396	6,545	+ 2%
Security ethics	2200	2,418	2,455	+ 2%
Guidance and protection for whistleblowers	61	89	134	+ 51%

Note: as a complaint can be multi-qualified, the sum of complaints per jurisdiction is greater than the total number of complaints received. The figures for 2020 and 2021 differ slightly from those presented in previous activity reports due to the continuous updating of files.

Complaints relating to the rights of foreign nationals increased by 233% from 2019 to 2022. This year, almost one in four complaints related to this issue.

Methods of approaching the institution, 2022



Scope: all complaints and information and guidance received at headquarters (N = 33,273) and by delegates (N = 92,183) in 2022, excluding calls to telephone lines.

Breakdown of complaints received by the Defender of Rights by subject matter, 2022

Rights of foreign nationals	24%
Protection and social security	21%
Road law	8%
Justice	8%
Public services	7%
Civil service	3%
Taxation	3%
National - Higher education	3%
Housing	3%
Private goods and services	3%
Security ethics	3%
Private employment	2%
Child protection	2%
Environment and urban planning	2%
Health	2%
Network operators	1%
Public liberties	0.6%
Privacy	0.5%
Regulated profession	0.3%
Not known	4%
Total	100%

Scope: all complaints received by the Defender of Rights in 2022 (N = 89,659).

INTRODUCTION

THE IMPACT OF THE DEFENDER OF RIGHTS ON GENERAL DAILY LIFE

The Defender of Rights is an independent administrative authority enshrined in the French Constitution. The *loi organique* [framework law] of 29 March 2011 entrusts it with five main tasks:

- upholding the rights of users of public services;
- protecting and promoting the rights of the child;
- combating discrimination and promoting equality;
- compliance with ethical standards by the security forces;
- providing protection and guidance for whistleblowers.

These tasks all contribute to the protection of the rights of all citizens. Many of the situations handled by the institution are inextricably linked to several of these areas. In order to carry out these missions of protection, promotion and access to rights, all of the institution's staff and regional delegates endeavour to deal with all the individual situations submitted to them.

Through the complaints submitted to it and the attention it gives to each of them, the Defender of Rights assesses the resulting evidence of rights violations. This was the case, for example, with the launch of the *Agence nationale des titres sécurisés* (ANTS, “national agency for secure documentation”), which made it difficult for many users to renew their driving licences, or with the difficulties encountered with certain systems such as the MaPrimeRénov’ home energy efficiency

scheme. At headquarters and local level, everyone makes use of the full resources of the institution, to restore people's rights.

The mission of promoting rights and equality makes it possible to disseminate knowledge of the law and rights as widely as possible to everyone, the general public, specific groups, professionals in a given sector, etc.

This individual handling of complaints also leads the institution of the Defender of Rights – armed with this knowledge derived from the real situations experienced by citizens – to bring systemic alerts and proposals before the public authorities, within the context of framework decisions, thematic reports, hearings, opinions to Parliament, or guides.

In so doing, the institution pays particular attention to people in vulnerable situations. While the past years have been difficult for many, the Defender of Rights is striving to reach out to those with the least access to the law. This attention is all the more necessary at a time of deterioration of public services, often as a result of forced dematerialisation, which weakens social cohesion and more specifically threatens the most vulnerable, who are often faced with insecurity and attacks on their dignity.

By reaching out to those who suffer most from difficulties in accessing rights and their consequences in their lives, the Defender of Rights directly fulfils the mission entrusted to it by the Constitution and the *loi organique*, and thus contributes to the advancement of rights for all.

“No one should be disenfranchised because of a lack of resources, information or digital skills, or because they have not found a door to knock on. So if these individuals don't come to us, we come to them.” (Claire Hédon)

I • REACHING OUT TO THE PEOPLE WITH LEAST ACCESS TO THEIR RIGHTS

DELEGATE CLINICS FOR REACHING OUT TO THE MOST VULNERABLE

The Defender of Rights can only fulfil its mission if it is also called upon by people who all too often have the greatest difficulty in asserting their rights, whether because of their lack of access to public services, their distrust of institutions, or their situation of insecurity. To achieve this, the regional divisions have embarked on a strategy of diversifying the locations of delegate clinics, to provide more local support for vulnerable people.

Here is an overview of these new establishments. Several clinics have been set up on the premises of charitable organisations; for example at the *Restos du cœur* food charity in Nice, the *SOS-Aide aux habitants* legal support association in Strasbourg, or the Red Cross in Paris. The social centres are also places that receive investment, such as the *Maison pour tous Bertly Albrecht* community centre in Aubervilliers and the *Centre social Bonnefoi* residents' centre in Lyon. The Defender of Rights also invests in "third places" that revitalise rural areas, such as in Revin, in the Ardennes, or Lombez in the Gers.

In order to gain a higher profile among children and young people, delegates are also establishing a presence in *maisons d'adolescents* (MDAs, "homes for teenagers"), such as in Albi, Montpellier and Annecy, and also in a university, in Rennes, or in *conseils régionaux d'information jeunesse* (CRIJs, "regional youth information councils"), in Castelsarrasin in Tarn-et-Garonne and in Saint-Denis de la Réunion.

For young people in difficulty, seven Defender of Rights delegate clinics have already been set up in local public service organisations in the Gard (in Nîmes), Haute-Garonne (in Blagnac and Colomiers), Hautes-Pyrénées (in Tarbes and Lannemezan) and Jura (in Saint-Claude and Champagnole).

In the Vendée, the Defender of Rights working alongside France Services information points

The regional network of the Defender of Rights in the Vendée was asked at the beginning of 2022 to introduce the institution and its working methods to the managers and agents of France Services information points. In April, the head of the regional division and a local delegate worked in pairs with fifteen people working at nine information points throughout the Vendée region.

The France Services officials present, who were in direct contact with people with little access to public institutions and organisations of all kinds, were particularly interested in the possibilities of intervention by the Defender of Rights, which are complementary to their own, regarding citizens' access to rights, especially of a social nature.

Familiarity with the institution's areas of competence and drivers of action thus enables an effective redirection of people towards the delegates, especially when the dematerialisation of public services leads to blockages that the France Services reception agents are unable to resolve.

Joint and coordinated action between France Services and the Defender of Rights could thus be a useful way of working together to promote access to rights and combat a lack of take-up, particularly among people living in rural areas. In addition, two delegates of the Defender of Rights hold their clinics at two of the France Services information points in the Vendée.

SERVING EVERYONE

The Defender of Rights operates all year round in France's 96 metropolitan departments and 5 overseas departments. The institution's 570 delegates constitute a key local network, working primarily on the practical resolution of the issues faced by the people who come to consult them. They also help to spread recommendations for the institution, through speaking engagements or participation in public events.

The published 2021 annual activity report was widely distributed in the regions. By relying on the network of delegates, the institution has promoted its missions and the help it can provide to people on a daily basis. Nearly 120 articles or reports were counted throughout France in the written press, television or radio, in the form of interviews with the heads of regional divisions or delegates. This high visibility provided a practical means of spotlighting the institution's work in France's departments: the activities and daily life of the delegates, an introduction to the institution's work, examples of referrals and testimonies from claimants, to ensure that the institution is increasingly well-known and increasingly accessible, everywhere in France.

Once again this year, a "Special Day of the Defender of Rights" was organised in December 2022 on the *France Bleu* radio network.

44 spokespersons for the institution (the deputies of the Defender of Rights, the heads of the regional divisions and the delegates) spoke live and simultaneously on all *France Bleu* local stations, in order to present the institution's work and regional network. The operation aims to raise the profile of the Defender of Rights via real-world examples of situations in which anyone can call on the delegates of the Defender of Rights free of charge. Claire Hédon spoke on the national airwaves at the end of this special operation.

Overall, in 2022, the radio presence of the Defender of Rights increased by 43%, from 705 topics referring to the institution in 2021 to 1010 in 2022. 2022 was also marked by a 16% increase in television coverage compared to 2021.

In Reunion, with stakeholders in the accommodation sector

On Reunion Island, the institution operates in each of the four zones of the department (north, south, east and west), enabling it to take part in the meetings of the *Coordination des acteurs de premier accueil* initial assistance organisation, bringing together all representatives of institutions and associations serving people in difficulty: CCAS social action centres, hospitals, social workers from the departmental council, the Red Cross, the *Fondation Abbé Pierre* housing charity, the *Secours catholique* anti-poverty organisation, the *La Cimade* refugee NGO, justice services, regulatory bodies, etc. At each meeting, the institution introduced its missions, its powers, its operating methods, and the locations of its delegate clinics.

Portrait

DOMINIQUE PYTKO & MICHELINE PILOT

Delegates from Northern France
Hauts-de-France Region

Can you tell us how you became delegates of the Defender of Rights?

DP: 2023 marks my 20th year as a delegate. At the time, I was working as a bailiff's clerk, and it was because of an article in the *La Voix du Nord* daily newspaper about the then-Ombudsman of the French Republic, Bernard Stasi, who was looking to increase and extend his network of delegates, that I applied and was appointed in 2003 in Maubeuge.

MP: I applied on the advice of a friend who was already a delegate of the Defender of Rights. At the beginning of 2016, I was appointed to Maubeuge, where I hold clinics at the *Maison de justice et du droit* legal support centre and at the prison centre, and also at the Quiévrechain young offenders' institution, and more recently at the France Services centre in Landrecies.

What are your duties?

DP: I receive claimants at two weekly clinics; they can also contact me via the Internet. I ensure that, where necessary, they provide proof of prior steps they have taken and produce all relevant documents for handling the complaints they submit to me. Alternatively, I give them guidelines on how to achieve this. In addition, I take part in field operations to publicise the work of the Defender of Rights.

MP: In rural areas, access to rights, for the most disadvantaged, requires a means of transport. The opening of a clinic at the France Services centre in Landrecies allowed claimants to contact the Defender of Rights.



How do you see the year 2022?

MP: After the Covid-19 period, there was a need to rebuild social links. Increasing difficulties in contacting government bodies and the dematerialisation of public services have been aggravating factors leading to a feeling of isolation. During my clinics, I try to offer an attentive ear, explaining the situation in a sympathetic way and untangling the difficulties. Human contact is essential as a way of fighting against the feeling of abandonment, especially for rural populations. Claimants need to be listened to, understood and helped with their complaints. I don't promise the impossible; however, I do provide basic help with difficulties.

DP: I am mainly called upon to deal with disputes relating to public services, and I note that claimants are encountering increasing difficulties in contacting government bodies: services that are inaccessible by telephone, difficulties in obtaining appointments, and longer delays in obtaining a response. As a delegate, I maintain good relations with the government bodies that I contact, particularly through the intermediary of officers who work specifically with me, and I obtain detailed answers.



The “Place aux droits!” (“Make Way for Rights!”) event in Strasbourg, from 29 September to 1 October 2022

“PLACE AUX DROITS!” IN STRASBOURG

The fifth edition of the “Place aux droits!” (“Make Way for Rights!”) event took place from 29 September to 1 October 2022 in Strasbourg. More than 1,500 people were welcomed at the stand on Place Kléber, staffed by agents and delegates of the Defender of Rights; providing an opportunity for passers-by to ask questions about their own situations, obtain information about their rights and even contact the institution directly on the spot.

In addition to running the stand, the Defender of Rights and her deputies met with local stakeholders, associations and institutions, students from the Faculty of Law and Political Science, schoolchildren from Schiltigheim, residents of Haute-pierre, prisoners from the Elsau prison, etc.

The event generated publicity for the means of redress offered by the Defender of Rights institution and generated numerous positive outcomes at the local level, such as increased awareness of the regional division and the delegates, improved cooperation with the city, dialogue with the prefecture, and the consolidation of links with associations, particularly in terms of combating discrimination.

An information campaign was run in the regional press and on posters, strongly supported by the municipality through its own channels. A hundred or so posters across the entire Strasbourg bus network, more than 30 screens in Strasbourg railway station and tramway stops, and also advertising spots in the *Les Dernières Nouvelles d'Alsace* publication (120,000 readers), ensured a high profile for the public event at Place Kléber.

Portrait**CAMILLE PEREZ****Head of the Office of the Defender of Rights****What is your background?**

I studied at Sciences Po Paris, then I obtained a master's degree in public law, specialising in human rights, at the University of Nanterre. I started as an adviser to a parliamentary group in the Senate, and then in the National Assembly, before joining the cabinet of a Secretary of State to the Minister of Foreign and European Affairs and then the Minister of the Interior. I went on to work in the Public Affairs directorate of the La Poste group, then at the Lille Town Hall. I joined the Defender of Rights in April 2021.

What are your duties?

The role of the Office is to assist and advise the Defender of Rights in her work. As Head of the Office, I ensure that the team functions smoothly. My duties are very varied in nature, I am the contact person for external stakeholders (non-profit organisations, institutions, elected representatives, etc.), I am in charge of coordinating cross-cutting events such as the Delegates' Convention last year, and I am also in charge of managing projects that involve the whole institution, such as the implementation of a communication system that is accessible to all. Every day, I ensure that the case files for the Defender of Rights satisfy her needs, priorities and expectations. My average day is also largely taken up with emergencies and various requests. A major part of my work is making travel arrangements in conjunction with the regional divisions and the Communications directorate. The Defender of Rights is particularly interested in this area, which enables her to embody and publicise the institution, meet people at the grass-roots level and reap the benefits of meetings and interactions.

“A major part of my work is making travel arrangements in conjunction with the regional divisions and the Communications directorate. The Defender of Rights is particularly interested in this area.”

What's your assessment of the past year?

For me, the year was marked by the 5th edition of the “Place aux droits!” (“Make Way for Rights!”) event in Strasbourg that I was tasked with coordinating with Clémence Neyrat, project manager at the Grand Est regional division, and colleagues at headquarters.

It was a proud moment to see the agents, lawyers and delegates all together in a city square, or in the various meetings that were organised to answer people's questions and promote our institution as a useful means of redress. On the stand, we welcomed more than 1,500 people in two and a half days.

MAKING COMPLIANCE WITH RIGHTS EVER MORE ACCESSIBLE

Legal and administrative matters may seem complex in nature. This observation led the teams of the Defender of Rights to undertake basic measures to clarify the service that the institution can provide to everyone.

To this end, an information campaign was conducted with the aim of showing what help the institution can provide to people facing often complex difficulties. The campaign used a simple, straightforward message to illustrate the sense of failure, deadlock or powerlessness that a person can feel when their rights are not respected. At the centre of the campaign, a video highlighted the solution offered by the Defender of Rights, a means of redress that helps to untangle such situations.

The video spot was broadcast on TV and social networks, and more than 50 million times in local shops. It generated over 6 million views on demand and as targeted TV spots.

The assessment showed that 88% of the people exposed to the campaign found it to be clear and easy to understand, and 85% considered the information provided to be interesting and useful to them.

The institution also encourages consultation with the stakeholders directly concerned by the information it disseminates: non-profit organisations, the public, field workers, etc. This is how tools intended for the elderly, prisoners and Travellers have been designed, all aimed at clarifying how the institution can be approached.

In Limoges, in defence of the rights of Travellers

The Nouvelle-Aquitaine division represented the Defender of Rights at the 15th *Journées nationales de l'accueil et de l'habitat des Gens du voyage* ("National Days for Welcoming and Housing Travellers") in Limoges, in December 2022. Travellers in France continue to face systemic discrimination in all areas of their daily lives: housing in relation to designated settlement sites, accommodation, education, employment, access to health care, etc. This event afforded an opportunity to present the Defender of Rights and its work in promoting travellers' access to their rights.

In the report entitled *Gens du voyage: lever les entraves aux droits* ("Travellers: removing impediments to rights") published in October 2021, the Defender of Rights committed to providing its regional network of delegates with more tools to better respond to the difficulties encountered by travellers, but also to developing, in close collaboration with non-profit organisations, a brochure for Travellers on their rights and possible remedies for asserting them. These tools, which will be introduced from the first quarter of 2023, were previewed in Limoges.

During these national days, the Nouvelle-Aquitaine division and the local regional delegate also ran a stand, and were able to hold discussions with a large number of stakeholders (managers, territorial agents, professionals, etc.), who work with this social group that is often threatened by rights violations.



LISTENING TO THE EXPECTATIONS OF PEOPLE AFFECTED BY INSECURITY AND ITS CONSEQUENCES IN THEIR DAILY LIVES

The discussion seminar held in June on the first results of the *The unique vulnerability resulting from the economic situation: sociological insights for a better understanding of non-discrimination law* study, carried out by a research team from the Université de Grenoble Alpes, opened an initial dialogue with non-profit stakeholders to better identify the reasons underlying the issues impeding the introduction of this discrimination criterion, introduced into the law as the 21st criterion in 2016, and to question the possibility of introducing it more widely.

In addition, as part of the dialogue that the institution conducts with civil society stakeholders, a series of meetings on the rights of people in situations of insecurity was organised between September and November 2022 in order to produce a report on the difficulties encountered on the ground.

This enabled the non-profit organisations to share their expectations of the institution, particularly with regard to the procedures for accessing and following up on referrals, and the institution's various information and discussion forums.

The Defender of Rights highlighted the institution's recent work on simplifying procedures and tools, as well as the need for greater involvement of non-profit organisations and the persons concerned in the preparation of the institution's publications.

The central role played by the regional divisions, which are local stakeholders in the regions, was also emphasised, through the example of an experiment under way in the Pas-de-Calais (mining basin) to combat failure to obtain redress. Finally, these discussions enabled the Defender of Rights to record the establishment of a Committee of Understanding on "insecurity" in 2023 in order to provide a sustainable space for consultation and discussion on this subject.

Portrait

ANAÏS BEAUPRÉS DE MONSALÈS

**Project Manager for Digital
Transformation, General Secretariat**



What is your background?

I completed a Sciences Po preparation course and a Master's degree in criminal law and judicial careers in Bordeaux. In 2018, after passing the competitive examination for Director of Judicial Registry Services, I joined the Ministry of Justice working on the PORTALIS project, a large dematerialisation project for the justice system. I developed digital skills, while maintaining the link with the legal side.

What are your duties?

I joined the Defender of Rights in March 2022 with the task of identifying digital tools to improve cross-functionality within the institution. My job is to implement new digital solutions to improve the work between agents, delegates and the institution's regional divisions. For example, we are adopting a new collaborative working tool – Resana – which features secure data and enables us to co-author documents, work on projects and create surveys. I am also working on improving the business mechanism between headquarters and the delegates, as well as on the complaint form and online complaint tracking system for people who request our assistance.

Digital technology provides useful solutions for an organisation such as the Defender of Rights, which has a very extensive regional network. It makes it easier for lawyers to handle complaints, while the support functions find it easier to access information. Digital technology can't solve all problems, but my job is to make sure that it makes our work easier.

“It makes it easier for lawyers to handle complaints, while the support functions find it easier to access information. Digital technology can't solve all problems, but my job is to make sure that it makes our work easier.”

II· RESTORING THE FULL MEANING OF PUBLIC SERVICE: ACCESS TO RIGHTS AS A PRIORITY

Editorial

DANIEL AGACINSKI

General Delegate for Mediation

REAFFIRMING THE PRIMACY OF RIGHTS

In addition to the new or unusual disputes that are sometimes encountered in mediation, the year 2022 was once again marked by a series of recurring difficulties that led users of public services to turn in ever greater numbers to the Defender of Rights and its regional delegates.

The following pages underline this abundantly: there are so many obstacles to renewing a residence permit, so many housing assistance disruptions due to errors in the data of social organisations, and so many twists and turns in the digital procedures for obtaining “MaPrimeRénov” home energy efficiency assistance!

In each of these situations, we see users being deprived of an entitlement or benefit that should be theirs by right, due to insufficient or inappropriate organisation of the services that should have ensured their delivery.

Last May, the Court of Auditors itself pointed out that, in the prefectures, the job cuts of recent years had not been “realistic”.

Yet they have had very real consequences on the lives of foreign nationals: longer processing times for applications, loss of rights, and professional and social insecurity.

Although the Council of State seems determined to provide a better framework for the dematerialisation of procedures, as shown by its decision of 3 June 2022, some government bodies are continuing to favour the “all-digital” approach, hoping to gain the possibility of reducing staffing levels, but running the risk of users losing access to their rights.

“(…) equal and effective access to public services for all cannot be just another public policy objective: it forms the very basis of what our country owes to each of its inhabitants.”

This is why the Defender of Rights states that access to rights must no longer be an adjustment variable for insufficiently staffed public services.

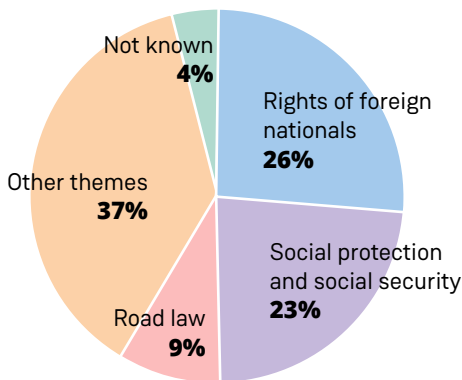
From this point of view, equal and effective access to public services for all cannot be just another public policy objective: it forms the very basis of what our country owes to each of its inhabitants, and the necessary condition for forming a society of citizens living in liberty, equality and fraternity.

This idea, which equates to what the sociologist Robert Castel called “social citizenship”, reminds us of the primal importance of rights: it is in the name of rights that the various public services are established, and it is in line with these rights that their staffing levels and procedures must be defined.

If we claim that rights come first – that they take precedence over responsibilities – we also emphasise that such controls, restrictions and sanctions as administrations are led to introduce are only legitimate insofar as they are necessary for the preservation of rights.

Despite budgetary or organisational pressures, public services must therefore maintain the rights of their users as their guiding compass. For its part, the Defender of Rights will continue to work to ensure that a genuine “culture of rights” is firmly established in all government bodies. And mediation – as a space for dialogue in which the user can be heard – must have a role to play in developing this culture.

Breakdown of complaints received in the area of public services by topic, 2022



Scope: all complaints relating to public services received by the Defender of Rights in 2022 (N = 82,202).

Breakdown of complaints received on public services concerning the rights of foreign nationals by sub-theme, 2022

Residence permit	70%
Family reunification	7%
Naturalisation	5%
Civil status of foreign nationals	2%
Visa	2%
Work permit	1%
Asylum	1%
Other	3%
Not known	9%
Total	100%

Scope: all complaints in the area of public services concerning the rights of foreign nationals received by the Defender of Rights in 2022 (N = 21,666).

Breakdown of complaints received on public services concerning social protection and social security by sub-theme, 2022

Old age pension	23%
Health insurance	17%
Family benefits	16%
Social assistance	12%
Disability	8%
Unemployment insurance	6%
Memberships or contributions	4%
Other	6%
Not known	8%
Total	100%

Scope: all complaints relating to social protection and social security public services received by the Defender of Rights in 2022 (N = 19,151).

Breakdown of complaints received about public services relating to road law by sub-theme, 2022

Driving licence	38%
Appeals against petty offences	17%
Certification of registration	9%
Post-parking fixed penalties (FPSs)	7%
Criminal fixed-penalty fine	4%
Non-receipt of the initial or increased fixed fine	4%
Unregistered transfer certificate	4%
Other	9%
Not known	8%
Total	100%

Scope: all complaints about public services relating to road law received by the Defender of Rights in 2022 (N = 7,324).

1. THE DEMATERIALISATION OF PUBLIC SERVICES: STILL DETRIMENTAL TO USERS' RIGHTS

The “Dématisation des services publics : où en est-on ?” public services dematerialisation report

Three years on from the publication of an initial report on dematerialisation and inequalities in access to public services, in which the Defender of Rights warned about the forced dematerialisation, the Defender of Rights decided to monitor the effects of the dematerialisation of administrative procedures, which has been further accelerated by the Covid-19 pandemic.

To do this, the institution made use not only of its referrals but also on hearings with non-profit organisations that help users, local elected officials, administrations, and users

themselves, particularly young people and those in a situation of digital insecurity.

Published on 15 February 2022, the report stresses that the dematerialisation of public services – which is often accompanied by the closure of local face-to-face services – results in a systematic transfer to the user of tasks and costs that were previously the responsibility of the administration. Users must be equipped, informed and, if necessary, trained to be able to carry out their procedures online and not make mistakes; alternatively, they may find themselves in a situation where they cannot access their rights. In this new report, the Defender of Rights reminded us that dematerialisation should be an additional option and not a substitute for face-to-face services, paper mail or telephone. This implies not only giving each user the choice of how they interact with the administration, but also not making users responsible for any difficulties they encounter. The implementation of an omnichannel contact policy (digital, telephone, mail, counter, etc.) must therefore be improved and accelerated. These findings and new recommendations have been widely shared by the institution in numerous symposia, interviews, working groups, ministerial meetings and parliamentary hearings.

Dematerialisation and protected adults in the Grand-Ouest region

In September, the Bretagne-Pays-de-la-Loire division spoke to management representatives from legal guardianship non-profit organisations that are members of GESTO Grand Ouest de la France, on the issue of the dematerialisation of public services and vulnerable persons, including protected adults in particular. This meeting was an opportunity to present the work of the Defender of Rights in the different territories of the West, as well as the report on the effects of dematerialisation, which includes a section dedicated to the situation of protected adults, people with disabilities, and people with little access to digital technology and living in rural areas.

Portrait

NASSERA BECHROURI

**Policy Officer in the Territorial Action,
Training and Access to Rights for
Young People division**



What is your background?

After my Master's degree in territorial development at the University of Paris-Est Marne-la-Vallée, I joined the *Groupement d'études et de lutte contre les discriminations* (GELD, "Anti-Discrimination Research and Action Group") in 2001, considering the issue of discrimination linked to origin. Later, GELD became HALDE, and then the Defender of Rights.

What are your duties?

Since 2020, I have been Policy Officer for "Public Services and Support to the Regions". I support the regional divisions in their work of promoting equality at the local level. I also contribute to the organisation of informational, awareness-raising and promotional initiatives to promote access to public services. I develop and write analysis notes, introductory information, articles and thematic reports for the institution.

"It makes sense that the work carried out by the Defender of Rights should directly facilitate discussion between those who defend individuals at the regional level."

What's your assessment of the past year?

This year we published a follow-up report, which examines the consequences of the dematerialisation of public services on users' rights, three years on from our first findings. This is because the dematerialisation of procedures is continuing, and we are receiving more and more complaints from people who cannot cope. In this report, we have given a platform to the people concerned; firstly, young people to understand their difficulties with digital technology; but also, people in situations of insecurity. Their stories and suggestions have really helped us in our work. I was also struck by the response to our findings and recommendations: we were able to hold discussions with foreign countries, particularly in the southern Mediterranean, which are facing the same dematerialisation challenges. In France, for example, the municipality of Rennes asked us to come and present the report to their elected representatives and to a group of users meeting in a citizen's forum dedicated to responsible digital technology. It makes sense that the work carried out by the Defender of Rights should directly facilitate discussion between those who defend individuals at regional level.

Becoming a naturalised French citizen: recommendations to ensure that the rights of public service users are upheld

On the basis of numerous complaints received on this subject, the Defender of Rights, on 22 February 2022, issued a report on access to the public naturalisation service, in which she made 18 recommendations to the Minister of the Interior. In this report, the Defender of Rights gives a reminder that access to public services, whether physical or digital, is a right for any person wishing to apply for naturalisation. However, the number of appointments offered for filing such applications is far too low to meet current needs. The introduction of a new platform in some departments, offering the complete dematerialisation of the application process, does not help to curb this phenomenon. Such access issues undermine the principles of continuity of public service and equality of users in the eyes of the public service.

In addition, many referrals have highlighted prefectures' delays in registering the case file once it has been submitted. The Defender of Rights has therefore recommended that an acknowledgement of receipt be issued as soon as the file is submitted and that a receipt be issued within a reasonable time after the file is registered so that the legal investigation period, set at 12 or 18 months depending on the situation, can begin.

Difficulties in making appointments for identity document applicants

Several claimants contacted the Defender of Rights about excessive delays in obtaining an appointment to apply for their identity documents (national identity card and passport), which were causing difficulties in everyday life (birth, registration for a driving licence, opening a bank account, scheduled travel, etc.). In one case, having been able to obtain no appointment in a municipality near his home, the claimant obtained an appointment 200 km from his home in order to submit a claim.

The Defender of Rights contacted the competent authorities (the mayor's office and the prefecture's centre for expertise and identity document resources) in order to shorten waiting times and allow applications to be submitted in a municipality close to the claimants' place of residence. These interventions helped to resolve the situations in question. (RAA-2022-037; RAA-2022-038; RAA-2022-039)

In one case, the town hall also added additional time slots to allow users with a particular urgency or difficulty to obtain an appointment.

The Council of State confirms the recommendations of the Defender of Rights concerning the renewal of national identity cards (NICs) that have expired

In its framework decision MSP-2016-330 of 21 December 2016, the Defender of Rights recommended that the Minister of the Interior remind representatives of the prefecture, mayors and French consular services that they were obliged to issue a new NIC to French nationals requesting the renewal of their permit, upon request, and notwithstanding the fact that their NICs are valid for an additional 5 years under the terms of Decree No. 2013-1188 of 18 December 2013.

In light of the refusal of the Minister of the Interior to follow this recommendation, the Defender of Rights continued to regularly refer the matter to the Ministry to obtain reviews following decisions to refuse to renew a facially expired NIC (Amicable settlements RA-2022-066, RA-2023-002).

The Defender of Rights also submitted observations to the Administrative Court of Strasbourg in connection with a legal appeal. This procedure led the Council of State, in its Decision No. 459599 of 2 December 2022, to uphold the recommendations of the Defender of Rights, ruling that the prefecture could not refuse to renew a facially expired NIC on the grounds that the document had been extended and that the user held a passport.

Portrait

MADELEINE JAYLE

Lawyer at the Justice and
Freedoms division



What is your background?

I joined the Defender of Rights in December 2020, having previously worked as a lawyer in a law firm specialising in the rights of foreign nationals in Lyon. It is a law that is both very technical and very human; the work we do is all about people's stories. This experience taught me that there is no such thing as fate: there's always something you can do to defend the rights of vulnerable people.

"It is a law that is both very technical and very human; the work we do is all about people's stories. This experience taught me that there is no such thing as fate: there's always something you can do to defend the rights of vulnerable people."

What are your duties?

The working groups in which I participated as a lawyer always focused on the work of the Defender of Rights. I thought that working at the Defender of Rights' office was a good match for the way I wanted to defend people: here, you can intervene upstream, through mediation. It's really important for me to know that we can save people from going to court.

As a lawyer, I deal with the complaints submitted to the institution regarding French nationality. When I joined the institution, I worked on failures in the naturalisation procedure, which led to a report published in February 2022.

Indeed, although the decision to grant French nationality to a foreign national falls within the remit of the government body, we found that access to the application process for naturalisation was very difficult. Moreover, once an application is submitted, users sometimes wait several years for a response, without having precise information on the progress of their application. We have made eighteen recommendations for improving access to the public naturalisation service.

I am now dealing more with situations where people are of French nationality but have difficulty proving it and obtaining a certificate of French nationality, or simply their French identity papers. The situations are often very delicate.





The adoption of a Charter on digital transformation

The Defender of Rights, the Children's Defender and the General Delegate for Mediation participated in the 11th Congress of the *Association des ombudsmans et médiateurs de la francophonie* (AOMF, “Association of Francophone Ombudsmen and Mediators”) in Morocco on 17-18 May 2022, bringing together 78 participants from 24 institutions in the French-speaking world.

The meeting, devoted to the theme “Digital transformation and access to rights: a common challenge in the French-speaking world”, provided an opportunity for the ministers to discuss the protection of personal data, access to rights and the guarantee of access to identity for all children.

At the end of the Congress, the AOMF members adopted the Marrakech Charter on the protection of the rights of users of public services in digital matters. Considering that digital transformation is disrupting public service delivery and user relations practices, the ombudsmen make recommendations to the authorities inviting them to implement or update a legal framework that guarantees the fundamental rights of users, such as privacy, the right to access the Internet and computer

tools, with particular attention to the protection of the most vulnerable.

The Defender of Rights in Marseille: a visit dedicated to access to social rights for vulnerable people and the difficulties of dematerialisation

On 24 and 25 February 2022, the Defender of Rights visited Marseille, accompanied by the General Delegate for Mediation, where they discovered initiatives to provide access to rights for the most vulnerable people. They visited the *Château en santé* (“Castle of Health”), a project located in one of the city's northern neighbourhoods, which is developing an approach based on medical consultations that aims to provide care for inhabitants, promote access to care and fight against social inequalities in health.

They also visited the Auberge marseillaise, a former youth hostel (auberge) that has been transformed into a shelter for women, alone or with children, in situations of insecurity. This is run by the city of Marseille, with a multidisciplinary group of non-profit organisations (help for victims of violence, help escaping from prostitution, etc.). Discussions with the participants and the women in the shelters showed the importance of the issue

of housing in accessing rights, but also the need for a comprehensive approach for vulnerable groups due to the many breakdowns in rights they experience (difficulties in accessing health, residence permits, civil status, access to social rights, parenthood, etc.).

“Defending rights entails refusing to accept the erosions and marginalisations that place the most vulnerable people in lawless areas. This requires a constant examination of the phenomena and trends that contribute to such situations.” (Claire Hédon)

The trip was also largely devoted to dematerialisation as an additional obstacle to access to rights for vulnerable and foreign groups. Detailed illustrations of these difficulties were provided to the Defender of Rights during the meal she shared with the inhabitants at the social centre of the Cité de la Viste in the 15th *arrondissement*. Other examples were reported by the delegates of the Defender of Rights of the department of Bouches-du-Rhône, whom Claire Hédon invited to a joint discussion at the Maison de la Justice et du Droit.

To mark this visit, the Defender of Rights and the General Delegate for Mediation presented the *Dématérialisation des services publics : trois ans après, où en est-on ?* three-year retrospective report on dematerialisation in public services, published a few days earlier in the local press, to the Prefect of the Provence-Alpes-Côte d'Azur region, and the Prefect of Bouches-du-Rhône, to whom she gave a special warning on the roll-out of the Digital Administration system for foreign nationals in France, and to the managers of the networks that manage public service points in the priority neighbourhoods of Marseille.

The question of the impact of dematerialisation is a major concern for these structures, not only for the people they serve but also in the daily work of social ombudsmen and support staff.

Ukrainian refugees: what constitutes good practice for welcoming highly vulnerable people?

On 24 March 2022, the Defender of Rights visited the Porte de Versailles reception centre in the 15th *arrondissement* of Paris for people fleeing the war in Ukraine. She praised the comprehensive care provided to these individuals in a single location under the authority of the Prefecture of Île-de-France, including a desk at the Prefecture of Police issuing an immediate temporary 6-month residence permit (APS) with a work permit, an OFII desk providing access to the *allocation pour demandeur d'asile* (ADA, “asylum seeker’s allowance”) with a card and associated code, a CPAM (“health insurance fund”) access point providing instant access to *protection universelle maladie* (PUMa, “universal health protection”), etc. She also praised the quality of the welcome on offer, with a 400-place dormitory for people who are in transit or who cannot access emergency accommodation on the same day, the presence of the *France terre d'asile* asylum office for finding accommodation, taking into account the choices of the person or family, and even a childcare space, allowing parents to focus fully on completing the procedures. This is an example of the welcome that should be afforded to all refugees, regardless of their origins.

During the French presidency of the European Union, the Defender of Rights brought several issues to the European stage in conjunction with her counterparts. She co-organised a conference of the European Network of Ombudsmen with the European Ombudsman, Emily O'Reilly. The European Ombudsmen discussed their role in times of crisis, particularly with regard to the war in Ukraine and the initiatives they have taken to help refugees. The Defender of Rights pointed out that all foreign nationals must be welcomed in accordance with their fundamental rights. She stressed that the help of the Defender of Rights can be enlisted to ensure that their rights are effectively exercised. A flyer introducing the institution and the means of accessing it was made available in places hosting Ukrainian refugees.

2- ADMINISTRATIVE FAILURES AND PRACTICES THAT CAN BE COSTLY FOR USERS

Failures in the “MaPrimeRénov” home energy efficiency scheme

Since the introduction of the MaPrimeRénov’ home energy efficiency scheme in 2020, the Defender of Rights has received over 500 complaints. Its staff contacted the *Agence nationale de l’habitat* (ANAH, “national housing agency”) about these individual situations and noted numerous problems in the processing of applications, such as technical problems affecting the platform, lack of information, processing times and difficulties linked to the total dematerialisation of the procedure, which had significant consequences for users, forcing them to go through the winter without heating in some cases, to take out loans in others, or to lose the right to claim the aid as a result of failure to follow the procedure.

Given these violations of users' rights, the Defender of Rights recommended that ANAH:

- implement measures to resolve the technical difficulties affecting its platform once and for all;
- reduce the time taken to process cases involving difficulties;
- improve the information provided to users and the sharing of supporting decision-making criteria;
- contact its supervisory ministries in order to set up a channel for submitting applications in addition to the dematerialised procedure;
- correct issues with all aid applications that were unsuccessful due to difficulties attributable to the implementation of the system, such as technical malfunctions, delays in processing files or failure to take into account tax relief notices.

Following the publication of this decision, more than 700 additional complaints were received by the institution (as of 1 February 2023).

Given the risk that common situations of failure to uphold rights may become trivialised, these small daily obstructions to people's rights, faced with the lack of obviously thorny issues, can result in an accumulation of various obstacles over the course of life, at any age, in any type of process. The Defender of Rights staff strive to enable as many people as possible to identify situations in which the institution can provide them with answers and a means of redress they may not even have known was available.

Without a boiler in mid-winter

An elderly woman wanted to obtain the MaPrimeRénov’ energy scheme bonus for changing her boiler. She then created an account on the ANAH website but, despite several attempts and exchanges with ANAH staff, she did not manage to fill in her application and, in particular, to submit her estimate in order to complete the process.

Her boiler stopped working, and she was left without hot water and heating in the middle of winter. She therefore decided to go ahead with the work before receiving ANAH's response, which in principle rendered her ineligible for MaPrimeRénov’.

The Defender of Rights then referred the matter to ANAH so that the technical problems encountered by the claimant could be considered. After several exchanges with ANAH staff, they cancelled the first application in order to create a new case file, thus enabling the assistance payment to be made.

Portrait

LAURENCE MARQUETTY

Legal Officer in the Public Services division



What is your background?

I started as a lawyer in a Parisian law firm specialising in public law and competition law. As part of this work, I had to deal with a case in which my client had also referred the matter to the Defender of Rights, whose quality of legal analysis aroused my interest. When I saw a job offer in the Public Services Department of the Defender of Rights, I decided to apply and, as it turned out, I ended up replacing the lawyer who had worked on my client's case.

"...progress has already been made, such as the handling of corrective tax notices, better information for users on the scheme and the creation of a specific unit within ANAH to address people's issues."

What's your assessment of the past year?

As a lawyer, I deal with complaints about users' difficulties in accessing public services, and in particular their access to public aid such as the conversion premium for low-polluting vehicles or the Covid solidarity fund for companies.

This year, MaPrimeRénov' case files have made up a large part of my work. This benefit was introduced in 2020, and is intended to help households finance their energy renovations. It is accessible exclusively online, but there have been major technical problems with the site. This has led to very problematic situations for many families: some were forced to have their work done before obtaining prior approval from the *Agence nationale de l'habitat* (ANAH) housing agency,

thus depriving them of aid; others waited, but that meant they had to spend the winter in conditions of energy insecurity; still others had to cope with long delays in processing their applications, which put them in a weakened economic position. In two years, we have had to deal with about 500 applications of this kind. We have systematically referred each individual situation to ANAH – the body responsible for the scheme – and have issued a decision to recommend improvements to the scheme. We still receive applications that are now handled by the regional delegates, but progress has already been made, such as the handling of corrective tax notices, better information for users on the scheme and the creation of a specific unit within ANAH to address people's issues.



The invoicing of co-payments for the costs of interventions by mobile emergency and resuscitation organisations (SMURs)

The Defender of Rights was contacted by several patients who contested the invoicing of a co-payment for their share of the costs of SMUR interventions relating to transport between their home and the hospital.

According to the hospitals concerned, the legality of the receipts was based on the order of the tariffs for services issued by the Director General of the *Agence régionale de santé* (ARS, “Regional Health Agency”), which is competent in accordance with the Public Health Code and Article 4 of Decree 2009-213 of 23 February 2009.

The Defender of Rights drew the attention of the Ministry of Health and Prevention to this billing practice, which she considers to be contrary to the applicable law. Since then, this position has been confirmed by the administrative and judicial courts and the provision of the aforementioned decree concerning charges for SMUR interventions has been repealed.

The Minister of Health and Prevention informed the Defender of Rights that he had asked the relevant ARS offices to contact the hospitals so that they could cancel the receipts and reimburse any sums already received.

The claimants informed the Defender of Rights that the hospital treasuries had cancelled their bill and that they had been reimbursed ([RA-2022-065](#)).

Road traffic offences: common mistakes involving personal identity

A woman received a notice of seizure of assets by a third party for traffic offences in the amount of EUR 8,000, without having been previously the recipient of any notice of an offence. Believing that she had been a victim of identity theft, she filed a complaint and an appeal with the Crime Processing Centre. These went unanswered.

When she received a bailiff's notice, she turned to the Defender of Rights. The delegate in charge of the case then intervened with the public prosecutor, the bailiff's office, but also with the automated fines collection department, which replied, by telephone, that this was indeed a case of mistaken identity and that the procedure against the claimant would be cancelled.

This case was a partial success: the seizure by bailiff was avoided, but neither the victim nor the Defender of Rights received an official written response from the administration. Unfortunately, this type of error is still all too frequent, with the government body sometimes failing to acknowledge its responsibility for failures in the system.

Overpayments described as fraudulent, often without proof or respect for the statute of limitations

In line with the previous [report](#) on fraud, the Defender of Rights continues to receive complaints about undue payments described as fraudulent by Social Security organisations, without really demonstrating intention and without adhering to the statute of limitations, as the funds recover all the undue payments.

For example, a claimant received a notification of overpayment of the *revenu de solidarité active* (RSA, “social welfare benefit”) in the amount of EUR 10,515, which was described as fraudulent by the local authority due to alleged false declarations.

On appeal, the criminal court found that the charges did not appear to have been made during a certain period, and were time-barred for the earlier period.

For the period not barred by the statute of limitations, the local authority indicated that it intended to persist in collecting its debt, the balance of which now amounted to EUR 4,835.

The claimant, who considered that the court decision of the criminal court prohibited further recovery of the overpayment, sought the help of the Defender of Rights through her lawyer.

Considering that the provisions of the judgement, both in respect of the public and civil action, had the effect of annulling the overpayment and prohibiting its recovery by virtue of the principle of *res judicata* in criminal proceedings, the services of the Defender of Rights wrote to the local authority.

In accordance with the opinion of the Defender of Rights, the local authority cancelled the RSA overpayment in the amount of EUR 10,515, and the sums already paid were returned by the local authority.

The supplement to the *Allocation aux adultes handicapés (AAH, “disabled adults allowance”)*: a misinterpretation of the texts that is detrimental to the beneficiaries

The Defender of Rights was notified of a complaint concerning the cancellation of the payment of the income supplement by the *Caisse d’allocations familiales* (CAF, “family allowance fund”), a benefit that the person concerned received in addition to the disabled adults’ allowance. This cancellation took effect when the claimant reached statutory retirement age, as the CAF wrongly deemed that the income supplement could no longer be paid after that age.

The interpretation of the legislation applicable to this situation, supported by the case law of the Court of Cassation dated 19 September 2019 (Appeal No. 18-17.817) prompted the Defender of Rights staff to ask the CAF to reinstate the income supplement, retroactively from its cancellation in July 2021.

The Defender of Rights noted that the erroneous interpretation of the legislation by the CAF was the result of instructions from

the *Caisse nationale d’allocations familiales* (CNAF, “National Family Allowance Fund”). The CNAF was therefore asked to review its instructions to bring them into line with the applicable texts, as interpreted by the Court of Cassation.

Defender of Rights staff also alerted the ministry responsible for the family allowance funds – and more specifically the *Direction générale de la cohésion sociale* (DGCS, “General Directorate for Social Cohesion”) – to this situation.

On 11 March 2022, the DGCS issued an instruction asking the bodies responsible for paying the income supplement to maintain it in cases where the recipient continues to receive the AAH in addition to his or her old-age pension(s), provided that he or she continues to meet the other conditions for its payment.

The same instruction provides for the option, for persons affected by a cancellation of the income supplement in cases where they should have continued to receive it, of receiving a reminder under conditions that remain to be defined.

In this case, the CAF complied with the Defender of Rights’ request, reinstating the payment of the income supplement to the claimant, retroactively, as of July 2021.

Pensioners living abroad: pension funds sometimes require documents that are contrary to legal and supra-legal provisions

The Defender of Rights was contacted by a claimant living in Spain who, since October 2019, had no longer been receiving her retirement pension on the grounds that her life certificate, which allows the administrations to verify that a user had not died, had not been sent to the *Caisse d’assurance retraite et de la santé au travail* (CARSAT, “retirement insurance and occupational health fund”) regional fund.

The claimant had, however, sent her identity document, her life certificate, a bank statement and a copy of her birth certificate, produced by the Spanish civil registry office; the fund had requested a certificate of

existence with a statement of her complete civil status, produced and authenticated by the French Consulate or Embassy in her country of residence.

Alternatively, it was proposed that she should send the original medical certificate mentioning his or her full civil status to act as a life certificate, the original birth certificate with annotations dating back less than 3 months and a copy of his or her valid national identity card, all of these documents to be translated by a sworn translator.

The request to produce a life certificate issued and authenticated by the French Consulate or Embassy appears to be contrary to Regulation No. 2016/1191 of the European Parliament and of the Council of 6 July 2016.

The Defender of Rights also pointed out, with regard to the requirement to present a certificate of existence issued by the French authorities, that the Court of Justice of the European Union, in its Judgement of 2 December 1997, stated that *“the administrative and judicial authorities of a Member State are obliged to recognise certificates and similar documents relating to the state of persons issued by the competent authorities of other Member States, unless their accuracy is seriously undermined by concrete evidence relating to the individual case in question”*.

The case file was corrected by CARSAT with the payment of the personal pension and the national solidarity fund for a total amount of EUR 8,793.

Right to information on pensions: not enough is being done

The Defender of Rights is regularly contacted by people who have difficulties in discovering their pension rights. For example, it received a complaint about the disputed pension rights of a self-employed person who had not been informed of the consequences of failure to pay contributions in good time. The basic pension contributions paid late by the person concerned, more than five years after their due date, had not been taken into account for the calculation of his pension.

The Defender of Rights considered that such a sanction was excessively detrimental to the financial interest of the individual right to a pension, protected by Article 1 of the First Additional Protocol to the European Convention on Human Rights, and submitted observations to the Court of Cassation.

In a judgement dated 2 June 2022 (Appeal No. 21-16.072), the Court of Cassation followed this reasoning and considered that *“this provision, insofar as it excludes any consideration, for the calculation of the basic retirement pension, of contributions paid more than five years after their due date, constitutes an interference with the property rights of insured persons affiliated to this scheme by affecting the substance of their pension rights”*. It therefore ruled that the disputed article should not apply.

In another similar complaint, the Defender of Rights considered that the complainant was not responsible for the late payment of contributions because she had correctly stated her annual income within the required period and the fund had failed to perform its task of calculating and calling for contributions corresponding to the declared income.

In response, the fund's mediator agreed to lift the statute of limitations on the acquisition of points for the year in question.

The claimant was thus able to acquire basic pension points in return for payment of the contributions corresponding to the income she had declared for the year in question.



Retirement in the civil service: ongoing difficulties

Many public servants encounter difficulties in liquidating their pensions, which the Defender of Rights often manages to resolve by mediating between the various stakeholders involved (former employers and multiple pension funds, both main and supplementary). Interventions in the cases of “polypensioners” – those who have contributed to several different pension funds and schemes during their career – are particularly representative of this role, which makes it possible to work through the legal consequences of situations of accepted fact.

For example, an administrator-general working in the sector of organisations linked to the Covid health crisis within a ministry, with multiple pensions under the general scheme, had taken steps to liquidate her pension on 1 January 2021. Due to a resurgence of the Covid-19 epidemic, which caused an increased workload for her department, she asked her ministry to postpone her retirement, and her request was granted. She had thus been in office for an additional quarter.

Wanting this period to be taken into account in the calculation of her civil service pension, she was initially refused by the state pension service, which requested notification of a new retirement date from the general scheme. However, as the pension under the general scheme was liquidated on 1 January 2021 and the interested party, due to the unpredictability of the circumstances, had not been able to contest this date in good time, the principle of the intangibility of liquidated pensions was invoked against her.

However, the general scheme, noting at the same time that she had not stopped working on 1 January and had continued to receive her civil service salary, notified her of a pension overpayment, which she reimbursed.

Following a request for review by the Defender of Rights, given the unforeseeable and exceptional service requirements under which the claimant had been required to continue her activity and her reimbursement of the overpayment, the State pension service, within a very short time, agreed to accept this period of employment and issued a new pension certificate taking into account the last quarter worked, as a result of the excess pension.

Breach of rights before retirement: conflicting interpretations, a cost for the people concerned

The Defender of Rights dealt with the situation of a claimant, aged 62, a job seeker, who was likely to assert her rights to retirement under the general scheme, at the full rate, once she had accumulated 167 confirmed quarters as of 1 October 2021, for an effective retirement on 1 January 2022. But she had spent part of her career in Germany and the number of quarters used to calculate the amount of her pension and the date of her retirement differ depending on whether one refers to national or European regulations. The *Pôle emploi* government employment agency suspended the payment of her back-to-work allowance until her retirement file was approved by CARSAT.

This was when she called on the Defender of Rights in search of a way out of this problem. The delegate intervened with CARSAT and *Pôle emploi* to sort out the contradictory interpretations of the claimant's rights.

Her action led to a successful outcome to this confusing situation: the claimant obtained the reinstatement of her rights to the return-to-work allowance, for a period of 803 days, but also the payment of a back-payment in the amount of EUR 1,335.

The opinion of the Defender of Rights to the Parliament on social and pension schemes

In relation to the draft finance law for 2023, the Defender of Rights was interviewed by the rapporteur for the judgement of the Social Affairs Committee of the National Assembly on the credits of the “social and pension schemes” programme.

She pointed out that the right to information on retirement should enable all insured persons to have, throughout their career and when preparing for retirement, a consolidated view of their vested interests and an assessment of the future amount of their pensions. However, the complaints handled by the institution raise questions over the effectiveness of this right.

Insured persons encounter difficulties related to the lack of clarity of the legislative provisions and the complexity of the calculations made; in short, the knowledge and understanding of the rights they have. This is even more true for people with little access to the law and for people in insecure situations.

Moreover, in Opinion No. 21-05 of 21 October 2022, the Defender of Rights pointed out the need to offer users the option of a meaningful choice of how they interact with administrations and pension organisations. Although the development of digital technology in the implementation of the right to information is essential, many obstacles to accessing information online emerge from the institution's referrals.

The vital need for training trainers in the field of social work to provide better synergy between stakeholders on the ground

Under a partnership with the *Union nationale des acteurs de formation et de recherche en travail social* (UNAFORIS) national social work training organisation, and following the 2020 publication of its Practical Guide for social workers, the Defender of Rights has designed a hybrid training course combining an “e-learning” module with “face-to-face” time. This training is intended for trainers working in social worker training institutes, enabling them to understand the work and powers of the institution and to incorporate them into their own training module. The 5-hour module, which is available on the Defender of Rights website, provides knowledge structured around a base of regulatory documents, supplemented by numerous examples of situations received, as well as testimonies from stakeholders in the field, working in the social sphere. These future trainers can thus understand the complementary nature of the responses provided by the Defender of Rights and social workers to users on a daily basis. The second three-hour face-to-face session enables the co-construction of structured educational modules to answer the question:

in practical terms, how can a social worker rely on the Defender of Rights?

A first face-to-face session took place in December 2022 in the Île-de-France region. A review will be carried out in the first half of 2023, and will precede the roll-out of the training to other regions.

The employer's certificate for obtaining the return-to-work allowance

In order to obtain payment of a claimant's return-to-work allowance, the *Pôle emploi* government employment agency requested an employer's certificate, but the claimant's employer had died. He had no heirs, and no estate had been registered with a notary. No one was therefore able to provide the requested certificate.

Faced with this situation, the claimant decided to refer the matter to the Defender of Rights. The delegate then invited her to write a preliminary appeal to the local *Pôle emploi* branch. However, more than a month later, no action had been taken on this appeal.

This was when the delegate approached *Pôle emploi*. At the end of the mediation process, the agency asked the claimant instead to produce a basic death certificate for the employer. Forty-eight hours after the document was sent, the claimant received a positive response to her application for benefit, and will also be entitled to training paid for by *Pôle emploi*.

3- FACILITATING DIALOGUE BETWEEN USERS AND MUNICIPALITIES

Report on relations between the Defender of Rights and town halls

Enrolling a child in school or with a school cafeteria service, renting a municipal hall for a birthday party, building a house or installing a veranda, accessing pavements as a wheelchair user, taking household waste to collection points, accessing drinking water, burying a relative, etc. are all areas in which the Defender of Rights can help users to resolve disputes with local authorities through mediation.

With its 570 territorial delegates throughout metropolitan and overseas France, the Defender of Rights is a facilitator of dialogue, providing legal support and explanations to the parties involved in a difficulty or conflict. The Defender of Rights acts as an independent and impartial third party, drawing on a detailed knowledge of local realities and the obligations to which municipalities are subject.

It seeks to settle disputes between mayors and residents amicably, in order to prevent situations from escalating and causing a lasting deterioration in relationships that contribute greatly to the life of the neighbourhoods and municipalities concerned. Through the resolution of disputes through dialogue, elected officials and residents can become aware of the difficulties faced by the other party and the options for compromise in order to reconcile the interests of all, ease tensions and protect rights and freedoms.

Portrait**PIERRE AURIEL**

Adviser to the Directorate for the Protection of Rights - Public Affairs

**What is your background?**

In 2019, I defended my thesis in public law at the University of Paris Panthéon-Assas on *the equivalence of fundamental rights protections in the European Union*, with a particular focus on the Dublin III Regulation and the right to asylum, before conducting a research project in philosophy of law at Lyon's Université Jean Moulin. At the same time, I was a volunteer at the *Secours catholique* anti-poverty organisation, where I trained other volunteers, and also trained asylum seekers on how to apply for asylum. In 2020, I became an assessor for two years at the *Cour nationale du droit d'asile* ("National Court of Asylum Law"), and in July 2022 I joined the Defender of Rights as an adviser in its Protection of Rights - Public Affairs directorate, reporting to the director.

"Mayors are key agents in the defence of people's rights; we believe it is important that they understand our role and our work..."

What are your duties?

As an adviser, I have quite a wide range of duties: I work on both appraisal cases and the department's working methods, as well as on analyses of projects or legislative proposals, for example. I am also required to work closely with my colleagues to identify emerging issues in our cases and plan collective work with working groups if necessary. No two days are alike, and that's quite refreshing!

What's your assessment of the past year?

This year, I was particularly involved in the report produced for mayors on *Resolving everyday disputes in municipalities: the path of mediation*. The aim of this work was to clarify complex legal issues, such as funeral law or town planning law, with are things that local elected representatives are confronted with on a daily basis. Mayors are key agents in the defence of people's rights; we believe it is important that they understand our role and our work so that we can work together to improve how services operate for inhabitants.

What projects are planned for 2023?

In 2023, we are looking at issues of inclusive public space, including the role of vulnerable people within it. This implies a variety of discussion points, in particular concerning the issues of cohabitation, but also the question of territorial disparities and their consequences on and in the public space as a place where rights become a practical reality.

Finding the way back to dialogue with a mayor: the pivotal role played by Defender of Rights delegates

A telling case: a couple's farm and home are served by a tarmac road, but it is in extremely poor condition, which affects both their family life and their business as dairy farmers. Attempts at dialogue with the municipality were unsuccessful, so the couple decided to contact the Defender of Rights.

The Defender of Rights delegate sent a letter to the mayor of the municipality and obtained a rapid and constructive response: the mayor suggested a meeting with the farming couple, attended by the delegate.

During the discussion – despite the fact that the maintenance of communal roads is part of the municipality's mandatory expenditure – the mayor emphasised the difficulty of requiring the whole community to bear the financial burden of the repair work of this road which serves only one family. However, he undertook to have a quotation drawn up and submit it to his municipal council when it votes on the 2023 budget. For their part, the couple also committed to providing a private route for tractors and large vehicles on the farm to spare the new surface.

The mediation work by the delegate made it possible to establish dialogue between the two parties and find a positive outcome to the dispute.

Access to the school canteen: an example of mediation

Delegates regularly intervene in school-related situations. For example, a pupil in the fifth grade, who has attention deficit disorder with a slight tendency to be aggressive, became upset during a meal when the dining room was changed. After a first warning, he was permanently excluded from the school canteen.

The child's mother challenged this decision, and referred the matter to the Defender of Rights.

The delegate contacted the local mayor to discuss the dispute. He asked to see the school's internal rules, and was particularly interested in the provisions concerning the dining area.

On reading these rules, the delegate observed provisions that seemed to him to be contrary to law and irregularities in the implementation of the disciplinary procedure. He informed the mayor of these wording and implementation anomalies. At the end of this constructive exchange, the mayor acknowledged that he had taken a decision too quickly, due to a lack of knowledge of the legal framework and the purely “mechanical” application of legislation adopted by his predecessor without any deliberation by the municipal council.

Two days later, the pupil was once again allowed to access the school catering area.

In light of the issues raised by the delegate, the municipality also undertook to draw up and adopt internal regulations in line with the law, and to improving disciplinary procedures.

Entitled to vote?

The Defender of Rights was informed of the case of a resident who was unable to exercise his right to vote in the first round of the presidential elections, because the driving licence he had presented at the polling station as identification was deemed to be invalid by the mayor of the municipality.

The delegate of the Defender of Rights contacted the mayor for information about the reasons for the refusal. After some discussion, the mayor acknowledged the error, which was due to a misinterpretation of the regulatory framework determining the documents required to prove identity. He apologised and promised that the claimant would be allowed to vote without difficulty in the second round of the presidential election – which is what in fact happened.



Opinion on the bill on “combating illegal occupation”

In two notices of 25 November 2022 and January 2023, the Defender of Rights expressed her strong criticism of the bill on combating illegal occupation, which was discussed in the National Assembly in December 2022.

Despite the residual nature of occupation without right or title or unpaid rent, the planned reform aims to implement enhanced measures against these two phenomena. Firstly, by increasing penalties for occupations without right or title and by facilitating the implementation of the derogatory administrative eviction procedure of article 38 of the DALO (“right to decent housing”) law. Secondly, by facilitating the eviction of tenants who can no longer pay their rent by reducing the procedural guarantees intended to rebalance tenant/landlord relations.

The Defender of Rights is of the view that such proposals place worrying restrictions on the fundamental rights of the occupants.

Occupants without right or title have the right to respect for private and family life and the inviolability of their home. Any policy to combat illegal occupation must successfully uphold these rights by reconciling them with the public interest and the rights of others.

In addition, procedural safeguards to ensure that the right to privacy of tenants experiencing difficulties in paying their rent is taken into account are diminished. Facilitating evictions of tenants also limits the extent to which judges can take the threats to their dignity into account.

The Defender of Rights is therefore of the opinion that further criminalising unlawful occupation or relaxing eviction procedures due to unpaid rent is neither necessary nor proportionate, since more effective measures exist to protect the right to property that are less intrusive on fundamental rights and freedoms.

Focus

ALERT ON THE EROSION OF FOREIGN NATIONALS' FUNDAMENTAL RIGHTS

Access to the rights of foreign nationals: increasing action in the face of a particularly deficient public service

Over the past four years, the institution has been faced with a considerable increase in the number of complaints relating to foreign nationals' fundamental rights. From 6,540 in 2019, this has risen to 21,666 in 2022: an increase of 231%. In fact, this increase even rises to 450% in the Île-de-France region, while over the same period the overall number of complaints received by the institution has increased by 33%.

In 2022, almost one in four complaints (24%) related to the law on foreign nationals, which makes it the main reason for referral to the institution.

These figures show a significant deterioration in the public service for foreign nationals in France. They should be seen in the context of a trend which has seen the ongoing dematerialisation of prefectural offices over several years, firstly with the introduction of online appointment booking modules, then the development of the "simplified procedures" platform, which enables the entire application for a residence permit to be submitted online, and finally with the development, under the aegis of the Ministry of the Interior, of the national *Administration numérique des étrangers en France* (ANEF, "Digital administration of foreign nationals in France") system. Today, these three forms of dematerialisation coexist, and all result in rights violations.

In 2022, the institution not only continued to receive a large number of complaints from foreign nationals who were unable to obtain an appointment to file a first application for

Change in the number of complaints about the rights of foreign nationals received by the Defender of Rights, from persons residing in Île-de-France, 2019-2022

	2019	2022	Change
75 · Paris	372	1,816	+ 388%
77 · Seine-et-Marne	198	677	+ 242%
78 · Yvelines	91	1,079	+ 1,086%
91 · Essonne	183	959	+ 424%
92 · Hauts-de-Seine	344	2,289	+ 565%
93 · Seine-S ^t -Denis	422	1,282	+ 204%
94 · Val-de-Marne	287	2,530	+ 782%
95 · Val-d'Oise	143	588	+ 311%
Île-de-France	2,040	11,220	+ 450%

Note: The number of complaints received concerning the rights of foreign nationals from persons residing in Île-de-France increased by 450% between 2019 and 2022.

Change in the proportion of complaints concerning the rights of foreign nationals received by the Defender of Rights from persons residing in Île-de-France, 2019-2022

	2019	2022
75 Paris	10%	30%
77 Seine-et-Marne	11%	27%
78 · Yvelines	6%	44%
91 · Essonne	15%	45%
92 · Hauts-de-Seine	17%	52%
93 · Seine-S ^t -Denis	18%	37%
94 · Val-de-Marne	19%	65%
95 · Val-d'Oise	12%	35%
Île-de-France	13%	42%

Note: in 2022, 42% of complaints received from persons residing in Île-de-France concerned the rights of foreign nationals, compared with 13% in 2019.

a residence permit at the prefecture, but also faced a significant and worrying increase in complaints from foreign nationals with the right to stay who were encountering difficulties in renewing their permit, whether due to the inability to make an appointment online, technical malfunctions encountered on the new platforms or, more generally, particularly excessive processing times. As a result of these difficulties, more and more foreign nationals who have been residing legally in France for many years are experiencing a breakdown in their rights (loss of employment, social rights, etc.) and, as a result of an administrative malfunction, are finding themselves in illegal residency situations, with serious consequences in terms of insecurity.

While such infringements lead to mass litigation before the administrative courts, the daily work of the Defender of Rights in support of foreign nationals is primarily carried out in the form of mediation. In this way, the delegates of the Defender of Rights and its central services are succeeding in restoring the rights of many users. In 2022, for example, 76% of the attempts at amicable settlement of the dispute made by the department in charge of initial analysis of complaints were successful. In some departments, however, the staff of the Defender of Rights - and in particular its territorial delegates - have observed a deterioration in the quality of their interactions with government bodies, with some prefectures having virtually ceased to respond to their interventions.

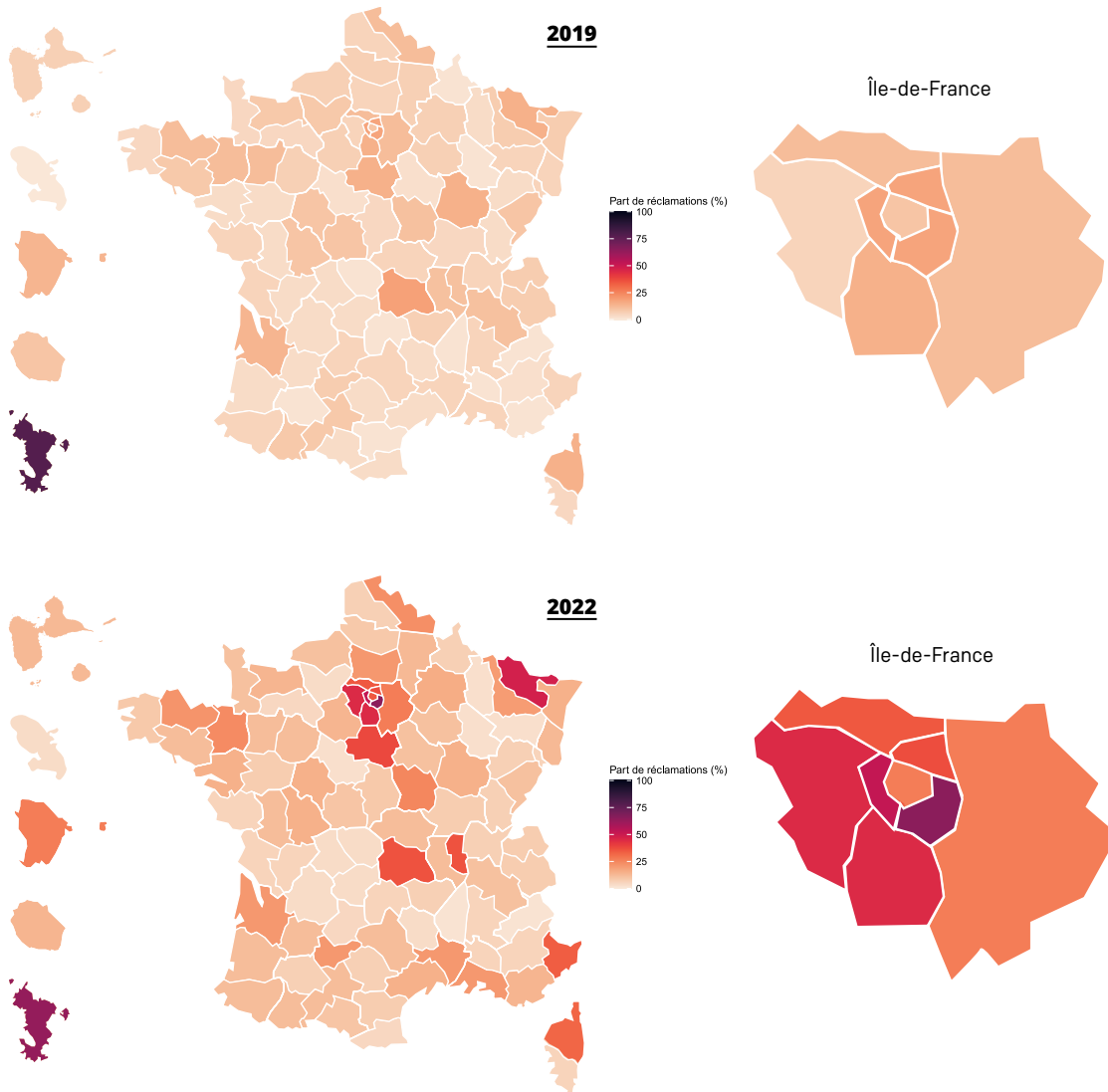
In order to restore inter-institutional dialogue, the Defender of Rights, together with the General Delegate for Mediation, therefore undertook to meet with the fifteen or so prefectures for which the institution records a large number of referrals, with the aim of identifying the most appropriate channels of communication and redefining effective intervention methods, taking the local context into account.

Through its day-to-day work handling individual complaints, the Defender of Rights has been able to draw up a comprehensive picture of the shortcomings of the services responsible for welcoming foreign nationals. The institution has regularly reported its findings to the public authorities. In Decision No. 2020-142 of 10 July 2020, it made recommendations to the Minister of the Interior for action to be taken at national level. The Defender of Rights has also made several interventions to parliamentarians. In 2022, for example, it published two opinions following its hearings by the rapporteurs for an opinion by the National Assembly's law commission, concerning the "General and territorial administration of the State" and "Immigration, asylum and integration" missions of the budget bill for 2023 (Opinion 22-03 of 4 October 2022 and 22-04 of 6 October 2022).

Finally, in response to a request for an opinion from the Council of State, the Commission presented observations in relation to the litigation brought against legislation requiring foreign nationals to use the ANEF system to carry out certain procedures (Decision 2022-061 of 24 February 2022). Passing on the findings of her teams in the field, the Defender of Rights emphasised that the online service, in its compulsory form and without a non-dematerialised alternative, was a serious infringement of rights.

In a decision of 3 June 2022, the Council of State ruled that the administration was entitled to make the use of the ANEF system mandatory, but on condition that the administrative authorities provide not only support for foreign nationals with little digital access but also an alternative solution for any user who is permanently blocked from using the online service. This decision, which is in line with the stance adopted by the Defender of Rights, constitutes significant progress for foreign users. In addition, the Defender of Rights continues to recommend that users should be free to choose their channel of referral to the administration (see in particular: Dématérialisation des services publics : trois ans après, où en est-on ?, February 2022).

Proportion of complaints concerning the rights of foreign nationals by department, whole of France, 2019-2022



The Defender of Rights visits Briançon

Alerted by non-profit organisations to violations of the rights of persons exiled at the French-Italian border, and of unaccompanied minors in particular, the Defender of Rights visited Briançon on 10 and 11 February.

Accompanied by the institution's lawyers, she took part in a night patrol in the mountains and visited the *Refuge Solidaire* migrant association facility, where she was able to talk

to the people housed there and the non-profit organisations of the Briançon area.

She also visited the Border Police premises in Montgenèvre. Lastly, she had a meeting with the Prefect, the State services and the department of Les Hautes-Alpes. The Defender of Rights has been investigating the complaints submitted to it since then.

III· COMBATING THE STATUS QUO AND ACCUMULATIONS OF DISCRIMINATIONS

Editorial

GEORGE PAU-LANGEVIN

Deputy to the Defender of Rights in charge of combating discrimination and promoting equality

INCREASING OUR ANTI-DISCRIMINATION WORK

The year 2022 was active in the field of combating discrimination and promoting equality; these sectors were no doubt boosted by the introduction of the [Antidiscriminations.fr](https://antidiscriminations.fr) platform and the 39 28 phone line.

After two years of lockdown, limiting our ability to travel, the year 2022 has instead seen numerous grass-roots visits: Clermont-Ferrand, Mulhouse, Meun-sur-Yèvre, Toulouse, Strasbourg, Montpellier, Dijon, Grenoble, and even Fort-de-France and Pointe-à-Pitre.

These assignments, at the invitation of the regional heads of division and partners, provided an opportunity to discuss these issues in a way that enabled them to be incorporated into the delegates' usual activities and be seen as less of a burden.

During this year, discussions with non-profit organisations were intense and fruitful, both within the regular Committees of Understanding and during specific bilateral meetings. This was the case with non-profit organisations specialising in disability – such

as the *Fédération Nationale des Sourds de France* deafness association, APAJ, Cemaforre and France Dys – with those concerned with discrimination based on origin, such as *Maison des Potes*, Achac, AFMD, MRAP, and also those dealing with age-related issues, such as Old'up.

“(…) our priorities in the fight against discrimination will be in two areas: firstly, the consideration and analysis of the cases submitted to us; and secondly, an ongoing effort to raise the awareness of our partners and the authorities.”

Relations with stakeholders such as the Grenoble Law Faculty, the Dijon *Conseil Départemental de l'Accès au Droits* (CDAD, “departmental council for access to rights”), the *Mémorial de Caen* (Caen Memorial museum) and the *Comités opérationnels de la lutte contre le racisme, l'antisémitisme et la haine anti-LGBT* (CORAH, “Operational Committees for the fight against racism, anti-Semitism and anti-LGBT hatred”), are clearly dynamic and well maintained by our local teams. We are also very attentive to regular work with national institutions such as the CNCDH human rights organisation, the *Haut Conseil à l'égalité entre les femmes et les hommes* (“High Council for Gender Equality”), the CNCGDV national consultation committee for Gypsies and Travellers, the ARCOM

audiovisual and digital regulator – which is very active in the area of online hate issues – and the ILO for its annual Barometer on the perception of discrimination.

However, in order to avoid disappointment, it should be remembered that not all unequal treatment, although painful, is necessarily discriminatory.

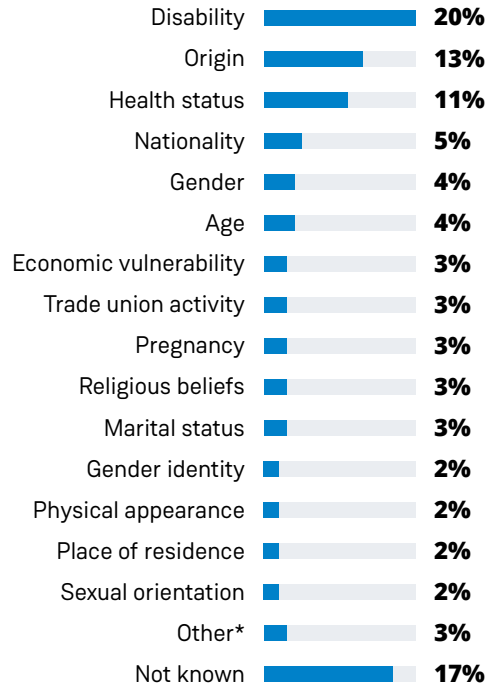
It must occur in an area provided for by law, such as employment or housing, or on grounds prohibited by law, such as physical appearance, ethnicity, religion, disability, sexual orientation or one of the other specified criteria. The Defender of Rights takes action to combat discrimination, sometimes by mediation or by investigating cases and making recommendations or observations in court; in addition, claimants can always bring a case before a court.

Such legal constraints and therefore the closure of a case, even with a reprimand, may not be enthusiastically received by people who have already been harmed by abuse or unequal treatment. Indeed, once the facts have been established – which is an essential first step – our teams try wherever possible to give the right assessment and the appropriate follow-up, but sometimes the conditions are not met and they are obliged to note that they cannot go further. Here once again, it is important to provide the necessary support to victims whose disappointment is understandable. In any case, we must thank all the staff, especially volunteer delegates who have powers of mediation, but not of investigation or judgement, for their committed work in support of citizens' rights.

If the Defender of Rights does not have jurisdiction, this does not mean that the case cannot be pursued. It is therefore important that the judiciary and the security forces are well trained in discrimination issues, and that our institution is always vigilant in providing such training.

During 2023, our priorities in the fight against discrimination will be in two areas: firstly, the consideration and analysis of the cases submitted to us; and secondly, an ongoing effort to raise the awareness of our partners and the authorities.

Breakdown of discrimination complaints received by main criteria, 2022

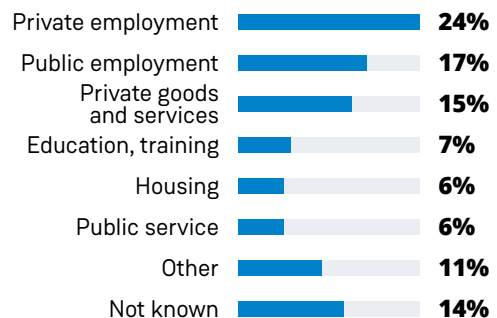


Note: 20% of discrimination complaints received concerned discrimination on the basis of disability.

Scope: all discrimination complaints received by the Defender of Rights in 2022 (N = 6,545).

***Other:** political opinion, bank account, morals, surname, loss of autonomy, genetic characteristics.

Breakdown of discrimination complaints received by main areas, 2022



Note: 15% of the complaints received for discrimination concerned private goods and services (commercial disputes, insurance, banking, consumer affairs, transport, etc.).

Scope: all discrimination complaints received by the Defender of Rights in 2022 (N = 6,545).

Breakdown of discrimination complaints received by main criteria and main areas, 2022

	Private employment	Civil service	Private goods & services	Education, training	Housing	Public services	Other or NS	Total
Disability	20%	22%	17%	15%	8%	9%	9%	100%
Origin	36%	18%	15%	7%	9%	5%	10%	100%
Health status	31%	35%	8%	6%	2%	6%	12%	100%
Nationality	15%	5%	30%	4%	5%	3%	38%	100%
Gender	41%	23%	16%	3%	3%	5%	9%	100%
Age	36%	18%	19%	3%	8%	7%	9%	100%
Economic vulnerability	17%	2%	33%	0.5%	19%	11%	17%	100%
Trade union activities	55%	40%	1%	1%	1%	1%	0.5%	100%
Pregnancy	69%	20%	3%	2%	1%	2%	3%	100%

Note: of the complaints received for disability discrimination, 20% occurred in private employment and 22% in public employment.

1. NEARLY TWO YEARS AFTER THE ANTIDISCRIMINATIONS.FR PLATFORM WENT ONLINE: AN INCREASE IN REFERRALS, A NEED FOR ACTION

The Antidiscriminations.fr platform launched in February 2021 (website, chat, dedicated 39 28 phone line) has reaffirmed the institution's role and profile as a central player in combating discrimination. The 26% increase in referrals received between 2020 and 2022 in this area shows that this mechanism has quickly come to be identified as an important resource, thanks in particular to the communication campaigns and the many partnerships established. However, although the number of referrals has increased, it does not reflect the extent of discrimination, and failure to seek redress is still very much the norm.

The mechanism therefore urgently needs to become better known to the general public. In this respect, civil society stakeholders play a central role as intermediaries between people who may be affected by discrimination and

the institutions. The partnership dynamic has made it possible to broaden the circle of the Defender's partners to reach certain audiences that are unfamiliar with, or may show a form of distance towards, those institutions.

This platform is also becoming a rallying point for all those involved in combating discrimination at regional level. The Defender of Rights staff are thus regularly requested by non-profit organisations or local authorities not only to support, strengthen and legitimise the anti-discrimination programmes they run, but also to raise awareness, provide tools and even train their teams on the subject.

In 2022, more than 300 organisations attended bilateral or collective meetings and participated in anti-discrimination events to raise awareness. For example:

- Some thirty meetings with non-profit organisations working on the subject of ethics in the security forces, and specifically on discriminatory identity checks, were organised in June and July in order to facilitate referrals;
- Events to introduce the platform were held throughout the year in the regions, uniting local stakeholders in combating



discrimination; for example, in September with the “Partenaires-Égalité” (“Equality Partners”) network coordinated by Grenoble-Alpes Métropole to reduce inequalities and discrimination within institutions, companies and non-profit organisations;

In order to illustrate the essential work of the legal advisers who have handled more than 18,000 calls to the 39 28 phone line since its creation (number of initial requests received between February 2021 and December 2022), the Defender of Rights took the Minister for Equality between Women and Men, Diversity and Equal Opportunities on a tour of the phone line offices.

In addition, in November and December, a new version of the Anti-discrimination campaign was rolled out on the radio, with targeted broadcasting on ten or so generalist stations that are both powerful and in step with the institution's priority audiences.

Throughout the year, an SEO campaign was conducted to establish the mechanism as an immediate means of redress for Internet users to whom the institution can offer support. Lastly, new communication tools (poster and leaflet) were produced for distribution in early 2023.

Although the majority of the institution's referrals and queries relate to access to public services, an educational campaign was carried out on digital media this year in the areas of combating discrimination and protecting the rights of the child: these two missions account for 75% of the institution's digital communications between September 2021 and September 2022.

More generally, between August 2021 and August 2022, more than 90,000 Internet users engaged with the Defender of Rights.

Over the same period, almost 7,300 articles were published online, concerning its announcements, alerts, reports and position papers.

Taking advantage of the immediate nature of digital media, the Defender of Rights was also able to share her views on 4 January 2022, expressing her concerns about the bill introducing the vaccine pass, a subject central to the debate and conversation.

Portrait**ROBERT GUIXARO
TRANCHO****Lawyer at the
Antidiscriminations.fr platform****What is your background?**

I studied law between France and Spain, including a Master's degree in public and European law. I then worked as a trainee in a law firm, and later as a lawyer in a hospital in Barcelona. I was also able to work with the Catalan Ombudsman, the *Síndic de Greuges*. After passing the bar exam in Spain, I decided to return to France, where I again completed several internships in law firms before joining the Defender of Rights, first as an intern and then as a lawyer. I wanted to join an institution that upheld the fundamental rights of people in difficulty.

“With Antidiscriminations.fr, we have an effective mechanism for supporting people who feel they have been discriminated against, because first of all their voices are heard, but also [...] we can launch an investigation and speak to the people involved...”

What are your duties?

I joined the Access to Rights directorate, which is the department that receives and examines new complaints. One year after my arrival, in February 2021, the Defender of Rights created the Antidiscriminations.fr service with a free number, 39 28, open to all victims of discrimination, which I joined as a lawyer.

With Antidiscriminations.fr, we have an effective mechanism for supporting people who feel they have been discriminated against, because first of all their voices are heard, but also because, with my legal colleagues, we can launch an investigation and speak to the people involved, issue reminders of the law or make amicable settlements. We can also carry out tests: for example, if we are approached by someone who thinks they have been refused a tenancy based on the supposedly foreign sound of their name, we can send the landlord a request for a tenancy with a name that would not be perceived as foreign-sounding. Such actions allow us to identify discrimination.

In 2022, we saw an increase in the number of calls to the Antidiscriminations.fr line and an increase in the number of referrals. The most frequent criterion is disability, followed by origin and health status, and most often in the field of employment.

Portrait

LOUBNA KADA

Manager at the Press and Communication directorate



What is your background?

This is my 16th year with the institution! I first joined the Ombudsman of the French Republic as an intern in 2007, and continued my career in the institution that became the Defender of Rights in 2011. I completed my Law degree with a major in general government by distance learning while continuing to work. During these years at the Ombudsman and then at the Defender of Rights, I worked in many different departments: at the General Affairs department, which is now the investigation division, and then in the offices of Mr Delevoye, when he was the Mediator, and of Mr Baudis. I then joined the Access to Rights directorate - which examines incoming complaints - for a few months, and then the Promotion of Rights directorate, and finally the Press and Communications directorate, as a management assistant.

“There’s never a dull moment here! I’m proud to have been here since the beginning. I have seen the institution evolve, and working in communication, I contribute to promoting the Defender of Rights. We have come a long way, and we’re continuing to press forward!”

What are your duties?

In the Press and Communications directorate, I’m in charge of relations with service providers for producing communication tools: I place orders, receive them, manage stocks, respond to requests for internal and external tools for events, meetings, etc. I make sure I have what I need, when I need it. I am also in charge of monitoring the budget, in conjunction with the deputy director: my job is to make sure that the service providers are paid and that everything is up to date. I act as the link between our finance division and our communication service providers: graphic designers, photographers, printers, agencies, etc.

I also take care of part of the life of the department. There’s always something happening: organising meetings and trips, but of course, life in the Press and Communications directorate is very much linked to current events. There’s never a dull moment here! I’m proud to have been here since the beginning. I have seen the institution evolve, and working in communication, I contribute to promoting the Defender of Rights. We have come a long way, and we’re continuing to press forward!



2- THE PREVALENCE OF DISCRIMINATION IN EMPLOYMENT

Even before accessing employment: discriminatory refusals to hire

Refusal of employment due to subsidiary protection status

The Defender of Rights was contacted by a man of Malian nationality holding a multi-annual residence permit and enjoying subsidiary protection, who had been refused a temporary job. After his employment had been confirmed, he provided the company with his identity documents. It then cancelled the appointment, explaining that the subsidiary protection status required lengthy procedures with the prefecture, preventing him from taking up his position in time.

Noting that the legislation in force did not require foreign nationals benefiting from subsidiary protection to obtain a work permit beforehand, the Defender of Rights questioned the company. The company disputed any discrimination, but acknowledged that it had carried out an incorrect analysis of the changes made to the hiring rules. It then undertook to adjust its analysis and to assist the claimant in his job search.

The Defender of Rights believed that since subsidiary protection could only be granted to persons of foreign nationality, the refusal to hire was presumed to be discriminatory on the basis of nationality. The company argued that it had not been its intention to discriminate. However, in civil law, an act of discrimination can occur independently of the perpetrator's intention. The Defender of Rights concluded that there had been discrimination and noted the company's commitments, asking for follow-up information ([Decision 2022-097](#)).

Discriminatory refusal to hire on the basis of health status

An employee who had worked as a delivery driver on a temporary basis was refused employment on the grounds that he was in poor health. He was offered a permanent contract, and was required to undergo a medical examination before signing the contract. The occupational physician concluded that the claimant was fit to work, provided that he limited the amount of handling and repeated loading and unloading of trucks over a short period of time. The company decided to halt the recruitment process because of the doctor's findings.

Considering that the chronology of the facts, and the explanations given, constituted grounds for a conclusion of discriminatory refusal to hire on the grounds of health, the Defender of Rights requested an explanation from the employer. The employer replied that the hiring was, from the outset, contingent upon the absence of any medical reservations regarding the applicant's fitness, so that it considered the refusal to hire to be a legitimate one.

Given the doctor's conclusions, the Defender of Rights' position was that the refusal to hire the employee could be described as discriminatory in relation to his health, since the hiring was possible with a potential adaptation of the role, which had been neither offered nor even considered.

The Defender of Rights continued its involvement through amicable means, which led to a settlement agreement, providing for the payment of a lump-sum compensation of EUR 2,350 ([RA-2022-007](#)).

Refusal to employ a residence permit holder

A man with a residence permit who was looking for work had a telephone interview for a three-day fixed-term contract, after which he was selected. When he submitted his identity papers, the company withdrew for fear of the time it would take to deal with the local prefecture, given the applicant's situation.

This prompted the claimant to lodge a complaint with the Defender of Rights.

The delegate approached the company for an explanation of the reasons behind this refusal to hire. The employer confirmed the reason for the refusal, and referred to difficulties it had encountered in the past in a similar situation. However, it was through ignorance of the texts that he rejected this application: if the person in question is registered with the *Pôle emploi* government employment agency, their potential employer is exempt from any application to the prefecture to check the validity of the residence permit.

The company then undertook to consider claimants' applications without restriction when making new job offers.

Refusal of employment of a father-to-be

The Defender of Rights issued the first decision finding discrimination on the basis of paternity leave in public service ([Decision 2022-050](#)).

A successful candidate for a fixed-term contract in a local authority art school was rejected following the announcement that he was to become a father and that he intended to take his paternity leave in instalments in September 2021 and January 2022.

The employer explained to the Defender of Rights that the failure to announce the forthcoming birth of a child during the recruitment interview had been felt to indicate a lack of professional commitment, as the start of the school year in September required the presence and availability of all teachers. However, a staff member's paternity leave by

definition requires structural arrangements to be made on the part of the organisation, and there was no specific information in the case file to rule out discrimination.

In particular, the Defender of Rights recommended that a memorandum be sent to all municipal employees involved in recruitment processes, reminding them of the scope of the principle of non-discrimination in access to public employment.

The employer subsequently stated that it had circulated this note to the staff and organised an awareness-raising meeting with the heads of the departments concerned.

Beyond the specific situation in question, the Defender of Rights seeks to raise awareness among public employers of the need to do more to uphold parental rights. As stated in the explanatory memorandum to the law that led to the creation of paternity leave in 2002, the introduction of this leave is intended to "*support fathers in their responsibility towards their children and to change the way in which domestic tasks are shared between men and women.*" This issue is all the more important as, since 1 July 2021, the duration of paternity and childcare leave has been doubled to 28 days. Public employers must set an example in this respect.

Discrimination in employment persists

Discriminated against on grounds of pregnancy

Too many complaints are still received by the Defender of Rights from women whose contracts were terminated (end of trial period, non-renewal of a fixed-term contract, etc.) because of pregnancy and who are regularly accused of a “lack of loyalty” when they do not report their pregnancy in advance, even though they are under no obligation to do so.

Despite a protective legislative framework and well-established case law, such discrimination in employment based on pregnancy remains frequent, and is the cause of numerous referrals to the Defender of Rights.

In addition to an initial leaflet on the guarantees and protections legally available to women in the event of pregnancy, the Defender of Rights sought to promote, to mark International Women's Rights Day, a practical guide explaining the law applicable to all stages of pregnancy, illustrated by the situations investigated by the institution.

This guide, which aims to inform stakeholders, provides legal tools for victims and guide legal professionals in identifying and dealing with such discrimination, was presented on 8 March during a special *webinar*.

This event provided an opportunity to present the institution's work in combating discrimination based on pregnancy in employment and to offer a sociological perspective on the impact of this discrimination on women's careers and on wage and professional inequalities.

Cumulative discrimination against women working in the personal services sector

Although the health crisis linked to the Covid-19 epidemic has highlighted the work of health professionals, some “front-line” jobs have remained largely invisible: employees in home help and, more broadly, in the personal services sector.

In 2022, the Defender of Rights and the International Labour Organization have therefore decided to dedicate the 15th edition of their barometer on the perception of discrimination in employment to this subject. This sector of activity is characterised by strong occupational segregation, mainly comprising insecure and historically female-dominated occupations, with gender stereotypes assigning women to the private sphere and to “caring” activities (especially for children and the elderly).

Nearly a quarter of employees in personal services (23%) say they have experienced discrimination or discriminatory harassment in their job search or career. When asked about their most recent experience, female workers in the care sector cited physical appearance as the most important criteria. In particular, the study highlights the overexposure to discrimination of female personal services workers of foreign origin who are perceived as being non-white.

There is a strong correlation between having been born abroad and the likelihood of reporting discrimination in employment: in this sector, almost one in two foreign-born employees has experienced discrimination or discriminatory harassment in the workplace. The proportion of workers perceived as non-white who had experienced discrimination or harassment was also twice as high as it was among the proportion of those perceived as white.

Two thirds (67%) of workers who experienced discrimination in this sector spoke out or took action as a result (compared to 72% in the general working population). Most of them did no more than talk about it to people close to them. Women in this sector make far fewer



Presentation of the barometer on perceptions of discrimination in the workplace, 8 December 2022

appeals to the labour inspectorate or the courts. In the human services sector, feelings of anger, fear, sadness and shame often affect people who have experienced discrimination in employment, sometimes long after the event.

After experiencing discrimination, almost 70% of women working in the sector admit to having gone through a period of deteriorating mental health (sadness, fatigue, depression, isolation or fear), and 38% have experienced long-term psychological repercussions.

As the Defender of Rights recalled at the barometer presentation event on 8 December 2022, the right to non-discrimination and the consequence of the principle of “equal pay for work of comparable value” between women and men require the implementation of a proactive policy to improve the status of personal services and, more broadly, female-dominated occupations, in terms of income, working conditions, social and legal protection, training and recognition of status, and requires a commitment from all players.

Grenoble: stakeholders take action against discrimination in the care sector

The Auvergne-Rhône-Alpes branch of the Defender of Rights and Grenoble-Alpes-Métropole co-organised an event for the 15th barometer on the perception of discrimination in employment, organised by the Defender of Rights and the International Labour Organization.

This year's edition, devoted to the care sector, provided an opportunity for interactions between professionals, institutions and non-profit players in the region in order to better understand the exposure of these employees, who are sometimes in insecure situations, to unequal treatment.

This approach was among the initiatives carried out by Grenoble-Alpes-Métropole within the framework of the FEJ (*Fonds d'Expérimentation pour la Jeunesse* - Experimental Fund for Youth) to combat the experiences of young people from working-class neighbourhoods in the Grenoble area.

Portrait

ÉMILIE BOURGEAT

Policy Officer at the Discrimination, Access to Rights and Observation of Society division

**What is your background?**

I have a PhD in social history that I took in England on the issue of colonial violence in Kenya. I then worked in research institutes on issues of gender violence, discrimination and health before joining the Discrimination, Access to Rights and Observation of Society division of the Defender of Rights. I wanted to stay connected to research while working collectively on more real-world projects.

“These forums for dialogue, which are invaluable for the institution, enable us to assess the difficulties that these stakeholders are likely to identify on the ground and to share our news with one another.”

What are your duties?

I take follow-up action on promotional initiatives related to discrimination on the grounds of origin or religion, and discrimination in private employment. In this capacity, I contribute to the development of information and awareness-raising materials and initiatives, reports and recommendations, for public authorities, professional stakeholders or the general public. For example, I was involved in drafting the *Discriminations et origines : l’urgence d’agir* (“Discrimination and origins: the urgent need for action”) report, published in 2020, in which we warned of the extent of discrimination linked to origin in French society and the need for a genuine public policy dedicated to combating this discrimination.

In conjunction with the institution's Research Department, I am also responsible for running the Barometer for Discrimination in Employment, which we produce every year in partnership with the International Labour Organization (ILO). This survey, conducted among the active population, enables us to draw up an updated inventory of the experiences of discrimination reported by job seekers and employees in the private and public sectors. It also includes a thematic focus, which changes every year. In 2022, we took an interest in female employees in the personal services sector, where roles are highly feminised and often insecure.

As part of the institution's relations with civil society and professional stakeholders, I also head up the “Origins” Committee of Understanding, which brings together non-profit organisations involved in combating discrimination linked to origin and against racism, and I also run the Liaison Committee of employment intermediaries. These forums for dialogue, which are invaluable for the institution, enable us to assess the difficulties that these stakeholders are likely to identify on the ground and to share our news with one another.

Fired after reporting sexual harassment

The Defender of Rights was approached by an employee who reported sexual harassment by her manager and retaliatory measures following her reporting of these facts.

The employee explained that she had received inappropriate remarks and sexual advances from her superior. The manager in question then offered her a contractually-based termination of her employment contract.

The employee was placed on leave, and reported the facts to her employer. When she returned from her break, she was dismissed for gross misconduct.

The employer argued that an internal investigation had been carried out, which had not revealed any sexual harassment.

Testimonies collected during the internal investigation corroborated the reported facts. Moreover, the dismissal was explicitly based on the letter in which the sexual harassment was reported.

In a decision on court observations (Decision 2022-083), the Defender of Rights recalled that a dismissal based on a report of sexual harassment is null and void if the report was issued in good faith. She noted that in this case, there was evidence to support the existence of sexual harassment and that the report had not been made in bad faith. She was of the opinion that the dismissal amounted to a prohibited act of retaliation.

The parties reached a settlement agreement after notification of the decision.

Discrimination on the basis of family status

An employee of a large retailer complained that his employer, having been informed that he was in a relationship with an employee from the same shop, had changed their schedules to prevent them from working together.

The employer did not dispute that it had taken their relationship into account, explaining that it had based its actions on an internal practice of not having employees who were

related or in a relationship work together in the customer service department, considering that “this could result in a lack of checks and balances”.

The Defender of Rights pointed out that employees are not obliged to specify the content of their relationship to the employer, nor can the employer take an employee’s relationship status into account when making decisions, especially regarding transfers or working hours. She then stressed that the potential lack of “checks and balances” or references to the “sensitive sector” of customer service concerning employees without any hierarchical link between them, and whose relationship had not been shown to have affected the smooth running of the establishment, could not justify the restrictions placed on their rights. The Defender of Rights concluded that the decision was discriminatory, and recommended that the company compensate the two employees, change its practices in how it scheduled working hours and raise awareness of non-discrimination among all managers (Decision 2022-170 of 2 November 2022).

Nurse receives a lower assessment because of her health

A nurse in a government organisation located on the island of Reunion challenged her professional assessment report for the year 2021 on the grounds that it contained discriminatory elements. She decided to refer the matter to the Defender of Rights.

Her assessment had questioned her service approach and involvement in departmental projects, referring to the long sick leave that had forced her to be absent for four and a half months.

The delegate, with the support of lawyers from the Defender of Rights, engaged with the complainant’s employer to remind them of the principles of non-discrimination in employment, particularly with regard to health, which cannot be used as a criterion for evaluating a staff member’s service.

Following this intervention, the claimant’s performance appraisal was reviewed and

corrected, and the references to her health condition were removed from her performance appraisal.

Discrimination on grounds of disability: the reluctance of some employers to comply with the law

The Defender of Rights received a complaint about discrimination on the grounds of disability. The claimant, who holds *reconnaissance de la qualité de travailleur handicapé* (RQTH, “official disabled worker recognition”) status, was recruited by a local authority under the *Parcours accès aux carrières de la fonction publique* (PACTE, “public office careers access”) scheme. At the end of his contract, the administration decided to terminate the PACTE scheme without offering him a renewal.

During his PACTE contract, the agent was not able to benefit from the necessary accommodations due to his disability. The numerous absences of his tutor also deprived him of the benefits of this scheme, even though it is provided for by Article 11 of Decree No. 2005-904 of 2 August 2005 in application of Article 38 bis of Law No. 84-53 of 26 January 1984 on statutory provisions relating to the local civil service. He was thus unable to establish his ability to perform his duties.

The Defender of Rights was therefore of the opinion that the decision to terminate the PACTE system without extending the contract or establishing tenure constituted discrimination based on the disability of the person in question.

The Defender of Rights therefore decided to present her observations before the interim relief judge of the administrative court hearing the case.

In an order dated 24 February 2022, the interim relief judge of the administrative court considered, firstly, that the local authority had not provided any evidence to establish that the decision of the tenure committee had indeed been on the basis of the agent’s file containing the follow-up notes kept by the tutor and his opinion on the agent’s ability.

Secondly, it noted that the applicant was justified in claiming that he had not received effective tutoring during his PACTE contract. Thirdly and lastly, it noted that the agent had not received sufficient support measures and tutoring by the local authority to enable him to complete his probationary period normally and to demonstrate his ability to perform his duties.

In view of these findings, the judge ordered the suspension of the execution of the contested decision refusing the applicant’s tenure and terminating his contract as of 31 January 2022. It also enjoined the local authority to reinstate him legally, on a provisional basis, and to re-examine his situation, with regard to the obligations incumbent on the local authority regarding his disability situation and the provisions of Decree No. 2005-904 of 2 August 2005, within one month.

Discrimination in employment and youth: a subject of importance to all regions

On 7 December 2021, at the institution’s headquarters, the Defender of Rights and the director of the International Labour Organization (ILO) office for France, Cyril Cosme, presented the results of the 14th edition of the *barometer* on the perception of discrimination in employment with a focus on youth.

Throughout 2022, the institution organised events based on this survey in several cities to raise awareness of the overexposure of young people to discrimination in employment. For example, the Defender of Rights went to Toulouse on 25 January 2022 for a conference-debate in which several young victims of discrimination told their stories and gave their analyses of their experiences of discrimination. The Defender of Rights also presented this barometer at the national seminar for the network of *missions locales* (local public service organisations) on 13 May 2022 in Marseille, which resulted in the signing of a Charter of Commitment by *missions locales* to fight discrimination systemically. “*The fight against discrimination is also a battle at local level in which the commitment of grass-roots stakeholders such as missions*

locales is essential. (...) Discrimination is a scourge for the young adults who are confronted with it; it undermines their confidence in the law and in our institutions, and distances them from the republican ideal of equality,” said Claire Hédon.

Hands-on work with *missions locales* in the PACA region for the employment of young people

The year 2022 was marked by a strengthening of the partnership with *missions locales* throughout the PACA (Provence-Alpes-Côte d’Azur) region. In March, at the La Ciotat *mission locale*, the officer in charge of the institution’s regional division co-led a workshop for young people on combating discrimination.

The Defender of Rights participated in the national seminar of *missions locales* in Marseille, and a working meeting was held with the president of the regional non-profit organisation of *missions locales* and the Defender of Rights’ “discrimination” officers with the aim of strengthening cooperation.

In November, in Avignon, more than 250 professionals and young people from the *missions locales* took part in an awareness-raising morning on discrimination, in the presence of the local delegate and the regional division.

Human trafficking: one of the most violent forms of discrimination. Conviction of an employer following observations by the Defender of Rights

In a judgement of 16 January 2023, the Rouen Court of Appeal convicted a restaurant owner of human trafficking, confirming a judgement of the judicial court of Évreux of 13 July 2021.

In both cases, the Defender of Rights submitted observations (Decisions 2019-235 and 2022-221).

The conviction followed complaints of human trafficking by five of the victims. The investigation established that for many years, the victims and most of their colleagues – recruited by the same employer in two restaurants and a bakery in Normandy – had been paid far below the minimum hourly wage and had worked well beyond the authorised limit, with very few days off. They were housed on site in particularly unhygienic, unsafe and overcrowded conditions. Most of them were in France illegally and had been lured in and then detained by means of false promises – particularly of help with administrative formalities – and threats.

At the end of the investigation, the Public Prosecutor’s Office chose to prosecute not the offence of trafficking, but only offences related to illegal residence of employees, clandestine work, physical violence, and violations of hygiene regulations.

Accompanied by the *Comité contre l’esclavage moderne* (CCEM, “committee against modern slavery”), the victims then decided to summon the employer directly to appear before the judicial court to be tried for human trafficking. They referred the matter to the Defender of Rights.

As the institution responsible for ensuring respect for rights and freedoms and combating discrimination, the Defender of Rights took a position on this case, stating its view that human trafficking is one of the most violent forms of discrimination when it consists of recruiting a person on the basis of his or her origin, nationality or economic vulnerability,



with the aim of subjecting that person to working and living conditions contrary to his or her dignity.

The legal observations of the Defender of Rights, presented to the criminal judge in charge of the case on 19 September 2019, who, in the absence of an adversarial investigation conducted by her services, does not issue a judgement on the criminal responsibility of the person summoned, underlined the need to understand the actions of the manager in their entirety and to characterise them appropriately, so that the damage suffered by the victims could be fully recognised.

In a judgement issued on 13 July 2021, the court found the defendant guilty of the offences of human trafficking committed in exchange for remuneration, subjecting a vulnerable person to unacceptable working and living conditions, and failing to pay an appropriate wage (or any wage) for the work of a vulnerable or dependent person.

The Defender of Rights repeated her observations at the appeal hearing held on 7 November 2022, which resulted in the judgement issued on 16 January 2023.

She stressed that this decision should form part of a more systematic recognition of human trafficking by the criminal courts, and that the fight against this criminal phenomenon should become a real priority.

She also reiterated that the *3^e plan d'action national contre la traite des êtres humains* ("3rd National Action Plan against Human Trafficking") for the period 2022-2024 had still not been made public, and that the mandate of the Secretary General of the *Mission interministérielle pour la protection des femmes contre les violences et la lutte contre la traite des êtres humains* (MIPROF, "Interministerial Mission for the Protection of Women against Violence and the Fight against Human Trafficking") had ended in September 2022 without the appointment of a successor.



Portrait

AURÉLIE STOFLIQUE

Lawyer in the Private Goods and Services division



What is your background?

I started as a lawyer specialising in criminal law and employment law in 2011, and then joined an accounting firm as an employment lawyer from 2016. When I joined the Defender of Rights in April 2020, in the middle of the lockdown, I had been watching the job advertisements for a long time! I wanted to put my skills to work on something that would give me a reason to get up in the morning.

What are your duties?

I mainly deal with complaints related to the field of private employment. For example, a situation in which a person absent on long-term sick leave does not return to his or her original post, and is eventually dismissed for unfitness. In private employment discrimination, we mainly receive referrals related to health or disability. But this year we also had a lot of cases of sexual harassment in which women were dismissed because the internal investigation concluded that there was no evidence. Here at the Defender of Rights, however, we conduct our own investigations, and if we think that the facts point in that direction, we say so. Above all, we remind employers of their obligation to protect these women.

This year, we worked in particular on a framework decision for access to evidence, as this is the main difficulty people face. We pointed out that employees have the right to request that employers provide them with documents which, by definition, they alone possess. My knowledge of the business world is an asset when working on these cases.

“... we worked in particular on a framework decision for access to evidence, as this is the main difficulty people face. We pointed out that employees have the right to request that employers provide them with documents which, by definition, they alone possess. My knowledge of the business world is an asset when working on these cases.”

3- SIMPLE ACTS OF DAILY LIFE STILL UNDERMINED BY DISCRIMINATION

Discriminatory refusal to provide care as the result of the particular vulnerability of the patient's economic situation

The Defender of Rights received a complaint from a patient about the difficulties she had encountered as a CMU-C (*couverture maladie universelle complémentaire*, “complementary health cover”) beneficiary in making an appointment with a gynaecologist’s office. She had been offered an appointment. A few days before the appointment, the gynaecologist's office contacted her to ask her about the possibility of paying an advance on the fees for the consultation. Having learned that she intended to avail herself of the exemption from advance payment and that she was therefore declining to pay the advance fees for the consultation, the office cancelled the appointment.

At the end of the investigation, the Defender of Rights concluded that the refusal to provide care was unlawful and discriminatory because it was based on the particular vulnerability linked to the patient's economic situation, which is prohibited by law. In the interests of preventing any discriminatory situation such as the one illustrated by the complaint in question, the Defender of Rights recommended that the departmental council of the Order of Physicians initiate disciplinary proceedings against the practitioner.

It also recommended that the *Conseil national de l'Ordre des médecins* medical regulatory body publicise its decision to the entire profession (Decision 2022-123).

Discriminated against in access to housing... because they live too far from their work

A couple were seeking to rent a flat and applied to a property agency; he was a CRS (security police officer), and she too was a civil servant.

Their application seemed solid, but the agency demanded additional guarantees that were quite surprising: the applicants were asked to produce proof of residence in the same town or on the outskirts of their place of work. The applicants were unable to do so, and their application was rejected without further explanation.

The couple decided to appeal to the Defender of Rights. The delegate in charge of the case contacted the agency, expressing surprise at the nature of the proof requested, which could lead to discrimination in access to housing on the basis of place of residence. The head of the agency admitted to “a processing error” and offered to re-examine the couple's application on the same basis as the other applications for the property. In the end, the couple's application was accepted by the agency.

“Double punishment” at the bank

A woman with a disability was receiving a disabled adult’s allowance (AAH). She went to her bank branch to request an EUR 15 increase in her overdraft authorisation, taking it to an authorised overdraft of EUR 495.

The adviser refused the increase on the grounds that the client was not in receipt of a salary.

The woman pointed out that she was entitled to an overdraft of 50% of her income just like any other customer, and that the requested increase was prompted by the need to buy petrol to visit her doctor. However, the adviser maintained her refusal, stating that the overdraft the client already had was a “favour”.

The claimant, feeling insulted by this refusal, which she considered to be discriminatory, referred the matter to the Defender of Rights. She explained to the delegate that the incident had resulted in additional costs and was disappointed that the branch had not taken her disability into account, requiring her to travel physically for certain banking operations.

The delegate contacted the bank's regional complaints department to explain the situation.

A few days later, the claimant received an apology from the bank's regional management and the adviser, as well as a refund of the expenses related to the incident; she was then able to increase her authorised overdraft, and has been assured that all banking transactions are possible online or by telephone.

Managing the health crisis and the risk of discrimination

In her Opinion 22-01 of January 4 2022 on the bill on strengthening the tools for health crisis management, the Defender of Rights had another opportunity in 2022 to state her view on the risks inherent in the extraordinary measures for pandemic management.

As she had already stated in three opinions in 2020 and 2021 (Opinion No. 20-10 of 3 December 2020; Opinion No. 21-06 of 17 May 2021; Opinion No. 21-11 of 20 July 2021), the Defender of Rights reminded the Parliament that measures that may infringe upon personal rights and freedoms must comply with the principle of legality, and therefore must be strictly necessary, proportionate and appropriate to the health risks involved and appropriate to the specific time and place in question. They must also be sufficiently legible, precise and backed by guarantees to ensure protection against the risks of abuse and arbitrary actions.

These concerns were strongly reinforced by the new bill. The risk of seeing extraordinary measures become permanent was confirmed, since the legislation extended

and strengthened measures that placed particular restrictions on individual freedoms.

This was the case for the replacement of the health pass by a vaccination pass for many activities of daily life: leisure activities, restaurants and drinking establishments, fairs, seminars and trade shows or inter-regional transport.

In particular, the Defender of Rights alerted the Parliament to the risks of measures directly concerning and affecting the daily lives of minors and the exercise of their rights; these minors had already been severely tested by the health crisis, with heavy impacts on their mental health.

In addition, the Defender of Rights received complaints from employees who were suspended for non-compliance with vaccination requirements while on sick leave (Framework decision 2021-291). On 2 March 2022, the Council of State issued an interim order stating that the suspension of a non-vaccinated employee could only take effect at the end of their leave period. The Defender of Rights was able to use this case law to obtain fair treatment for many employees.

Other complaints concern staff on special leave of absence, the renewal of which in the summer of 2022 was particularly complicated, as the employers of those staff were seeking to return to a more traditional way of working. Tensions have also arisen – in much greater numbers than before the Covid-19 epidemic – in cases where staff with disabilities have obtained medical recommendations to allow them to telework. These new issues call for a balance to be struck between the organisation's right to structure its own operations and the fight against discrimination.

4• DISSEMINATING KNOWLEDGE ON NON-DISCRIMINATION LAW

Discrimination in higher education: from observation to action

The *Expérience des discriminations dans l'enseignement supérieur et la recherche en France : Premiers résultats de l'enquête ACADISCR* (Experience of discrimination in higher education and research in France: First results of the ACADISCR survey) study was conducted, with the support of the Defender of Rights, by Christelle Hamel (CNRS-INED, URMIS), Marguerite Cognet (Université de Paris Cité, URMIS), Géraldine Bozec (URMIS, Université Côte d'Azur) and the ACADISCR academic discrimination team.

Surveys conducted among students and institutional staff (teacher-researchers, administrative or technical staff, etc.) in two universities revealed significant discrimination on the basis of gender and origin: more than half of the university staff stated that they had been subjected to at least one type of unequal treatment since the beginning of their professional career, and 20% of female students reported having been confronted with sexist behaviour of a sexual nature during their studies.

The initial results were presented on 20 October at a study day entitled *Les discriminations dans l'enseignement supérieur. Du constat à l'action* ("Discrimination in Higher Education: From Observation to Action"). The day, organised by the Defender of Rights, brought together 250 people, including France's Minister of Higher Education and Research.

It facilitated interaction and dialogue between all the stakeholders concerned, enabling them to act effectively in preventing and dealing with discrimination; draw up an inventory of discrimination in higher education; question the way in which it is measured; reiterate the legal obligations and means of redress in the event of discrimination; and finally, provide real-world tools for action in the light of existing resources and initiatives.

The Defender of Rights used this opportunity to stress the need to go beyond one-off actions and commit to genuine anti-discrimination policies, over and above the silo policies of prevention of gender-based and sexual violence or inclusion of students with disabilities.

The "Collectif Handicaps" training course

The Defender of Rights organised a training session on disability discrimination at the request of the Collectif Handicaps ("disability collective"). A member of the Defender of Rights Disability Committee, it brings together 52 non-profit organisations representing the various types of disability. This training course reiterated the basic principles of non-discrimination law as applied to disability and, in so doing, gave stakeholders in this area the necessary foundation to enable them to better guide and support people with disabilities who feel they have been victims of discrimination. Accessible to deaf people thanks to French sign language translation and transcription, it brought together some sixty participants, both in person and remotely.

Access to rights for older people living at home

In 2021, a Defender of Rights study among people aged 65 or over living at home identified the difficulties they faced in accessing their rights, and the discrimination to which they were exposed.

Older people may be faced with infringements of their rights in their daily lives, in relation to public services, access to housing or health, without sometimes being aware that they may constitute discrimination. The results of this study were presented and discussed in June 2022 during a *webinar* bringing together institutional stakeholders and the world of research, as well as representatives of civil society and the network of delegates of the Defender of Rights, with the aim of playing a part in making the specific issues of discrimination relating to old age visible and identifying drivers for action.

At the same time, an information resource dedicated to access to rights and the prevention of discrimination linked to the elderly was developed with non-profit stakeholders who are members of the health agreement committee and professionals in the field, with the aim of contributing to the promotion of the right to redress.

It was released on 1 October, the United Nations (UN) International Day of Older Persons.

Defender of Rights Thesis Prize 2022 on the principle of neutrality and the exercise of religious freedom in companies

The Defender of Rights awarded its 8th Thesis Award to Léopold Vanbellingen for his legal science thesis entitled “*Neutrality in private companies: a contribution to the study of European law on freedom of religion and non-discrimination of workers in the face of a multi-voiced transfer of concepts.*”

Defended on May 26, 2021, at the Catholic University of Louvain, this thesis, in its focus on compliance with the principles of freedom of religion and non-discrimination within private companies, studies the way in which the principle of religious neutrality can sometimes be used as a justification for limiting or prohibiting any religious expression (ostentatious signs, requests for leave or adapted working hours, specific diets, refusal to perform a task, etc.) in the workplace. The aim of this thesis, based on an in-depth analysis of French and Belgian European case law and historical and philosophical sources, is to assess the extent to which the objective of neutrality is compatible with private sector employees’ freedom of religion and religious non-discrimination.

It provides a useful system for classifying neutral companies that facilitates an understanding of the different facets of the claims to neutrality made by private companies.

It shows that for each example of a neutral company, there is a specific legal response regarding the legitimacy and proportionality of

restrictions based on neutrality, from the point of view of European law on religious freedom and non-discrimination.

A webinar in Occitanie to promote the law on non-discrimination

In response to requirements expressed by several organisations involved in combating discrimination, the local office of the Defender of Rights in the Occitanie region of the South of France offered a *webinar* by videoconference, bringing together more than 180 people, mainly non-profit organisations, local authorities, academics and trade unions. It set out the key legal principles on the right to non-discrimination and introduced the work of the Defender of Rights, including the work of the delegates. The presentation combined educational legal content with illustrations from actual situations that had been faced by delegates.

The Defender of Rights before the UN Committee on the Elimination of Racial Discrimination

Published on 2 December at the end of the Examen de la France (UN review of France) conducted on 15 and 16 November 2022, the Committee's concluding observations recalled several positions also defended by the institution in the contribution produced on that occasion.

In particular, it welcomed the Committee's recommendation that the State should address, “*as a matter of priority, the structural and systemic causes of racial discrimination in the party State.*”

The Committee also makes a similar observation to the Defender of Rights’ own observation concerning the existence of discriminatory identity checks in France.

Its recommendations are in line with those which have long been stated by the Defender of Rights concerning the need to explicitly prohibit these in French law, and to implement a system of traceability and evaluation of the controls carried out.

As the Defender of Rights has done on numerous occasions, the Committee also insists on the need to take effective measures to guarantee *“Travellers access to living conditions (...) in accordance with their particular needs, including the recognition of the caravan as a dwelling and the provision of a sufficient number of residential sites with adequate conditions.”*

Actions of the Defender of Rights during the French Presidency of the European Union

During the French Presidency of the EU, on 2 and 3 June 2022, the Defender of Rights and the European Network of Equality Bodies (Equinet) held two conferences on equality bodies (EBs) in Europe.

The first conference brought together European experts to discuss the experiences of the Defender of Rights and its counterparts in the field of interventions before the courts. The discussions also focused on the provisions of forthcoming proposals for directives on standards, particularly as regards the powers of such bodies, which would make it possible to improve the effectiveness of non-discrimination law.

On 7 December 2022, the Commission adopted two proposals for Directives to strengthen the equality bodies, in particular their independence, resources and powers, so that they can fight discrimination more effectively across Europe.

The second conference explored the role that these bodies can play in promoting a better work-life balance and salary transparency and combating violence against women, all of which are drivers for progress towards gender equality.

Compiling international best practice

A fact-finding visit to Montreal took place at the end of October, during which the Defender of Rights and two of her deputies were able to discuss several priority topics with their counterparts: simplification of institutional documents for the public, methodologies implemented to provide improved access to rights for vulnerable groups, and the measures implemented by the city of Montreal and the city's police services to combat systemic discrimination related to ethnic origin and social situation.

The delegation was particularly interested in the existence of two specialised courts: the Tribunal des droits de la personne (“Human Rights Tribunal”), providing a crucial added value to the effectiveness of the right to non-discrimination, and the *Comité de la déontologie policière* (“Police Ethics Committee”) on compliance with ethical standards.

Future administrative managers in Lille trained in combating discrimination

The Hauts-de-France regional office of the Defender of Rights participated in the training of future State administration executives through its involvement in each training cycle at the *Institut régional d'administration* (IRA, “regional administration institute”) in Lille during events dedicated to combating discrimination. A workshop on gender equality was held in partnership with the regional directorate for women's rights and equality. An awareness-raising session on the work of the Defender of Rights in support of LGBTI+ persons was also held in the presence of the *Délégation interministérielle à la lutte contre le racisme, l'antisémitisme et la haine anti-LGBT* (DILCRAH, “Interministerial Delegation for the Fight against Racism, Anti-Semitism and Anti-LGBT Hatred”) and a non-profit organisation. And this partnership now has a long-term future, since its work is set to be continued in 2023.

Portrait

MARIELLE CHAPPUIS

Head of Research and of the Defender of Rights Monitoring Centre



What is your background?

I obtained a postgraduate degree in demography, and then specialised in health issues – specifically, in epidemiology – working for more than seven years at the Marseille *Observatoire régional de la santé* (“regional health monitoring centre”). I then turned to humanitarian projects: one year in the Democratic Republic of Congo for the *Aide médicale internationale* (“International Medical Aid”) NGO, then six years as head of the *Observatoire de l'accès aux droits et aux soins* (“Access to Rights and Care Monitoring Centre”) for *Médecins du Monde* (“Doctors of the World”) France. I joined the Defender of Rights in October 2018.

“... contributing to the improvement of knowledge on themes of interest to the institution through the support of studies or research [...] to better understand the people who come to us and the difficulties they face.”

What are your duties?

I am responsible for research and the Defender of Rights Monitoring Centre. This consists of contributing to the improvement of knowledge on themes of interest to the institution through the support of studies or research (assigned to teams of researchers) and the analysis of our own data, enabling us to better understand the people who come to us and the difficulties they face.

What's your assessment of the past year?

In October 2022, we organised a day of study into discrimination in higher education in conjunction with the released results from the *ACADISCR* survey. We initiated and supported this work 3 years ago, which highlighted the extent of discrimination in this sector.

The aim of this day was to open a debate on the basis of an updated state of knowledge on discrimination, and to encourage exchanges and dialogue between all the stakeholders concerned in order to act effectively in preventing and dealing with discrimination.

Following this event, the research team obtained additional funding to continue the research in other institutions. The Defender of Rights continues to investigate these issues through the support of several pieces of research that will be published in 2023, on (the lack of) redress for victims of discrimination in higher education.





The “Anti-Discrimination and Promotion of Equality” Committee

The Defender of Rights chairs the committee that assists her in exercising her powers in combating discrimination, provided for in Article 11 of the *loi organique* [framework law] on the Defender of Rights. George Pau-Langevin, Deputy to the Defender of Rights, is the vice-president of this committee.

The discussions within this committee, which is composed of eight members and met four times during the year, focused on discrimination based on health and disability (Decisions 2022-089 and 2022-090), physical appearance (Decision 2021-280 on a refusal of employment due to tattoos; Decision 2022-013 concerning a refusal to provide a service that was discriminatory because it was related to physical appearance and gender identity; and Decision 2022-182 on a student's hairstyle that was considered to be contrary to the school's internal regulations).

It also issued a favourable opinion on an important framework decision for anti-discrimination law (Framework Decision 2022-139 on access to evidence in discrimination cases).

Discussions within this committee also produced opinions on discrimination relating to projects that sometimes relate to other areas and are submitted to another committee for an opinion, such as draft decisions concerning discriminatory identity checks.

Focus

ARTIFICIAL INTELLIGENCE AND THE PRINCIPLE OF NON-DISCRIMINATION

In 2022, the Defender of Rights continued its work on algorithms and artificial intelligence as the pace of their introduction increases in both the public and private sectors.

In his report on biometric technologies in 2021, the Defender of Rights pointed out the considerable risks of violation of the principle of non-discrimination and, more generally, of fundamental rights that these technologies entail for those exposed to them (*Biometric technologies: the need to uphold fundamental rights, Defender of Rights, 2021*). In 2022, the institution also sought to obtain the French people's perception on this subject via an opinion survey conducted among the general population. The results of this survey, entitled *Perception of the development of biometric technologies in France: a lack of information against a demand for a framework*, highlight a strong lack of information among the public, a variable degree of confidence depending on the entities responsible for introducing these technologies, a relative awareness of the risks of infringement of rights, and a strong desire to see the existing legal framework reinforced.

As a result, the Defender of Rights alerted the public authorities to the French people's lack of knowledge about the use and consequences of biometric technologies on their fundamental rights, and reiterated her recommendations:

- discard irrelevant assessment methodologies, with the significant growth in biometric assessment tools using unproven scientific methodologies requiring stakeholders to be accountable given the potential risk of discrimination in this area;
- implement strong and effective guarantees to ensure that the rights of individuals are upheld;
- within the context of police use: extend the explicit prohibition on the use of facial recognition software applied to images captured by drones to other existing surveillance devices (pedestrian cameras, video surveillance, etc.);
- for all uses: systematically consider whether the use of a less intrusive technology is appropriate, systematically check for discriminatory bias and facilitate the right to appeal;
- rethink existing controls, in particular by revising the evaluation threshold for IT procurement contracts, by including an assessment of the risks of discrimination and by introducing an obligation to have a regular, external and independent audit of biometric identification and evaluation devices;
- tighten public notification requirements and train technical and IT engineering professionals and user and supervisory organisations on the threats that algorithms pose to basic rights.

The Defender of Rights contributes to this essential work of training stakeholders: between October and December 2022, with the support of the Council of Europe, it offered – for the second year – an online training course on artificial intelligence and discrimination to many stakeholders (its own staff, and those from other independent authorities such as the CNIL data protection authority and the ARCOM audiovisual and digital regulator, as well as staff from ministries and representatives of non-profit organisations).

The aim of these courses is to give participants some basic expertise on these subjects in order to better prepare them for current or future issues and work within their own organisations.



In addition, the Defender of Rights also contributed to the development and facilitation of a training course organised by the European Network of Equality Bodies (Equinet) in December 2022 for its members on artificial intelligence and combating discrimination, following the [report](#) published by Equinet on this topic in 2020.

The proposed Regulation on artificial intelligence that the European Commission presented in April 2021 is an ambitious move not only because it will be directly applicable in France, but also because it aims to provide a horizontal and cross-cutting framework for the various applications of artificial intelligence. The Defender of Rights is monitoring the development of the debates on this text and intends, in particular alongside her counterparts and within the Equinet European network, to support an approach based on respect for fundamental rights that will make it possible to combat discrimination effectively.

To this end, in conjunction with Equinet in June 2022, she published an [opinion](#) entitled *For a European AI that protects and guarantees the principle of non-discrimination: an opinion setting out key recommendations and principles for future European legislation on artificial intelligence*. The recommendations in this opinion are in line with the institution's previous work, stressing the priority of combating algorithmic discrimination and emphasising the role that European equality bodies could play in this context, particularly in their role of sounding alerts and raising awareness.

IV • BEING GUIDED BY THE BEST INTERESTS OF THE CHILD

Editorial

ÉRIC DELEMAR

Children's Defender,
Deputy to the Defender of Rights
in charge of the defence and
promotion of the rights of the child

GUARANTEEING CHILDREN'S FUNDAMENTAL RIGHTS

In 2022, we submitted our report to the UN Committee on the Rights of the Child. For the 6th time since France ratified the International Convention on the Rights of the Child (CRC), the Committee will assess France's progress and persistent difficulties. The Defender of Rights is recognised as a monitoring mechanism of the CRC by the United Nations Committee on the Rights of the Child. It ensures that the “best interests of the child” are upheld, which must be a primary consideration that takes precedence over all others.

Although the evolution of public policies towards greater consideration of the rights of the child has led to real progress in many areas of the Convention, we emphasise the persistent difficulties of access to rights faced by many children, and in the first place, the most vulnerable children: children in situations of insecurity, children with disabilities, protected children, migrant children, etc.

The Covid-19 pandemic has highlighted and exacerbated existing social and regional inequalities, discrimination and violence against children.

“Therein lies the mission of our institution, which works to reduce the existing gap between proclaimed rights and their real-world implementation through the defence and promotion of the rights of the child.”

We were particularly struck by the fact that the best interests of the child were not being sufficiently taken into account by public authorities when developing and monitoring health policies. Some of the shortcomings that were observed at that time stem from structural problems that have been apparent for several years (lack of a holistic approach to the child's situation, fragmentation of care for children, etc.).

On 23 February 2022, the Committee of Ministers of the Council of Europe adopted its 4th Strategy for greater effectiveness in terms of the Rights of the Child. The roadmap for national governments consists of: combating violence against children, equal opportunities and social inclusion, participation and taking their voice into account, and safeguarding the rights of the child in crisis or emergency situations. A new child protection law was passed in February 2022.

However, between 2021 and 2022, the Children's Defender noted an increase of 20% in the number of complaints about violations of the rights of the child. These referrals related to the inadequate protection of children at risk, violations of the right to education, and serious violations of children's

right to health, especially for the most vulnerable.

The Defender of Rights pointed to the historic increase in the current and future cost of living and its devastating effects on the daily lives of the most modest families, already weakened by the pandemic. More than ever, this crisis situation exposed widespread needs for support and assistance, at a time when health, child protection and education services were already being burdened by serious staff shortages and a glaring lack of resources.

In our [annual report on the rights of the child](#), published in November, entitled *Privacy: a Child's Right*, for which we involved over 1,100 children nationwide, we showed that preserving children's privacy is about considering them as owners of rights, and meeting their basic needs of freedom and security. Protecting the child by respecting his or her body, intimate spaces and image.

Much remains to be done to effectively guarantee all the fundamental rights enshrined in the CRC. This is the mission of our institution, which works to reduce the existing gap between proclaimed rights and their real-world implementation through the defence and promotion of the rights of the child, paying special attention to those children with least access to the law.

We are working towards this goal every day, throughout the country.

The mission of the Defender of Rights to defend and promote the rights of the child cuts across the entire institution. It concerns not only access to public services and the fight against discrimination, but also compliance with ethical standards by the security forces.

Breakdown of complaints received in the area of the rights of the child by sub-theme, 2022

Education, early childhood, schooling, after-school care	30%
Protection of childhood and children	21%
Health and disability	13%
Parentage and family justice	7%
Foreign minors	5%
Criminal justice	2%
Adoption and legal guardianship of children	0.3%
Not known	22%
Total	100%

Scope: all complaints relating to the rights of the child received by the Defender of Rights in 2022 (N = 3,586).

1. CHILDREN'S PRIVACY: A SUBJECT THAT REVEALS THE NEED FOR MUCH WORK TO COMBAT THE VIOLENCE THEY SUFFER

The annual report on children's privacy

To mark World Children's Day, the Defender of Rights and her deputy, the Children's Defender, published their [annual report](#) on the rights of the child: *Privacy: a child's right*.

In it, the Defender of Rights calls for a full understanding of the decisive challenge of recognising children's fundamental right to privacy, so that they may be considered as true owners of rights, without ignoring their status as children to be protected.

To this end, she stresses the need to ensure that all children who are poorly housed, homeless or forced to live in a collective living environment have decent living spaces that

afford them privacy and dignity. At the very heart of their intimate selves, children, from the earliest age, need to have their bodies unconditionally protected, particularly against all forms of violence.

With the omnipresence of digital technology in our daily lives, the Defender of Rights also calls for special care regarding the exposure of children's lives on the Internet and potential digital violence (cyber harassment, cyber sexism, online hate, etc.).

To inform its report, the institution conducts an annual national consultation of children. The consultation focused this year on the right to privacy, gathering views from more than 1,100 children and young people aged 6 to 21 via more than 70 partner organisations and non-profit organisations. The report also obtained expert opinions from stakeholders.

The Defender of Rights makes 33 recommendations in which she calls on public authorities to offer children the protection and education that will enable them to build an intimate environment that is strong enough to establish an open, trusting relationship with the world.

The worrying state of child protection in France

The Defender of Rights is particularly concerned about the state of child protection, which is no longer able to serve its purpose.

For example, Defender of Rights staff carried out an investigation lasting several years following a complaint from a nurse concerned about the treatment of children in a departmental child and family centre.

Following this investigation, the Defender of Rights issued a decision in which she pointed out, among other things, the inadequacy of the supervision and control of the structure by the departmental council and the prefecture, as well as the lack of consultation, coordination and networking between the department and the *Agence régionale de santé* ("Regional Health Agency"). Noting a number of improvements since the recorded events, she made 16 recommendations, covering occupancy rates and overstaffing,

the duty to monitor and control child protection institutions, governance methods, management and recruitment, inter-institutional responses to children with complex issues, and the child welfare service's support for institutions that care for children.

At the end of 2022, the institution was first alerted by judicial magistrates to the flaws in the child protection system. As a result, the Defender of Rights turned her attention to this situation, which concerns several departments, and investigations will be carried out in 2023.

The Defender of Rights at the hearing of the *Commission indépendante sur l'inceste et les violences sexuelles faites aux enfants (CIIVISE, "Independent Commission on Incest and the Sexual Abuse of Children")*

The Defender of Rights and her deputy, the Children's Defender, were given a hearing in May 2022 by CIIVISE. The work of this commission, particularly in listening to and collecting the testimonies of victims of sexual violence and their parents, constitutes an essential first step in recognising these victims. The debates on the law to protect minors from sexual crimes and incest, and the report of the *Commission indépendante sur les abus sexuels dans l'Église* ("Independent Commission on Sexual Abuse in the Church"), show how necessary it is to ask questions and obtain answers.

The institution has sought to bring to the attention of the Commission the persistent difficulties it perceives in the situations referred to it, linked in particular to:

- the lack of communication and exchange of information between the different services;
- the inadequate efforts to collect children's testimonies;
- the need to improve detection and reporting mechanisms;
- insufficiently effective sex education for young people, which does not offer effective prevention.

The Defender of Rights once again called for the work of CIVISE to lead to a radical change in culture, ensuring that the best interests of the child take precedence over all other considerations at the very first suspicion of violence.

The report to the United Nations Committee on the Rights of the Child

The assessment made by the Defender of Rights and her deputy, the Children's Defender, of France's implementation of the International Convention on the Rights of the Child (CRC) paints a mixed picture. In addition to the observations made following the Covid-19 pandemic and the specific attention that needs to be paid to the children with least access to the law, the Defender of Rights expressed her concern in her follow-up report about the extent of the phenomenon of prostitution in child protection facilities.

Here, as in her 2022 [annual report](#) dedicated to the rights of the child, focusing on children's privacy, the Defender of Rights emphasised that sex education sessions, provided for in the law since 2001 ("*Information and education on sexuality are provided in schools, colleges and high schools at a rate of at least three sessions per year and in homogeneous age groups*", Law No. 2001-588 of 4 July 2001) are not implemented, although they represent a crucial issue: sex education is an essential tool for preventing all forms of violence (not only sexual, but also gender-based, marital and family violence, etc.). It also enables the implementation of a policy of prevention of the risks of prostitution for minors. It is essential for the follow-up recently announced by the Ministry of National Education and Youth (circular of 30 September 2022 No. MENE2228054C on sex education) to be implemented on the ground and in the long term.

The Defender of Rights has called on the State to take the necessary measures to make the best interests of the child the primary consideration in all public policies, so that children are fully considered as owners of rights.

Following the request of the member associations of the Defender of Rights' Committee of Understanding on Gender Equality, the Defender of Rights sent a letter to the Ministry of National Education, asking for the publication of her report on sex education. The [report on *L'éducation à la sexualité en milieu scolaire*](#) ("Sex Education in Schools") has finally been published. It points out that only 15% of the sex education courses recommended by the law are actually implemented.

Multidisciplinary research on prostitution among minors

The *Centre de victimologie pour mineurs* (CVM, "Victim Research Centre for Minors") has carried out a multidisciplinary action-research project on prostitution among minors in France, supported in particular by the Defender of Rights.

The report provides an initial overview of prostitution among minors of French nationality in France and identifies several factors that encourage minors to enter prostitution: sexual, physical and psychological violence, episodes of running away from home and exposure of their private lives on social networks.

The life paths of minors who are victims of prostitution are marked by multiple breakdowns, whether in the family sphere (separation of siblings, etc.) or at school (truancy). Violence also has a lasting impact on their mental health.

The report also reveals that half of the minors identified as victims of prostitution were in the hands of the *Aide sociale à l'enfance* (ASE, "Child Welfare Agency") before falling into prostitution.

The Defender of Rights calls for training and the strengthening of the human and financial resources of the ASE. It supports the recommendation made by the CVM to create a dedicated inter-ministerial body providing resources, assistance and support for professionals and families dealing with prostitution among minors.



Presentation of the annual report on the rights of the child, *La vie privée : un droit pour l'enfant* ("Privacy: a Child's Right"), 17 November 2022

The rights of children to climate justice

The UN General Assembly recognised the right to a clean, healthy and sustainable environment as a human right in July 2022. In September 2022, the Council of Europe also called for Member States to recognise the right to a clean, healthy and sustainable environment. In its Decision No. 451129 of 20 September 2022, the Council of State recognised that *"the right of everyone to live in a balanced environment that promotes health, as proclaimed by Article 1 of the Environmental Charter, is a fundamental freedom within the meaning of Article L. 521-2 of the Code of Administrative Justice."*

Children have been strongly engaged in civic actions, but many have expressed dismay where they have perceived their efforts to be in vain. In this context, ENOC (European Network of Ombudspersons for Children) has sought to examine the extent to which children can access climate justice. To do this, ENOC organised a participatory project, and groups of young people were able to give their opinions in 19 countries.

Their recommendations were incorporated into the statement which ENOC adopted on 21 September 2022.

Portrait**MARGUERITE AURENCHE**

**Head of the Defence
of the Rights of the Child division**

**What is your background?**

I am a magistrate by training, and I started my career as a deputy prosecutor at the Bobigny District Court, where I was in charge of public delinquency, then the enforcement of sentences and the prevention of recidivism; finally, I spent two years in the juvenile section. Afterwards, I spent several years running the office of the enforcement of sentences and pardons at the Ministry of Justice before joining the jurisdiction of Nanterre as a juvenile judge for 4 years. Juvenile justice, with which I have been involved both as part of the public prosecutor's office and also as a juvenile judge, is very practical in nature, with immediate and long-term work on resolving difficulties. Juvenile justice is a different kind of justice; it is first and foremost about prevention and protection.

“Juvenile justice is a different kind of justice; it is first and foremost about prevention and protection.”

What are your duties?

The Defence of the Rights of the Child Unit takes action in individual situations where a child's rights are not upheld; this concerns all children, although it is important to note that we are mainly approached regarding the situations of more vulnerable children, such as those entrusted to child protection services. This may be, for example, a refusal by a town hall to allow children staying in a social hostel to attend school, or a situation in which the child welfare service has not established the parents' right of access. As head of the division, I supervise the work of the team and ensure that our responses are

consistent. This requires constant dialogue with the legal team, and in particular with the two coordinators of the division. I provide guidance for the processing of files during our guidance committees, and I handle dialogue with the other divisions on certain situations; for example, with the Security Ethics division on the issue of incarcerated minors.

How do you see the year 2022?

This year, we have been alerted by magistrates in several courts to widespread failures in child protection within their geographical jurisdictions. We have taken up many of these situations ex officio, and have issued a press release to alert the public to difficulties that have been ongoing for many years but have recently become more acute. There is increasing tension, to the detriment of children, in many public services, schools, health, mother and young child protection services and crèches, which are in great difficulty and face a shortage of professionals. However, there is a future challenge in taking good care of these children and making them a priority in our public policies. And I am convinced that the law is a wonderful tool for bringing about change.

Portrait

CAROLINE VENGUD

**Delegate for Gironde,
Rights of the Child officer**

Can you tell us how you became a delegate for the Defender of Rights?

I started by studying private law; I was planning to be a lawyer. Even back then, I wanted to work in basic rights, and I was involved with Amnesty International for several years. I continued my studies in criminal law with a DEA postgraduate degree with a specialisation in juvenile delinquency, where I was able to work and reflect on the question of social determinism. I then went on to write a thesis on the law as applicable to the sick, and in particular on the issue of free and informed consent. This topic led me to undertake training at the Red Cross. The rights of the child have always been central to my thinking, and I wanted to apply to become an assessor at the Children's Court. I was appointed as an assessor at 36 years old.

"After all, it's important to be clear: the children of today are the people who will build the society of tomorrow."

It was during the Covid period that I decided to become more practically involved in the defence of the rights of the child. I applied to the Defender of Rights, and was appointed in April 2021. I see people at my clinics in Bordeaux and Lesparre, while continuing my work as a trainer in several areas: on the rights of the child for directors of child protection, but also on the rights of patients and vulnerable people, and on domestic violence in particular.



What are your duties?

As a delegate, I deal with all types of complaints that fall within the institution's remit, but as a Rights of the Child officer, I provide assistance to all the delegates in my region on situations that affect children.

I am thinking, for example, of our work on behalf of a Traveller family, a father and his two children, who were denied access to drinking water by a mayor, thus violating the two children's right to dignity. This year we also had the case of a three-and-a-half-year-old child with psychological problems who had been isolated and humiliated by her teacher. We intervened, and then the mother finally filed a complaint. It was a great legal satisfaction, if I may say so, because the head of police himself made reference to the rights of the child, and specifically to the right to respect and dignity.

Progress is being made in terms of the rights of the child: awareness is growing at institutional level, although there is still a long way to go before these rights are taken into account and upheld. After all, it's important to be clear: the children of today are the people who will build the society of tomorrow.



2. TRAINING THE YOUNGEST AND EDUCATION PROFESSIONALS ON THE SUBJECT OF THE RIGHTS OF THE CHILD

The Educadroit programme to make young people aware of the law and their rights

2022 demonstrates the rich activities conducted by Educadroit, the Defender of Rights programme for raising the awareness of children and young people regarding the law and their rights. It is aimed at professionals working with young people.

The “Dessine-moi le droit” (“Draw me the law”) exhibition was loaned out over 50 times to promote the rights of the child in schools, extracurricular activities and *ad hoc* events. Nearly 40 awareness-raising sessions on the programme were also held; for example, in March 2022, organised with the support of the Hauts-de-France regional division. The event was attended by about forty participants from Educadroit's partner structures, as well as other local stakeholders working specifically with young audiences.

Educadroit was also present with the CNIL data protection authority and the ARCOM audiovisual and digital regulator at the Educatech educational innovation fair from 30 November to 2 December 2022. As a continuation of the educational kit published in January 2021, the Defender of Rights, CNIL and ARCOM sought to continue their collaboration by launching a study among secondary school teachers on the theme of digital citizenship.

During a conference organised as part of the exhibition, the key points of this study were presented along with the various initiatives and resources in the field of education for digital citizenship, including Chapter 11 of the Educadroit programme, “*Mondes numériques : quels droits ?*” (“Rights for digital worlds”), and the recommendations on digital literacy made in the annual report of the Defender of Rights on the rights of the child: *La vie privée :*

un droit pour l'enfant (“Privacy: a Child's Right”).

The Jeunes Ambassadeurs des Droits

The JADE programme is a civic service scheme created by the Defender of Rights dedicated to raising awareness of the rights of the child and combating discrimination, by young people and for young people, with fun and interactive activities.

The gradual phasing out of Covid constraints has enabled the 94 *Jeunes ambassadeurs des droits* (JADEs, “Young Ambassadors for Rights”) to raise awareness of their rights among nearly 52,000 children and young people in 22 departments in mainland France as well as in Guadeloupe, Mayotte and Reunion; i.e. 3,000 more children than in 2021.

2022 was marked as a year by significant regional growth, now giving JADEs a presence in most regions. For example, Aix-Marseille-Provence welcomed its first team of four JADEs. The programme also returned to the department of L'Ille-et-Vilaine after a four-year absence.

The quality of the JADEs' work is based on both the extensive training they receive and the attractiveness of the tools tailored for an audience of children and young people. This year, the Defender of Rights team has redesigned the activities to ensure a better quality of support work in all regions. Play materials and work resources have been revised, and new activities have been created.

Alongside the Solidays festival and the EducapCity citizen rally, the JADE programme continues to establish partnerships for events aimed at the general public - 38 events this year.

Bullying at school: listening to what children have to say

The Defender of Rights is regularly receiving complaints related to school bullying. For example, it received a case of a child who was being harassed by other students at the school he attended. The parents filed a complaint and a procedure was initiated, in which the delegate was not entitled to



Stand of the Defender of Rights at Solidays festival, from 24 to 26 June 2022

intervene. However, the case did not end there, because a week after the start of the school year, the pupil – who had moved to another school – was again bullied in retaliation for the complaint. The child was frightened, and made this known to the head teacher. His parents then needed to make arrangements to accompany him on his journeys to and from school.

The delegate spoke with the minor, in the presence of the parents, paying close attention to the child's concerns. He then approached the social department of the academy and the school's head teacher.

His actions triggered the “school bullying” prevention mechanism and set off a series of measures for the protection of this child, in particular socio-educational and psychological support.

The delegate subsequently spoke to the school's educational and medico-social community to raise awareness of how to deal with these difficult situations.

3· CHANGING SOCIETY TO SUIT THE CHILD, AND NOT THE OTHER WAY ROUND

The report on personal support for pupils with disabilities

This year, numerous referrals to the institution related to the rights of the child have once again shown that too many children with disabilities still face difficulties in accessing education in the way that other children do. Most of them relate to support for these pupils in the school environment.

A few days before the start of the 2022-2023 school year, the Defender of Rights published a report on personal support for pupils with disabilities.

The number of decisions allocating *accompagnantes ou accompagnants d'élèves en situation de handicap* (AESHs, “support assistants for pupils with disabilities”) is increasing, many of which are not effective.

More generally, and despite the political drive to make schools inclusive in recent years, too many children with disabilities are still offered inappropriate school conditions. Instead of

addressing the needs of the child, the school system asks the child to change. The needs of many children are ignored, especially in extracurricular areas such as the canteen. In this report, the Defender of Rights has formulated 10 recommendations to the public authorities with the aim of guaranteeing effective rights for children with disabilities. She stresses the importance of better training and support for all those involved in national education in the care of children with disabilities and of guaranteeing continuity of support for children throughout their lives.

Refusal to provide individual support to a student with a disability: a serious infringement of the basic right to education

The Defender of Rights received a complaint regarding a disabled child who was referred by the *Maison départementale des personnes handicapées* (MDPH, “Departmental Centre for Persons with Disabilities”) to the ULIS (*Unités localisées pour l’inclusion scolaire*, “Localised Units for School Inclusion”) and allocated an individual disabled student assistant (AESH-i) on a full-time schooling basis.

Individual support for the pupil had proved to be essential to enable that pupil to start learning and to provide assistance with personal cleanliness. The academy refused to allocate individual personal assistance, arguing that pupils referred to the ULIS scheme receive collective human assistance and that this scheme is unsuitable for pupils needing individual personal assistance.

The Defender of Rights reminded the academy of the terms of the Circular No. 2015-129 of 21 August 2015 and the note from the Minister of National Education of 12 May 2016, which states that pupils referred to a ULIS can benefit from personal assistance at all times of inclusion in their regular class, particularly when such support is the result of the need for permanent physiological care.

In this case, denying the presence of an AESH-i to this student at all times of schooling could constitute an infringement of the student’s fundamental right to education.

Following the intervention of the Defender of Rights, the academy recruited a one-to-one assistant (RA-2022-064 of 9 November 2022).

Disability at school: moving away from a disciplinary approach to find appropriate support

The Defender of Rights was informed of the case of a schoolgirl with a disability who had been summoned before a disciplinary board for inappropriate behaviour.

At the same time, the MDPH notified her of a referral to an *institut thérapeutique et pédagogique* (ITEP, “therapeutic and educational institute”), which the child’s mother opposed. She argued that when her daughter had received individual support from an AESH assistant, she had not experienced behavioural difficulties. However, her argument was deemed inadmissible.

The delegate of the Defender of Rights took up this argument with the school’s head teacher, who then proposed to postpone the decision of the disciplinary council for one year, provided that the MDPH agreed to provide personalised support.

For her part, the child’s mother obtained a diagnosis from specialist doctors reporting behavioural problems due to an autistic condition; this provided support to the case before the *Commission départementale d’orientation* (CDOEA, “departmental guidance commission”). Following the intervention of the delegate, the commission agreed to issue an AESH notification. Since the start of the school year, the young schoolgirl has been provided with a personalised support plan, and no new difficulties related to her behaviour have arisen.

Integrating children with disabilities in sporting and leisure activities

The mother of an autistic child approached the Defender of Rights because an association that organises hiking activities had refused her son membership. During outings, however, the intention was for the child to be accompanied by an educator from the medical-psychological centre where he was being monitored.

The delegate then contacted the association to learn the reasons for the membership refusal. The decision had been prompted by the fear that the volunteer leaders would be overwhelmed by the child's condition and that his behaviour would affect the safety of the group. During the discussions, the delegate asked the club in more general terms about its policy on welcoming people with disabilities, and proposed a trial period so that each party could assess the real-world difficulties of the child's participation in the hikes.

The "trial" outings were successful, and the autistic child is now a member of the association and regularly participates in the hikes with the other members.

Hospitalisation of a child in a psychiatric ward for adults

The Defender of Rights was informed of the situation of a 13-year-old girl who had been hospitalised in a psychiatric ward for children and adults. Her mother was reporting that her daughter had been sexually assaulted by an adult patient on the ward.

The Defender of Rights concluded that there were shortcomings in the public service that had resulted in serious violations of the rights of the child and the user of the public service. It made several recommendations to the hospital concerned, and also to the health authorities at regional and national level (Decision 2020-008).

As part of the follow-up to these recommendations, the hospital informed the Defender of Rights of measures taken to ensure better protection of children.

Hospitalisations of children in adult psychiatric wards are now automatically reported to the *Agence régionale de santé* ("Regional Health Agency") through a jointly agreed procedure.

In Decree No. 2022-1263 of 28 September 2022, the Minister for Health and Prevention specifies the framework for the psychiatric hospitalisation of children. This authorises the exceptional care of children in adult services from the age of 16. It stipulates that a transition to care in a child psychiatry service must be arranged as soon as possible.

4. MISINTERPRETATION OF LEGISLATION AND ILLEGAL PRACTICES: DECISIONS THAT DISADVANTAGE THE MOST VULNERABLE CHILDREN

The report on unaccompanied minors under the law

For the past several years, the Defender of Rights has been alerted to the situation of unaccompanied minors, from their entry into France until they reach the age of majority. These referrals have given rise to numerous recommendations, decisions, court observations and opinions to Parliament, which show that changes in the legal framework for these minors have gradually shifted away from standard child protection law to a genuine right of exception in line with the law on foreign nationals. Gradually, the belief has taken hold that these minors should be considered as migrants, and therefore treated as such, rather than as children, who require special attention under the law.

The Defender of Rights wished to bring together all its work in a report published in January 2022, in order to reiterate the applicable law and the obligations imposed upon public authorities, and mainly the absolute need to give priority to the best interests of these children in any decision concerning them, as is the case for any child on French soil. The Defender of Rights makes 32 recommendations to ensure that the rights

of these minors are effectively respected everywhere.

The termination, during the school year, of the care provided by the *Aide sociale à l'enfance* (ASE, "Child Welfare Agency") to a young adult without family support

The institution issued a reminder that in basing its refusal of care for a young adult on the grounds of their non-authorized residence status, a departmental council had added a condition that was not provided for by law and was discriminatory (Decision 2022-014). In this sense, the law of 7 February 2022 on child protection has provided a framework for departments' assessment authority, which can be based only on the absence of sufficient resources or family support. Despite this, some illegal practices remain.

The Defender of Rights thus submitted observations (Decision 2022-335) before the interim relief judge of the Council of State following a referral by a young adult, a former unaccompanied minor entrusted to the *Aide sociale à l'enfance* (ASE, "Child Welfare Agency"), whose care had been terminated during the school year following a refusal of a residence permit with an obligation to leave French territory.

She pointed out that by basing its decision to terminate care exclusively on the denial of residency, the departmental council had disregarded Article L.222-5 of the *Code de l'action sociale et des familles* (CASF, "Social Action and Family Code"). By order of 12 December 2022, even though the young person was in an illegal situation, the interim relief judge of the Council of State considered that the refusal of care amounted to a serious and manifestly illegal infringement on the part of the ASE of the fundamental freedom that constitutes the right to care for the young adult, who fulfilled the conditions of Article L. 222-5 of the CASF. It noted that the departmental council's proposal to give the young person only accommodation and financial assistance effectively compromised the overall approach to the needs of young adults and enjoined the department to offer him a young adult contract as soon as possible.

Failure to inform a student and his family about the terms and conditions of a school grant

A student who had been receiving a grant for years during his schooling was refused a renewal of his grant when he repeated his final year because he had failed to apply for it in time. After his appeal was rejected, his mother appealed to the Defender of Rights. The investigation revealed that the late submission of the application by the family was due to a lack of information from the school on the obligation to provide further proof of resources and expenses in the event of repeating a year.

In her Decision 2022-020, the Defender of Rights concluded that the academy and the school had violated the student's right to education. She recommended that the school and the academy improve their system for informing families, in particular by ensuring that those who had not submitted an application or the requested supporting documents one month before the legal deadline were personally informed by means of a text message or an email and, in the absence of a response, by sending a registered letter with acknowledgement of receipt.

Following this decision, both the school and the academy made improvements to the information provided to families in line with these recommendations.

Ending the detention of children in administrative detention centres

The Defender of Rights remains very concerned about the number of children locked up in *centres de rétention administrative* (CRAs, "administrative detention centres"). In a Decision 2022-023 addressed to the department in charge of the execution of the judgement of the European Court of Human Rights, *Moustahi v. France*, she pointed out the numerous violations of minors' rights in Mayotte: arbitrary associations of minors with third parties and modification of their dates of birth for the purpose of administrative detention and removal from the territory.

On 9 March 2022, the Committee of Ministers of the Council of Europe invited the Government to provide it with updated information, taking into account the findings and analysis of the Defender of Rights. It will review the case in June 2023.

Again, in a [Decision 2022-206](#) concerning Mayotte, the Defender of Rights reported on situations in which children were being associated with third parties who had no parental authority over them, before being placed in the CRA. She also noted a serious infringement of the right to effective redress for these children.

She made a number of recommendations, including an end to the confinement of children in administrative detention centres or premises and to the practice of unilaterally changing the dates of birth of adolescents detained for the purpose of placement in the CRA and deportation.

French children held in camps in Syria: the ECHR condemns the French government

Since 2017, the Defender of Rights has been receiving complaints from the families of French children held in camps in Syria and has constantly called on the authorities to take measures to put an end to this situation, which endangers their lives and exposes them to inhuman and degrading treatment ([Decision 2019-129](#) of 22 May 2019). One of these measures is the organisation of their return to French soil and their care by the competent services.

The Defender of Rights intervened before the Committee on the Rights of the Child ([Decision 2021-201](#) of 23 July 2021). In [February 2022](#), the Committee concluded that France had a responsibility to protect these children and that the refusal to repatriate violated the right to life and the right to be free from inhuman and degrading treatment.

The Defender of Rights also intervened before the European Court of Human Rights, to which families also made applications ([Decision 2020-125](#)).

In a judgement dated 14 September 2022, the Court found France guilty of violating the right of entry of its nationals to its territory. It took the view that the authorities had not guaranteed the children's effective right of entry into their territory and that they should resume consideration of the repatriation applications as soon as possible, with appropriate safeguards against arbitrary actions. The Defender of Rights will ensure the full implementation of these decisions, which support its own analysis.

The “Defence and Promotion of the Rights of the Child” Committee

The Defender of Rights chairs the committee that assists her in exercising her powers in the defence and promotion of the rights of the child (Article 11 of the *loi organique* [framework law] on the Defender of Rights). Éric Delemar, Children's Defender, Deputy to the Defender of Rights, is the vice-chair of this committee.

The six-member committee met four times and was consulted on several projects concerning the right to education, such as [Decision 2022-020](#) concerning insufficient information on the terms and conditions for renewing a scholarship.

Several decisions have also dealt with violence against children: [Decision 2022-070](#) on the failings of a departmental council in its duty to provide protection, following reports of sexual offences committed by the spouse of a childminder against children being looked after in her home, [Decisions 2022-207](#) and [2022-143](#) on acts of violence by teachers against their pupils.

Portrait**AUORE NEEL****Delegate of the Defender of Rights
in Mayotte****What is your background?**

In Mayotte, where I have been living for 10 years, I am the coordinator of a non-profit organisation that promotes the professional integration of young people. When I arrived, I was immediately confronted with the inequalities in access to rights encountered by the inhabitants of Mayotte, and I became interested in the special legal provisions applicable in Mayotte in order to improve the support I could provide to a population that had very little access to the law: as a result of difficulties in accessing the French language, not knowing their rights and having to deal with administrations that are perceived as being all-powerful. It is because of this desire to be involved in protecting the rights and equality of everyone that I became a delegate of the Defender of Rights.

What are your duties?

I started to hold clinics in 2019. Nowadays, I hold a clinic for claimants on Thursdays in the France Services houses in three villages: Sada, Ouangani and Combani. Here, I speak to people from Mayotte who feel that their rights have not been upheld. This represents between 10 and 15 people per clinic, with about 50 requests per week. We still lack delegates in Mayotte. I also deal with a lot of “non-clinic” complaints, which arrive by word of mouth, through associations, by email and by telephone, and especially – and increasingly – by Mayotte citizens living in mainland France. The needs on the ground are considerable, and there are few structures to help people to understand and enforce their rights. I am also the disability officer and tutor for JADEs –the Defender of Rights’ *Jeunes ambassadeurs des droits auprès des enfants* (“Young Ambassadors for the Rights of the Child”) – and since this year, I have been coordinating the network of delegates in Mayotte.



“The needs on the ground are considerable, and there are few structures to help people to understand and enforce their rights.”

The reasons for complaints touch on all our areas of competence, but the vast majority of them relate to difficulties in accessing public services. It is important to understand that most of the inhabitants here do not know that they can challenge the administration, demand an answer within a reasonable time, exercise the right to redress or question an administrative decision. My role is also to educate them about their rights. Problems linked to the rights of the child are numerous and particularly serious in Mayotte, where one in two inhabitants is under 18 years old. Last September, I took action on behalf of children aged 4 to 8 who were unable to start school because they had been refused registration. After a lot of back and forth with the school directors, the town hall and the families, the seven children were able to attend school in the following weeks.

V. ACTING AS AN EXTERNAL SUPERVISORY BODY FOR THE SECURITY FORCES

Editorial

PAULINE CABY

Deputy to the Defender of Rights in charge of compliance with ethical standards by the security forces

IDENTITY CHECKS IN THE LIGHT OF ETHICAL RULES

Security programmes, which by their very nature involve measures likely to infringe on rights and freedoms, are required to take into account the requirement for exemplary conduct and greater quality in the relationship between citizens and their institutions.

This is particularly true of identity checks, which are necessary tools for the work of the security forces, in terms of both the judicial and administrative police, but constitute an infringement of the freedom of movement. Their lack of traceability, and sometimes discriminatory nature, undermine public confidence and increase tensions.

The Defender of Rights is responsible for the external and independent control of the security forces, in order to ensure that their rights are respected, thus contributing to appeasing their relationship with the population and reinforcing confidence, and ensures compliance with ethical standards, i.e. good professional practices; firstly, by identifying individual breaches; and secondly, by promoting ethical standards, including participating in the training of security forces.

“(...) ensure effective control and redress, fostering trust and the necessary respect for the security forces, ensuring that ethical concerns are of central importance in their actions, as a service to our fellow citizens.”

Because the legality of the identity check is not the only issue, the Defender of Rights seeks to determine whether or not the identity checks referred to it have been motivated by discriminatory considerations and whether they have been carried out in accordance with the rules of professional conduct, in particular, without patronising forms of address to the person concerned or unjustified security searches.

The investigations carried out enable us, when a case is referred to a court, to make observations in court, most recently at the request of the Council of State, which dealt with a group action filed by several non-profit organisations on the alleged failure of the State, and before the European Court of Human Rights in the context of third-party interventions concerning the legal framework of controls, their implementation and guarantees against unreasonable or arbitrary actions.

If the matter is not referred to a court, the Defender of Rights takes decisions, after which it may make individual or general recommendations to put an end to any infringements of rights found and to prevent their recurrence.

The analyses of the Defender of Rights are also enhanced with input from several sources.

Firstly, from studies produced or commissioned from researchers or the high courts that the Defender of Rights has the power to question. For example, the Court of Auditors was asked last May to carry out a quantitative and qualitative study on identity checks. Secondly, from study visits abroad, such as a trip to London last April to meet our British counterpart, the IOPC, and the London police, or to Quebec. Finally, from meetings with civil society and directly concerned parties, listening to their experience and feelings.

The Defender of the Rights has thus formulated, notably in its observations in court, recommendations aimed at modifying the legislative framework in order to set objective criteria, ensure the effectiveness of the control by the judicial authority, the guarantor of individual freedoms, and the traceability of identity checks by carrying out experiments, and inform the person subject to the checks.

These recommendations are intended to ensure effective control and redress, fostering trust and the necessary respect for the security forces, ensuring that ethical concerns are of central importance in their actions, as a service to our fellow citizens.

Breakdown of complaints received in respect of security ethics by sub-theme, 2022

Violence	15%
Refusal of a complaint	10%
Inappropriate comments	10%
Infringement of procedure	9%
Unlawful citation	6%
Lack of impartiality	6%
Refusal to intervene	2%
Lack of consideration of health status	1%
Other	5%
Not known	36%
Total	100%

Scope: all complaints in respect of security ethics received by the Defender of Rights in 2022 (N = 2,455).

Breakdown of security ethics-related complaints received by security activity in question, 2022

National Police	49%
National Gendarmerie	20%
Prison Administration	12%
Municipal police	9%
Private security services	2%
Public transport monitoring services	1%
Customs services	1%
Other	1%
Not known	10%
Total	100%

Note: several possible security activities involved.

Scope: all complaints in respect of security ethics received by the Defender of Rights in 2022 (N = 2,455).

1. UPHOLDING THE RIGHTS OF VULNERABLE PEOPLE

Expulsions of families without legal justification, without redress and without support

The Defender of Rights conducted an investigation into the eviction of fifteen people, including four children, by national police officers and the destruction of six shacks occupied by them by municipal police officers on the instructions of the national police officers, even though there was no legislation authorising the State or the municipality to carry out these operations. This intervention was illegal and resulted in the inhabitants being deprived of redress and support in matters of housing, health and schooling ([Decision 2022-213](#)).

The Defender of Rights also concluded that the Inspector General and the Police Commissioner, who were present during the operation and gave the instructions, failed to

comply with the obligations to uphold the law, protect persons and preserve their dignity.

The Defender of Rights issued another decision concerning similar acts and breaches in another department (Decision 2022-212), and its services investigated several cases concerning the legal framework and problematic practices used during eviction operations by national police officers or gendarmes.

Detention of a child with an autism spectrum disorder

The Defender of Rights was informed of the manner in which a 16-year-old child with an autism spectrum disorder was held in police custody. At the end of the investigation carried out by the Office of the Defender of Rights, it was found that there was an accumulation of breaches of the best interests of the child, and in particular the right to protection against all forms of violence. The minor claimant had in fact been held in police custody until a magistrate was informed of his vulnerability and the method of the detention, and decided to end it.

The Defender of Rights issued a decision recommending that the Minister of the Interior issue a reminder of the applicable legislation to the agents concerned.

The Juvenile Criminal Justice Code: one year on

Following on from Opinions 19-14 of 13 December 2019 and 20-09 of 1 December 2020, the Defender of Rights and the Children's Defender were consulted on 23 November 2022 by the fact-finding enquiry on the evaluation of the implementation of the juvenile criminal justice code.

The institution found that the reform has been implemented in very different ways, depending on the size of the jurisdictions. While the objective of reducing trial times is laudable, it seems in some cases to have taken precedence over respect for defence rights and high-quality educational work.

In this respect, the Defender of Rights emphasised issues of resources, of both a material and human nature.

The Defender of Rights was in favour of an irrefutable presumption of lack of criminal responsibility, and asked parliamentarians to assess the impact of the reform, instituting a simple presumption, on the practices of professionals at the stage of police interviews with minors under thirteen years of age.

Finally, she stressed continuing failures in the conduct of criminal investigations: free interviews with very young minors (8, 9, 12 years old), the lack of staff training in the interviewing of minors, the absence of a dedicated room, and the lack of clear information to the minor on his or her rights and to his or her legal representatives.

Procedures for receiving and dealing with a deaf person in a police station

In the Decision 2022-242 of 30 December 2022, the Defender of Rights found shortcomings in receiving and dealing with a deaf woman in a police station.

The Defender of Rights noted, among other things, that the claimant's disability had not been sufficiently taken into account when she went to the police station to request information about her son's ongoing custody, and also at the point when the decision was made to remove her from the police station with inappropriate actions. The officers were insensitive to her condition even though the claimant was left unresponsive on the ground for several minutes, without calling for emergency services.

The Defender of Rights also considered that in deciding to interview her without delay in police custody, the police officer had not sufficiently taken her vulnerability and distress into account.



Noting general difficulties concerning access to a French sign language interpreter, the Defender of Rights finally recommended that the Minister of Justice should adopt appropriate measures to guarantee effective access without discrimination to the procedure for deaf and hard of hearing persons.

Meetings with stakeholders in charge of ethics

The Defender of Rights and her deputy responsible for ethics in the security forces travelled to London in April 2022 to meet the main British stakeholders in police ethics and identity checks (stop and search police powers). In particular, they were able to hold extended discussions with the IOPC (Independent Office for Police Conduct), the British counterpart of the IPCAN (Independent Police Complaints Authorities' Network) on the issue of monitoring and tracing identity checks and assessing the discriminatory aspects of certain checks.

The opinions of the Defender of Rights on fixed fines for offences

In two opinions to the Senate and the National Assembly 22-02 of 3 October 2022 and 22-06 of 24 October 2022, the Defender of Rights expressed her opinion on the reform of *Amendes forfaitaires délictuelles* (AFDs, “fines for misdemeanours”) proposed by the Ministry of the Interior’s draft framework and planning law.

The original legislation proposed the extension of the AFD procedure to cover all offences punishable by a single fine or up to one year’s imprisonment. However, for the past two years, in cases already provided for by the law, the Defender of Rights has been informed or alerted on numerous occasions of multiple or repeated citations, up to 8, for disturbances of the peace or traffic violations. Consequently, it did not seem appropriate to universally implement a procedure that had not been the subject of any precise assessment and that clearly presented difficulties of application, with significant consequences for relations between the police and the general public.

The Defender of Rights noted three arguments that resulted in changes to the bill, avoiding the initially planned general application, although the legislation still retains the extension of

AFDs to new offences, which is itself open to criticism.

First of all, increases to the powers of enforcement officers entail a risk of arbitrary implementation and disparities of treatment contrary to the principle of equality before the law.

In addition, the AFD procedure creates new barriers for access to the judge, especially for the most vulnerable. The proposed procedure no longer allows access to the judge without an initial payment of a deposit, the amount of which may be high. In addition, the initial notice is sent by ordinary letter, which often makes it difficult to receive.

Finally, the last bias noted by the Defender of Rights in this procedure is that the payment of the AFD, without a criminal trial, has the effect of excluding the victim from the procedure.

2. REMINDER OF THE ETHICAL OBLIGATIONS UPON LAW ENFORCEMENT OFFICERS

The importance of internal control in relation to security ethics

The Defender of Rights was informed of a trade union leaflet that contained insulting language about a detainee. The investigation carried out by the Defender of Rights' office found that the prison services had not taken any action against the authors of the leaflet. In its Decision 2022-030, the Defender of Rights found that they had breached their ethical obligations.

Subsequently, the Defender of Rights welcomed the response given by the Director of the Prison Administration, who stated that he strongly condemned such practices, had taken preventive measures, and would ensure absolute respect for detainees.

Furthermore, in her speech to the *Beauvau de la sécurité* consultative body in 2021, the Defender of Rights stressed the importance of control by internal inspectorates, hierarchy and peers. While she welcomed the effectiveness of this control and the responsiveness of these stakeholders in many cases referred to the Defender of Rights, it noted shortcomings in the choice of persons to whom certain investigations were entrusted (Decisions 2022-241, 2022-242), the manner in which the investigations were carried out (Decisions 2022-153, 2022-241, 2022-242), or the lack of response from senior management, despite serious suspicions of misconduct by their agents (Decisions 2022-156, 2022-240, 2022-052, and 2022-153).

The partnership work of the Defender of Rights with schools for the training of persons engaged in security activities

The work of the Defender of Rights in respect of security ethics was again marked by a strong investment in training:

- 4,160 student peacekeepers were trained in ethical rules in 35 sessions in 10 metropolitan schools;
- 450 officer cadets from the Canne-Ecluse school also received training based on practical cases involving peer-related situations;
- 140 cadets or external auditors from the *École des officiers de la gendarmerie nationale* ("Gendarmerie Officer School") in Melun were trained on the same instruction model as used for police officers. The training is based on the philosophy that ethics provide a legal framework for the day-to-day work of staff, which not only binds them but also affords protection for them.

A seven-hour "train-the-trainer" course was conducted for managers and trainers at the SNCF's security university (SUGE) in January 2022.



The “Security Ethics” Committee

The Defender of Rights chairs the committee that assists her in exercising her powers in respect of security ethics (Article 11 of the *loi organique* [framework law] on the Defender of Rights). Pauline Caby, Deputy to the Defender of Rights, is the vice-president of this committee.

The eight-member committee met four times and had several opportunities to discuss the existence or absence of misconduct by the security forces.

The Committee examined several projects relating to the prison environment: [Decision 2022-030](#) on insulting remarks about detainees contained in a trade union leaflet in a prison; [Decision 2022-055](#) on the negligence of a prison guard who allowed a detainee to be assaulted; [Decision 2022-156](#) on violence against a prisoner and management of an incident involving a power cut in a cell.

In addition, the members of the Committee deliberated on several occasions on recommended disciplinary proceedings against police officers following observed breaches: [Decisions 2022-212 and 2022-213](#) on illegal evacuations and destruction of property; [Decision 2022-240](#) on violence by a police officer against a man placed in the custody of a judicial court.

Finally, a few cases submitted to the Committee for its opinion concerned conditions of custody: [Decision 2022-52](#) on the placement and maintenance in police custody of a child with an autism spectrum disorder; [Decision 2022-209](#) on the difficulties encountered by women in police custody in accessing sanitary protection; [Decision 2022-242](#) on the circumstances under which a hearing-impaired woman was received by police officers at the reception desk and then taken into police custody.

Focus

THE CRITICAL NEED TO PROTECT DETAINEES

Attending a father's funeral while in prison

The Defender of Rights was informed of difficulties encountered by a detainee in attending his father's funeral, despite the fact that an order authorising his release under escort had been issued by the sentence enforcement judge. When the judge requested an escorted leave, the authority responsible for regulating and scheduling judicial escorted leave told the prison that it was unable to grant the request.

Following an urgent approach by Defender of Rights staff, the management of the prison administration informed them of the urgent re-engagement of a team from the judicial escorted leave division to ensure the claimant's release under escort. He was then able to attend his father's funeral the following day (RA-2022-045).

The inability of a detainee to obtain medically prescribed hypoallergenic bedding

The Defender of Rights was contacted by a detainee whose health condition required the provision of hypoallergenic bedding. Despite the presentation of medical certificates, she was denied access to this bedding. This refusal was repeated several times, forcing her to sleep on the floor.

The Defender of Rights referred the matter to the management of the prison administration, which stated that the internal regulations of the institution prohibited the introduction of such bedding into the institution.

The Defender of Rights took the view that this situation constituted inhuman and degrading treatment, and that the

provisions of the internal regulations constituted discrimination on the basis of the person's health. It recommended that the internal rules be brought into line with the law in force. The Defender of Rights also recommended that a detainee who has been granted reasonable facilities to adapt his or her detention conditions should only be transferred to a new prison if it is guaranteed that he or she will be entitled to the same facilities there (Decision 2022-081).

"Portable" rights for a disabled prisoner

The Defender of Rights was informed of the case of a detainee – a beneficiary of the Disabled Adult Allowance (AAH) – whose temporary transfers between penitentiary establishments located in different departments had disrupted the payment of his benefit.

Despite the request to transfer his case file from one *caisse d'allocations familiales* (CAF, "family allowance fund") to another, his allowance – and only source of income – continued to be paid at the original prison, which had rejected the payments on the grounds that the prisoner had been moved.

The delegate of the Defender of Rights intervened with the CAFs concerned, and each one re-established the payment schedule. The benefits due for the entire period were paid, and the detainee's rights were restored.



Protecting a detainee from violence by neighbours

The delegate of the Defender of Rights was contacted by a prisoner who complained of violence from some prisoners on his floor (insults, spitting, physical attacks, clothes being torn off, etc.), on the grounds that he had supposedly stolen a mobile phone. He no longer dared to take a shower, and allegedly attempted suicide several times.

The delegate intervened with the management of the establishment to ensure that protective measures were taken for the prisoner concerned.

Following this intervention, the prisoner was interviewed by the director in charge of the prison building. An investigation was launched to identify those responsible for the violence, and the threatened prisoner was placed in a secure area, isolating him from contact with his attackers. And he was invited to speak to the director again if the difficulties reappeared.

VI. PROVIDING PROTECTION AND GUIDANCE FOR WHISTLEBLOWERS

Editorial

CÉCILE BARROIS DE SARIGNY

Deputy to the Defender of Rights in charge of support for whistleblowers

WHISTLEBLOWERS, ACT II

No less than four pieces of legislation were enacted in 2022 to guarantee the protection of whistleblowers, as part of the transposition of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019, and beyond.

The Defender of Rights had called for such measures, and is pleased that they have now been adopted. The year 2022 thus marks a new stage in the protection of whistleblowers.

But only when it is implemented in the months and years to come will we be able to judge the real effectiveness of the new legal framework, which can already be considered as needing further improvement – particularly in terms of the financial support provided to whistleblowers. The recommendation to create a dedicated support fund – which was included in the opinion of the Defender of Rights of 29 October 2021 – was not adopted, as the legislator preferred a financial and psychological support system for external authorities, which is clearly insufficient.

As now provided for in the *loi organique* [framework law] of 29 March 2011, amended in 2022, the Defender of Rights is today responsible for assessing the “overall

functioning of whistleblower protection” in a biennial report. Consequently, it will seek to draw up an initial assessment.

“The coming months, which will undoubtedly be crucial, will tell whether the first trends are confirmed. They will also undoubtedly make it possible to measure the involvement of the Defender of Rights and its unique position in the whistleblower protection system.”

Nevertheless, it should be noted that the new protective provisions, which have just been incorporated into French law, are already yielding some results.

The authorities responsible for handling alerts specified by the decree of 3 October 2022 thus seem to be preparing themselves to create or update their alert-handling procedures. Formal and informal meetings on the subject were held at the end of 2022, in which the Defender of Rights had a strong involvement. They have provided an assessment of not only the shortcomings of the current procedures in certain structures, but also the desire to remedy them and to overcome the practical difficulties generated by the new rules.

As far as whistleblowers are concerned, the entry into force of recent legislation has not been without its consequences. The Defender of Rights was the first to witness this: in the period of a few months,

the institution received several dozen requests from whistleblowers for an opinion on their status as whistleblowers. These opinions, known as *certifications*, are a new feature of the *loi organique* of 21 March 2022, allowing whistleblowers to be informed of their status despite not (yet) having suffered any reprisals.

For legitimate reasons of confidentiality, the Defender of Rights has chosen not to make these certifications public. However, the annual report of the institution – as well as the biennial report on the overall functioning of whistleblower protection – provides an opportunity to share the doctrine of the Defender of Rights in applying whistleblower protection mechanisms. This doctrine is still under construction, but initial opinions already reveal a broad approach to the scope of the Defender's tasks, particularly with regard to the legal framework within which applications are examined and the scope of the advice given.

The certifications are not all positive, however, and in terms of substance, limitations on the scope of application of whistleblower protection mechanisms have been raised. For example, the Defender of Rights informed the claimants that whistleblowers are by definition motivated by an interest that transcends their own situation, which excludes from the definition (among others) any victims who may have made a report on their own behalf and exclusively for themselves.

The coming months, which will undoubtedly be crucial, will show whether the first trends are confirmed. They will also undoubtedly make it possible to measure the involvement of the Defender of Rights and its unique position in the whistleblower protection system.

1 • A NEW LEGAL FRAMEWORK FOR PROTECTING WHISTLEBLOWERS

The entry into force of new legislation and regulations

The Law of 21 March 2022 aimed at improving the protection of whistleblowers, along with the *loi organique* of the same day aimed at strengthening the role of the Defender of Rights in terms of whistleblowing, offer new guarantees to whistleblowers.

This legislation relaxes the conditions that enable whistleblowers to benefit from protection by removing the condition of disinterestedness, the exclusionary effect of which the Defender of Rights had criticised. The reporting procedure has been made more flexible, ending the requirement to go through the internal channel before notifying an external authority. Whistleblowers are now able to choose the most appropriate channel for reporting. The simplification of the procedure limits the legal risks that could cause whistleblowers to lose their right to protection. This protection is reinforced by the new legislation. It benefits not only whistleblowers but also the third-party facilitators who accompany them in their work, now providing civil and criminal immunity not only for the disclosure of protected secrets, but also for the concealment of lawfully obtained information, as well as financial support before the judge in the event of a gagging procedure.

The law entered into force on 1 September 2022.

A decree of 3 October 2022 completed the structure by strengthening the obligations incumbent upon authorities responsible for handling alerts. It is aimed primarily at public or private entities that handle internal alerts. The decree also lays down procedural rules for external authorities that may potentially receive alerts within their field of competence. A list of these 41 authorities is set out in the legislation.

The Defender of Rights, which is one of these authorities, is appointed to deal with alerts relating to the rights of the child, discrimination, ethics relating to persons exercising security activities and relations with public services.

Finally, Decree No. 2022-1686 of 28 December 2022 has set out the terms and conditions for supplementing the personal training accounts of whistleblowing employees.

The specific place of the Defender of Rights in the new system

Under the role of supporting and protecting whistleblowers that it assumed in 2016, the Defender of Rights now has a certification power that enables it to state, as soon as possible after a whistleblower makes a report, the nature of the protection from which the authors of the report are likely to benefit.

More generally, the Defender of Rights ensures that protective provisions are properly implemented. In terms of handling alerts, it is the central authority responsible for delegating the alert to the external authority best placed to deal with it. The Defender of Rights is also responsible for assessing the overall functioning of whistleblower protection in a report that it submits every two years to the President of the Republic, the President of the National Assembly and the President of the Senate.

A new deputy for whistleblower support is responsible for the work of the institution on this topic on behalf of the Defender of Rights. Cécile Barrois de Sarigny, appointed following a proposal by the Defender of Rights, by decree of 16 April 2022, took up her duties in the weeks following the publication of the laws of 21 March 2022. She has endeavoured to ensure that they are properly disseminated, both within and outside the institution, through training and communication. Once the decree of 3 October 2022 had been issued, the Defender of Rights naturally became a favoured point of contact for the various entities responsible for implementing the new provisions, including the external authorities. In particular, in conjunction with the latter, it defines the doctrine necessary for the proper application of the texts.

Legislation that whistleblowers have been quick to avail themselves of

Requests for an opinion

This has resulted in a significant increase in the number of requests for support made to the Defender of Rights.

The first requests for certification were received as soon as the *loi organique* of 21 March 2022 came into force, which entrusted the Defender of Rights with this new competence.

More than 30 applications for certification were submitted to the Defender of Rights between March and December 2022. In several cases, the whistleblower already had an ongoing case related to a claim for protection against retaliation.

The Defender of Rights was asked for an opinion by an employee of a supermarket chain who had reported tax fraud and clandestine work in her establishment.

After examining the documents submitted, the Defender of Rights found that the conditions of the Act of 9 December 2016 had been met; specifically, that no payment had been sought by the employee in return for her reports, and that she was convinced of the fraudulent nature of the reported actions without any indication that she had been informed of the manifestly unfounded nature of her suspicions.

The Defender of Rights concluded that the claimant was entitled to claim to be a whistleblower within the meaning of the Act of 9 December 2016.

The opinion provided an opportunity to examine the applications for certification relating to alerts issued prior to the new Act of 21 March 2022 in the light of the law in force both before and after this Act. According to the analysis of the Defender of Rights, the applicable protection is the one that was in force at the time of the reprisals (Decision 2020-024 of 28 May 2020). In order to prevent future reprisals, therefore, it is necessarily useful for the author of a report to know whether he or she is entitled to benefit from the new protections offered by the law.



Requests for guidance

The Defender of Rights has also received requests for guidance under the new legislation.

In one case, a trade union representative referred a report of racist remarks to it.

It is the responsibility of the Defender of Rights to assess the merits of a report only in the other four areas of its competence, which are mentioned in Article 4 of the *loi organique* of 29 March 2011, relating to the rights of the child, discrimination, ethics relating to persons exercising security activities, and relations with public services.

Having concluded that in this case the racist remarks had not been accompanied by discrimination, the Defender of Rights declined jurisdiction for handling the alert.

It nevertheless invited the claimant to refer the matter to the competent public prosecutor, whose contact details it provided.

The alert was thus redirected to the authority best placed to deal with it.

2· ACTING ON A EUROPEAN SCALE WITH THE NEIWA NETWORK

On June 17, 2022, the Defender of Rights participated in a seminar organised by the Anti-Fraud Office of Catalonia as part of the annual meeting of the Network of European Integrity and Whistleblowing Authorities (NEIWA).

The members of the network were able to examine, country by country, the implementation and specific characteristics of the national laws transposing European Directive 2019/1937 on the protection of persons who report violations of EU law.

The first version of a comparative study on NEIWA members, carried out by the Slovak members of the network, was also presented to the members. The aim of this report is to introduce the organisations associated with the network and to give an overview of their powers and competencies in the field of whistleblower support and protection as well as education and awareness-raising. This study has now been published on their website.

Portrait

FABIENNE DUBO

Executive Assistant to the General Secretariat



“I also provide assistance in managing her day-to-day business, not only in the work of the investigative divisions, but also in the areas of human resources, finance or communication, as the General Secretariat is the cornerstone of the institution.”

What is your background?

I joined the Defender of Rights after several decades as head of the private secretariat of local elected officials and ministers, where I learned about how institutions operate and the specifics of work with a cabinet.

In 2013, I joined the institution as an executive assistant to the Director General of Services. At the time, the institution was two years old and Dominique Baudis was the Defender of Rights.

What are your duties?

I work alongside the Secretary General, whom I assist in managing her schedule, organising meetings both internally and with our external partners, who are mostly institutional stakeholders. I also provide assistance in managing her day-to-day business, not only in the work of the investigative divisions, but also in the areas of human resources, finance or communication, as the General Secretariat is the cornerstone of the institution.

This requires me to work with all the departments. On a day-to-day basis, this requires discipline and flexibility in facilitating the interface between the departments, the cabinet and the members of the governance.

“This requires me to work with all the departments. On a day-to-day basis, this requires discipline and flexibility in facilitating the interface between the departments, the cabinet and the members of the governance.”

VII· WORKING AT THE DEFENDER OF RIGHTS

THE SUPPORT FUNCTION TEAMS COMMITTED TO NEW PROJECTS

In 2022, the General Administration directorate was able to take advantage of a period of recovery from the health crisis which, during the previous years, had set the pace for a large part of its activities, whether in terms of remote working rules or health rules for life on site, in compliance with interministerial protocols.

The short-term management methods imposed by the crisis have been replaced by the implementation of long-term projects and the commitment to strong and sustainable guidelines for the operation of the institution:

- in terms of methods and human resources, with recruitment corresponding to the new programmes – including the Antidiscriminations.fr platform and whistleblowers in particular;
- with regard to working conditions and daily life, 2022 has been a year that prompted the institution to overhaul its decision on teleworking in order to consider the consequences of the crisis and offer a quality of working life that is more considerate of work/life balance;
- with regard to IT and security considerations, 2022 was a year synonymous with strengthening the cybersecurity of servers and applications. Under the impetus of France's *Agence nationale des systèmes d'information* (ANSSI, "National Information Systems Agency"), a study known as "PRIS" was conducted and successfully concluded, testing the security of IT architecture following threats or attempted attacks;

- 2022 was also marked by the return of more important communications initiatives, travel and physical events, the financing and management of which occupied part of the support functions.

Professional elections at the Defender of Rights

In addition to the renewal of the staff representatives, i.e. about twenty people, the election was accompanied by the creation of new social dialogue bodies, including the *Comité social d'administration* (SAC, "Social Administration Committee"), which will replace the *Comités techniques* (TCs, "Technical Committees") and *Comités d'hygiène, de sécurité et des conditions de travail* (CHSCTs, "Health, Safety and Working Conditions Committees") in 2023, i.e. after the renewal of the staff representatives.

Service notes, decisions by the bodies, advocacy and awareness-raising work among staff, logistical organisation, collection and dispatch of voting material, ballot accessibility, etc., were all part of the work of the HR division in preparation for this deadline.

As the institution had been granted an exemption from electronic voting at its request, voting took place at the ballot box and by post for this renewal.

The result was very positive in terms of participation: the participation rate was 75%, compared to a 45% average in the state civil service.

Portrait

MATHIAS KHELOUYA

Manager in the Human Resources Department



What is your background?

For five years, I worked as an administrative manager at the *Centre national d'art et de culture Georges Pompidou* (“national art and culture centre”), where I worked on payroll. Later, as a local human resources manager at the DSAF (Prime Minister’s Administrative and Financial Services Directorate), I worked on recruitment, with a particular focus on discrimination issues (disability, gender, supposed origin, etc.). I have been interested in the work of the Defender of Rights for a long time, and when I was recruited in 2022, it fulfilled a long-term ambition to join the institution.

“I also follow up on staff on long-term sick leave. This means regularly informing them about their rights, responding to their needs, and fighting against isolation in preparation for their return.”

What are your duties?

Since my arrival, I have been dealing with issues related to working conditions and all matters concerning occupational health. This may concern workstation ergonomics specifically; for example, with problems related to musculoskeletal disorders, but also subjects related to psychosocial risks in a more general sense. I can deal with people who express a problem at work, for any reason.

I am also in contact with the occupational physician and the occupational psychologist, who, while adhering to the strict confidentiality of exchanges with agents, can give alerts. Our role may be to consider adaptations to the workstation, in conjunction with line managers, colleagues, etc. I also follow up on staff on long-term sick leave. This means regularly informing them about their rights, responding to their needs, and fighting against isolation in preparation for their return.

I am also in charge of running the institution's social activities, such as organising the end-of-year party. This is an important event for the institution, and it involves contacting several service providers, suggesting venues to management and shortlisting gifts for the children, in order to organise an event that will please everyone, staff and their families, because a fun atmosphere also contributes to occupational health!



DAY-TO-DAY MANAGEMENT OF THE INSTITUTION

In addition to medium- and long-term actions, day-to-day business has been marked by important HR news, including:

- the continuation of a rich social dialogue, with 17 bodies debating work organisation rules, structural changes in the regional network and headquarters, and the duties of the gender equality officer;
- the launch of work on the deployment of a new Human Resources Information System (HRIS) in preparation for a “GA-PAYE switchover” and the modernisation of personnel management tools in 2023;
- the strengthening of an individualised training offer, with an emphasis on staff in the regions;
- a promotion campaign, in accordance with the management guidelines, with a higher number of promoted staff (35) to take into account the financial years not covered during the pandemic;
- almost 40 staff appointments over the year (short and long contracts), these appointments were facilitated by dedicated software and a career site, not forgetting onboarding and support for around 64 trainees over the two semesters;
- the management of the staff appraisal campaign in a dematerialised format with the Esteve tool, which this year allows the collection of training requirements.

But also:

- the completion of the renewal of the computer fleet, in accordance with the recommendations on equipment obsolescence, and experiments on new tools for securing portable equipment and remote office devices;
- the establishment of a procedure for managing the delegates' archives, in conjunction with the archives function of the Prime Minister's office, the regional

network and the various departmental archives services;

- the completion of the relocation of the regional divisions onto public parkland, for the metropolitan divisions, delivering structural savings, in conjunction with stakeholders responsible for property policy in the regions;
- and participation in 11 *Comités de gestion du site* (COGES, “Site Management Committees”) to coordinate with the other entities occupying the Ségur-Fontenoy building, where the institution's headquarters are located, on all common issues (life on site, collective catering, modernisation work, voluntary waste management points, fire safety drills).

THE OFFICERS OF THE INSTITUTION

The institution's employment authorisation ceiling (PAE) has increased significantly between 2021 and 2022 from 231 to 249 Full-Time Equivalents (FTEs) according to the Budget Acts.

This increase comes after new competencies were entrusted to the institution with the creation of an anti-discrimination platform, the development and coordination of which was made the responsibility of the Defender of Rights in 2021.

However, the institution remains structurally under-resourced for carrying out all its tasks more effectively and dealing with the increase in complaints, which stands at around 15% each year.

In addition, it has not yet been possible to translate the increased competencies in the field of whistleblowing in the course of 2022 into a corresponding and satisfactory increase in resources.

The category and gender breakdown tables are calculated on a regulatory basis to facilitate comparisons from one year to the next. They reflect a distribution that is generally stable according to these criteria, compared to previous years.



On average, job consumption will have reached an average of around 245 FTEs (full-time equivalents), reflecting – as indicated above – significant recruitment activity during 2022.

In fact, apart from the delegates (nearly 570 at the end of 2022) whose status as volunteers makes them special employees who cannot be counted in the workforce, nearly 320 people (staff, trainees and casual workers) will have been managed by the institution's HR teams in 2022.

Breakdown of the FTE employment ceiling of the institution by category

Employment ceiling as FTE*	Employment ceiling 2022	
Incumbents	Category A+	16
	Category A	19
	Category B	8
	Category C	2
	Subtotal	45
Contract workers	204	
Total	249	

* FTE = full-time equivalent work

Breakdown of the institution's FTE employment ceiling by category and gender

Categories	Women			Men			Overall workforce	Workforce breakdown
	Number	% W	% W/W	Number	% M	% M/M	Number	%
A+	32	66%	17%	17	34%	27%	49	20%
A	122	76%	65%	37.8	24%	60%	160	64%
B	25	83%	13%	5	17%	8%	30	12%
C	7	70%	4%	3	30%	5%	10	4%
Total	187	75%	100%	62.8	25%	100%	249	100%

Budget consumption in 2022

In EUR	Staff expenses	Operating expenses**		Total	
	AC*=PC*	AC	PC	AC	PC
Initial Budget Act budget	17,546,239	6,856,295	6,856,295	24,402,534	24,402,534
Available budget	17,978,508	6,444,917	6,444,917	24,423,425	24,423,425
Budget consumed	17,878,601	6,460,269	6,365,771	24,338,870	24,244,372
Usage rate	99%	100%	99%	100%	99%

* AC: authorisation of commitment, PC: payment credit / ** Including the compensation of territorial delegates.

BUDGETARY RESOURCES

In 2022, the credits made available to the Defender of Rights, for programme 308, *Protection des droits et des libertés* ("Protection of Rights and Freedoms"), amounted to EUR 24,423,425 in authorisations of commitment (ACs) and payment credits (PCs).

EUR 24,338,870 in ACs and EUR 24,244,372 in PCs were consumed, i.e. full usage of the appropriations made available. The structure of expenditure remains broadly stable compared to previous years (74% devoted to the wage bill, and 11% to territorial delegates).

At the same time, EUR 2,068,855 in operating credits were also allocated to the institution by the Prime Minister's Administrative and Financial Services Directorate to cover expenses shared with the Prime Minister's departments and also human resources expenses in the amount of EUR 650,000, which will be transferred to the institution's business budget programme (No. 308) and will be added next year to the credits in this envelope.

As an extension of the measures initiated in previous years, and while still pursuing its policy of promoting rights, the institution has endeavoured to rationalise its operating costs with a view to controlling public expenditure and ensuring transparency in purchasing by using, whenever possible – and with the exclusion of purchases that justify a specific

approach with regard to its independence – interministerial and shared public contracts of the Prime Minister's services, as well as the Union of Public Procurement Groups.

Breakdown of the institution's operating expenditure

Type of expenditure	%
Compensation for regional delegates	42%
Rights advocacy, communication, partnerships, events	21%
Day-to-day operations	17%
Websites, computer tools	7%
Surveys and research	5%
Trainee allowances	4%
Reimbursement of seconded staff	3%
JADE Programme	1%
Total	100%

Portrait

LAMINE GAYE

Computer scientist in the IT division

“To ensure that all officers have the IT and material resources they need for their work...”

What is your background?

I started out as a computer scientist in the French education system in the Amiens school district. After that, I was a network administrator in private companies, and then I completed my training in network systems administration and security at the *Institut pour la promotion de l'enseignement et du conseil* (IPREC, “Institute for the promotion of teaching and advice”) in Paris.

What are your duties?

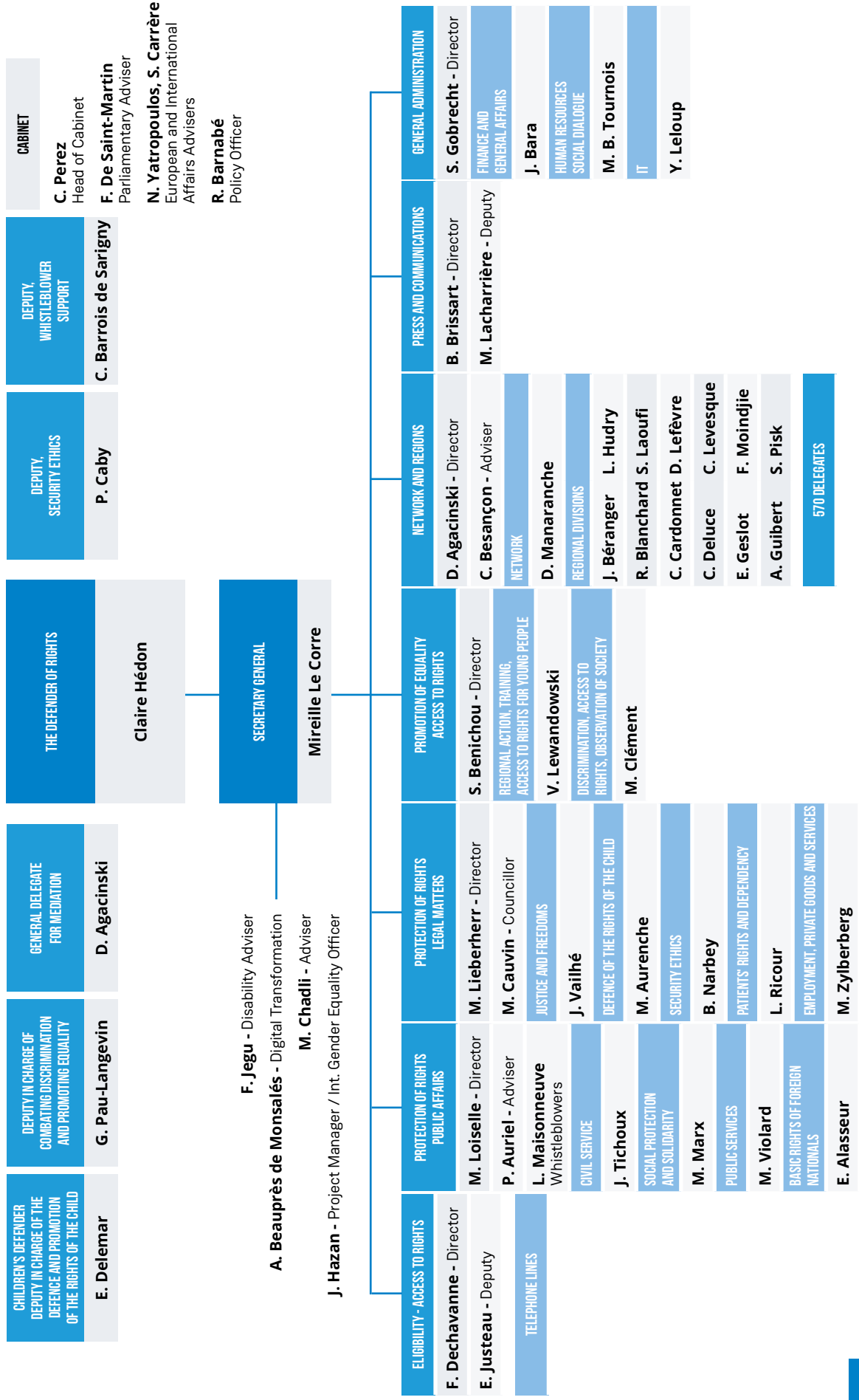
I am an IT administrator. My role is to manage the equipment, perform preventive monitoring, manage all the hardware and servers and ensure the smooth running of the institution's network. This involves dealing with dysfunction reported by staff, which may be related to computer equipment, the running of a videoconference or difficulties in accessing the network, whether in the office or at home.

My work also includes pre-processing of attachments to files that come from outside, sent by claimants before they are handed over to the lawyers. To ensure that all officers have the IT and material resources they need for their work, I also create directories and lists of internal and external contacts and ensure that they remain up to date.



“I am an IT administrator. My role is to manage the equipment, perform preventive monitoring, manage all the hardware and servers and ensure the smooth running of the institution's network.”

Defender of Rights organisation chart



THE COMMITTEE MEMBERS

“Anti-Discrimination and Promotion of Equality” Committee

• **Ms. Gwénaële CALVÈS**

Professor of Public Law at the University of Cergy-Pontoise, specialist in non-discrimination law

• **Mr Stéphane CARCILLO**

Professor affiliated to the Department of Economics at Sciences-Po
Head of the Employment and Income Division at the OECD

• **Mr Éric CÉDIEY**

Director of ISM CORUM

• **Ms. Marie-Françoise GUILHEMSANS**

State Councillor

• **Mr Guy-Dominique KENNEL**

Former Senator
Honorary President of the Bas-Rhin Departmental Council

• **Mr Pap NDIAYE** (until June 2022)
Mr Daniel SABBAGH (since 2023)

Director of Research (Sciences Po-CER)

• **Ms. Karima SILVENT**

Head of Human Resources, AXA Group
President, *Établissement pour l'insertion dans l'emploi* (EPIDE, “Establishment for Inclusion in the Workplace”)

• **Ms. Véronique SLOVE**

Honorary Adviser to the Court of Cassation

“Defence and Promotion of the Rights of the Child” Committee

• **Mr Jérôme BIGNON**

Honorary Member of Parliament, honorary barrister

• **Ms. Odette-Luce BOUVIER**

Adviser to the Court of Cassation

• **Ms. Pascale COTON**

Vice-President, *Conseil économique, social et environnemental* (EESC, “Economic, Social and Environmental Council”)
Vice-President, CFTC

• **Ms. Elisabeth LAITHIER**

Honorary Deputy Mayor of Nancy
Chair of the Early Childhood Committee
Expert adviser on early childhood at the AMF
President of the Lorraine *Association pour la Promotion des Actions Médico-sociales Précoces* (“Association of for the Promotion of Early Medical-Social Action”)

• **Ms. Anne-Marie LEROYER**

Professor at the Sorbonne Law School, specialist in personal and family law

• **Ms. Marie-Rose MORO**

Professor of child and adolescent psychiatry
Head of Department of the *Maison des adolescents* (“teenager centre”) at Cochin Hospital, Paris-Descartes University



“Security Ethics” Committee

• **Mr Claude BALAND**

Honorary Prefect of the region

President, *Fédération française des banques alimentaires* (“French Federation of Food Banks”)

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• **Mr Alain FOUCHÉ**

Honorary Senator for Vienne

Honorary lawyer at the Court of Appeal of Poitiers

• **Ms. Dominique de la GARANDERIE**

Lawyer

Former President of the Bar

Chair of the Le Monde Group Ethics Committee

• **Mr Yves NICOLLE**

Honorary Commissioner General

Mr Olivier RENAUDIE

Professor of Public Law, University of Paris 1 Panthéon-Sorbonne

Mr Jacky RICHARD

Honorary State Councillor

Ms. Valérie SAGANT

Magistrate

Director, *Institut des études et de la recherche sur le droit et la justice* (“Institute for Studies and Research on Law and Justice”)

Mr Pierre VALLEIX

Honorary Advocate General at the Court of Cassation



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Mireille Le Corre

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TSA 90716 - 75334 Paris Cedex 07

+33 (0)9 69 39 00 00
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