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# Annual Activity **Report** 2016

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# Editorial

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## RIGHTS ARE A FIGHT

**2**016 confirmed that, 5 years after it first went into operation in June 2011, the Defender of Rights is an institution of the Republic that may still be young but is growing in power and is a recognised force able to exercise influence on the effectiveness of rights and promotion of equality.

Our activities have increased significantly, in terms of requests received, files processed by local delegates and the central team, and number of interventions.

The delegates' convention, the second of its kind, evidenced the major role our territorial network plays in dealing with difficulties in access to rights – a role recognised by elected public officers and civil service departments alike.

Moving our head office – an operation carried out with considerable agility – did not slow down the pace of our activities.

Our interventions have enabled us to submit

more observations to courts – with such notable successes as the Court of Cassation's ruling on identity checks and major decisions on compensation for employees who have been discriminated against – and, by delivery of opinions and through hearings, to participate in much parliamentary, legislative and monitoring work. Our general recommendations, reports and studies have embodied a whole series of reform proposals for the progress of law.

However, and this report is largely devoted to it, there would seem to be a trend towards diminishing access to rights in our country.

The wide-scale survey carried out among the general population last spring, the detailed results of which we are currently busy exploiting, provides ample demonstration of the fact. Non-take-up of rights is a major phenomenon in our society. It may be explained by a measure of withdrawal on the part of public services, in particular reduction in reception, guidance and assistance

functions, replaced by digital procedures. Consequently, the Defender of Rights finds itself responsible for seeing that the rights of the most vulnerable sectors of the public are applied, in particular those of the poorest, oldest and most disabled, who suffer worst of all from the drop-off in public services.

At a deeper level, inequalities between individuals and groups themselves produce this non-take-up phenomenon. This is particularly true when it comes to countering discrimination. There is no doubt that it continues, and it would seem that few people who suffer from it see it as such, and even fewer take one of the paths of redress open to them in substantive law.

The decades-old weakness of public policies countering discrimination has much to do with unawareness of realities and ignorance of procedures. The intervention of the Equality and Citizenship Law at the very end of the five-year period, and the advances contained in the law on modernisation of the justice system, to both of which the



Defender of Rights greatly contributed, have not made up for lost time – all the more so as, although countering discrimination within the City Policy is without doubt an advance as far as priority districts are concerned, real action to counter discrimination everywhere and for everyone is yet to be taken.

The terrible events of 2016 also led the Defender of Rights to adjudicate on the balance between security requirements and compliance with the guarantees of fundamental freedoms. With each of the five laws extending the state of emergency and the legislative and constitutional projects intended to prevent and pursue terrorism, I showed how many provisions restricting our public and individual freedoms shifted the border between the judicial authority and the administrative police, and in total weakened the rule of law that I continue to regard as the best response to terrorist endeavour.

The “migrant crisis”, as the newspapers so improperly call it, has held the Defender of Rights’ attention since its very beginnings. Dominique Baudis was in Calais in 2012 and I expedited an onsite mission in June and July 2015 that led to publication on 6 October that year of the documented report on the situation with regard to

fundamental rights in the Calais area.

On 9 May 2016, following more than a year’s analysis work, we published the report entitled “*Les droits fondamentaux des étrangers en France*” (Fundamental Rights of Foreigners in France). In the meantime, a number of recommendations bearing on provision of care to foreign minors, unaccompanied minors in particular, highlighted the failings of French and European authorities in the application of foreigners’ and migrants’ rights.

If I paid so much attention to the situation of unaccompanied minors, especially those who had been evacuated from the Calais and Paris camps, it was because it provided a perfect illustration of the Republic’s failings with regard to at least three of the Defender of Rights’ missions: the fundamental rights of children under the International Convention, inadequacies in the operation of public services, and discriminatory treatment of foreigners and migrants in circumstances where, in disregard of universal rights, their being foreigners was taken into consideration over and above their being users, sick, children, jobseekers or accommodation seekers.

In this field as in others, 2016 made it all too clear once again: in a country where equality is yet to be achieved, ensuring effectiveness of rights is a

constant struggle, all the more so as temptations to withdraw, to refuse to belong, and the decline of the republican spirit become greater day by day.

The Defender of Rights must therefore respond scrupulously to social demand as well as take part in a fight for rights, through education, training, research and communication.

The 2016 Activity Report provides an exhaustive description of what we are and what we do in taking on this dual vocation.

Expert, exacting, independent and free, the Defender of Rights is neither neutral nor indifferent, however. As an institution of the Republic, we must play an active part in reform in order to ensure that the aim of equality is gradually achieved to the benefit of all those who live in our country.

Jacques TOUBON,  
Defender of Rights



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of Health  
10 Downing Street  
London SW1A 2BQ

10 Downing Street

10 Downing Street

10 Downing Street

10 Downing Street



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# The Defender of Rights’ Delegate and Deputies

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*“The Defender of Rights chairs boards that assist him in the performance of his duties in the defence and promotion of the rights of the child, the fight against discrimination, promotion of equality, and ethics in the field of security.*

*Upon the Defender of Rights’ proposal, the Prime Minister appoints the Defender of Rights’ deputies [...] Such Deputies are assigned to the Defender of Rights under his authority.”*

(Article 11 of the Organic Law of 29 March 2011)

The position of General Delegate to Mediation with Public Services was also created with a view to monitoring the defence of rights and freedoms of individuals in their relations with public services.

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## ***Defence and promotion of the rights of the child***

In order to perform his duties with regard to the rights of the child, the Defender of Rights is assisted by a **Deputy, Children’s Ombudsperson Geneviève Avenard**.

The Defender of Rights chairs the Board for Defence and Promotion of the Rights of the Child, with Ms Avenard as Vice-Chair.

*The Board is composed of six members:*

Dominique Attias, Vice-President of the Paris Bar, Christian Charruault, President of the Honorary Chamber of the Court of Cassation, Eric Legros, psychoanalyst and former child protection association director, Anne-Marie Leroyer, Professor at the Sorbonne Law School

and specialist in individual and family law, Jean-Pierre Rosenczveig, Honorary Magistrate at Bobigny Children’s Court, and Françoise Simon, former Director for Childhood and the Family at Seine-Saint-Denis *Départementale* Council.

The Board for Defence and Promotion of Children’s Rights met three times in 2016. Apart from the exchanges and debates that took place, it was also consulted on draft recommendations regarding unaccompanied minors, two examples being general recommendations on access to rights and justice (Decision 2016-52 of 26 February 2016) as well as the decision bearing on such minors in Paris (Decision 2016-183 of 21 July 2016).

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## ***Countering discrimination and promoting equality***

In order to perform his duties with regard to countering discrimination, the Defender of Rights is assisted by a **Deputy, Patrick Gohet**.

The Defender of Rights chairs the Board for the Fight against Discrimination and Promotion of Equality, with Mr Gohet as Vice-Chair.

*The Board is composed of eight members:*

Rachid Arhab, journalist,  
Gwénaële Calvès, Professor of Public Law

at Cergy-Pontoise University and specialist in non-discrimination law, Yves Doutriaux, State Councillor, Dominique Guirimand, Honorary Counsellor at the Court of Cassation, Françoise Laroudie, Secretary General of Arche en France, Jamel Oubechou, community activist, Françoise Vergès, researcher, and Mansour Zoberi, Director of Diversity and Solidarity, Casino Group.

The Board for the Fight against Discrimination and Promotion of Equality met four times in 2016. Apart from the

exchanges and debates that took place, it was also consulted on draft recommendations regarding access to banking services: Decision 2016-007 of 12 February 2016, Decision 2016-134 of 11 May 2016 and Decision 2016-179 of 24 November 2016. The Board also debated a number of decisions relating to discriminatory harassment, both in public employment (Decision 2016-122 of 11 May 2016) and private employment (Decisions 2016-168 and 2016-176 of 6 July 2016).

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### *The ethics of security*

In order to perform his duties with regard to the ethics of security, the Defender of Rights is assisted by a **Deputy, Claudine Angeli-Troccaz**.

The Defender of Rights chairs the Board for the Ethics of Security with Ms Angeli-Troccaz as Vice-Chair.

*The Board is composed of eight members:* Nicole Borvo Cohen-Séat, Honorary Senator, Nathalie Duhamel, former Secretary General of the CNDS, Jean-Charles Froment, Professor of Public Law and Director of the Grenoble IEP, Sabrina Goldman, lawyer at the Paris Bar, Jean-Pierre Hoss, Honorary State Councillor, Sarah Massoud, Investigating Judge at the Créteil High Court, Cécile Petit, Honorary First Advocate-General at the Court of Cassation, and

Valérie Sagant, Magistrate and Assistant Director of the National School of the Magistrature.

The Board for the Ethics of Security met five times in 2016. Apart from the exchanges and debates that took place, it was also consulted on draft general recommendations bearing on implementation of administrative search measures and compensation of individuals in the context of the state of emergency (Decision 2016-153 of 26 May 2016). The Board also dealt with cases of interaction between the security forces and migrants: Decision 2016-9 (circumstances of the evacuation of exiles from an esplanade), Decision 2016-24 of 17 February 2016 (situation of a migrant in Calais) and Decision 2016-304 of 1 December 2016 (conditions of administrative detention).

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### *Defence of users of public services*

In order to perform his duties with regard to relations with public services, the Defender of Rights is assisted by a **General Delegate to Public Services Mediation, Bernard Dreyfus**.

The General Delegate coordinates a range of actions aimed at finding permanent solutions to recurrent difficulties identified in complaints addressed to the institution.

He is also responsible for monitoring a number of partnerships and represents the institution in various networks: the network of the Defender of Rights' correspondents in ministries, networks of mediators in social bodies and local authorities, and at the Public Service Mediators Club. Finally, he participates in work carried out by the Mediation Evaluation and Control Commission for Consumption (CECMC). He is therefore able to keep an eye on all

mediation methods.

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# The Defender of Rights in figures

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ALMOST 130,000 REQUESTS FOR INTERVENTION  
OR ADVICE

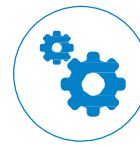


**86,596**  
complaint  
files

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**44,474**  
calls to the  
institution's  
call centres

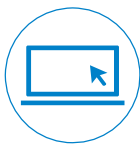


**22**  
ex-officio  
referrals

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PERMANENT CONTACTS WITH THE PUBLIC  
AND CIVIL SOCIETY



In 2016  
**1,128,469**  
visitors to the  
websites

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**3**  
advisory boards  
composed of  
22 qualified  
individuals,  
which met 14 times

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**8**  
permanent  
committees for  
dialogue  
with civil society,  
which met 10 times

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Over  
**3,000,000**  
communications disseminated in 2016



## ACKNOWLEDGED EXPERTISE

81,949  
files  
processed

119

submissions of  
observations  
to courts

In  
83%  
of cases, courts'  
decisions  
confirm the  
institution's  
observations

11

reports published

696

significant  
measures  
taken

Recommendations of general

and individual scope, legal  
observations,  
proposals for reform, opinions to  
Public Prosecutors' Offices, referrals  
to Public Prosecutors' Offices, civil  
transactions, ex-officio referrals of  
serious situations, etc.

152

proposals for  
reform  
addressed to  
the public  
authorities  
and

26

proposals for  
reform  
satisfied

350,000

leaflets disseminated

Almost

80%

amicable  
settlements

undertaken by the  
institution

have positive  
outcomes

27

hearings at the  
request of  
Parliament in a  
wide variety of  
fields

21

opinions at the request of  
Parliament

## A TEAM AT THE SERVICE OF RIGHTS AND FREEDOMS



Almost

250

employees  
at the head  
office



Almost

450

delegates present at 750  
reception points across the  
territory



# General statistics

## OVERALL EVOLUTION OF COMPLAINTS RECEIVED BETWEEN 2015 AND 2018

### Breakdown according to the Defender of Rights' fields of competence

*It should be kept in mind that sums presented are not equal to total numbers of complaints received (Over 3,000 submissions were multiqualified).*

	2015	2016	Evolution	2010*
Public service	40,329	45,113	11.9%	38,091
Childhood	2,342	2,611	11.5%	1,250
Discrimination	4,846	5,203	7.4%	3,055
Security ethics	910	1,225	34.6%	185
Access to rights	33,132	35,504	7.2%	

\* Data for 2010 corresponds to the final year of activity of the 4

authorities to which the Defender of Rights succeeded



### 44,474

provisions of information by telephone in 2016



Complaints increased by:

### 8.8%

over 2016

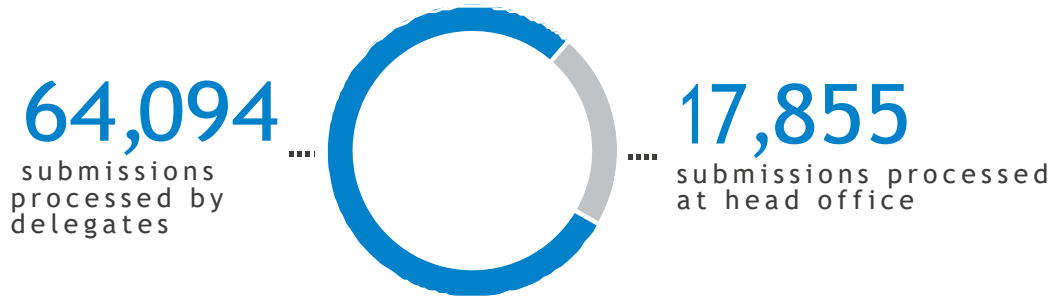
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**17.9%**  
since 2014

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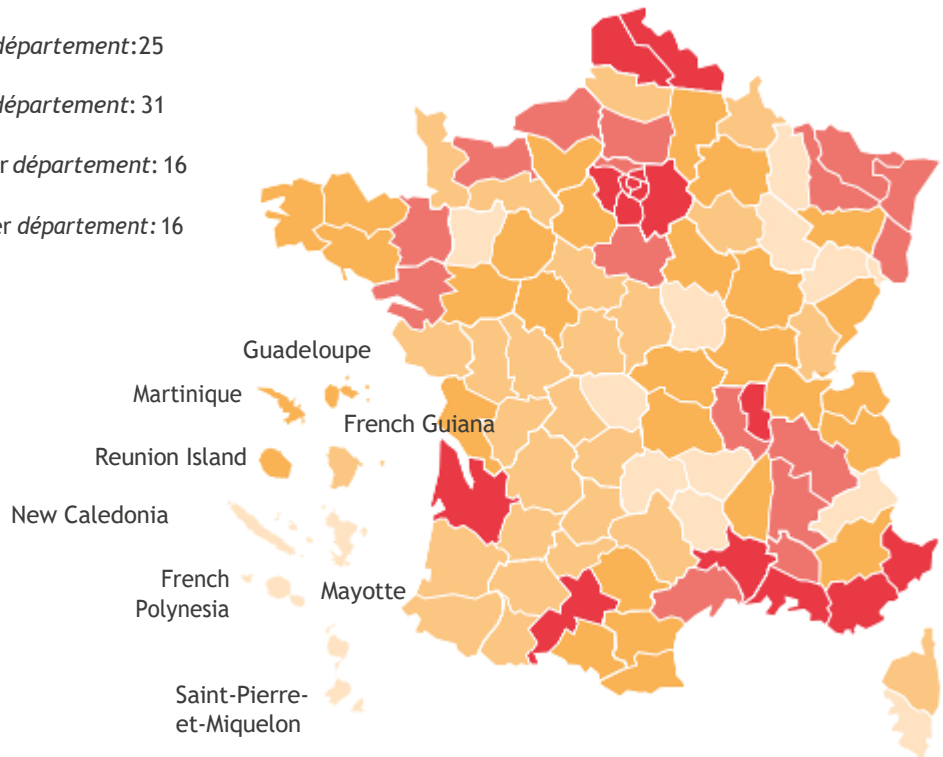
## BREAKDOWN OF COMPLAINTS PROCESSED BY THE INSTITUTION IN 2016

*Division between head office and delegates*



### *Breakdown of submissions received by the Defender of Rights over the course of 2016*

- 1-200 per *département*: 16
- 201-400 per *département*: 25
- 401-800 per *département*: 31
- 801-1,600 per *département*: 16
- Over 1,601 per *département*: 16



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# Highlights

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*THE DEFENDER OF RIGHTS' INDEPENDENT REPORT TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD*

Following France being heard

by the UN Committee on the Rights of the Child on 13 and 14 January 2016, the Defender of Rights delivered its

independent assessment report in February 2016, in which it assessed implementation of the Convention on the Rights of the Child (CRC), as an independent mechanism for monitoring the Convention. With the collaboration of the various institutions and associations that had drawn up alternative reports, the Defender of Rights will soon be setting up operational mechanisms enabling permanent monitoring of the Committee on the Rights of the Child's general observations.

*DEFENDER OF RIGHTS SURVEY ON ACCESS TO RIGHTS*

A large-scale survey among a representative sample of over 5,000 individuals was carried out, with the aim of taking stock of the

situations falling within the Defender of Rights' competences (combating discrimination,

Children's rights, security force ethics and relations with public services).

*PRESS CONFERENCE ON THE DEFENDER OF RIGHTS' REPORT ON THE STATE OF EMERGENCY*

In the exceptional context of restriction of freedoms brought about by the state of emergency on 26 November 2015, the Defender of Rights set up a dedicated referrals system and, on 26 February 2016, presented the press with a report on situations that had been referred to it and which had led it to note the tensions arising from operations connected with the state of emergency, within families and the population as a whole. It also made recommendations on taking into account the presence of children in houses searched (Decision 2016-069), formalisation of relations between security forces and individuals in the context of searches, and on the system for compensation after searches

that caused damage (Decision 2016-153).

*THE DEFENDER OF RIGHTS' REPORT ON FOREIGNERS' FUNDAMENTAL RIGHTS*

Drawing on a report on its activity, decisions issued and the opinions it had delivered to

Parliament, the Defender of Rights published a report on 9 May 2016 designed to indicate all the obstacles hindering foreigners' access to fundamental rights under the State's sovereign powers (entry, stay and removal) as well as in other fields where equal treatment should be ensured: social protection, work, schooling, child protection and prohibition of violence. The report was also a collection of recommendations on changing a number of laws and regulations, along with illegal or discriminatory practices.



*CONFERENCE,  
28 JUNE 2016:  
"CHILDREN,  
EUROPE,  
EMERGENCY—  
THE PROTECTION AND  
FUTURE OF MIGRANT  
CHILDREN: A CHALLENGE  
FOR EUROPE*

Concerned about the situation of migrant children present in France and Europe, the Defender of Rights arranged to bring together all European actors involved on 26 June 2016 in Paris, in order to take stock of the migratory situation in Europe and exchange best practices so as to ensure immediate reception and protection of migrant children. The Ombudspersons, Mediators and Defenders of Children's Rights present adopted a common declaration, calling on States to provide migrant children with effective protection and asserting their determination to implement concrete actions to ensure the safety of migrant children and respect for their rights.

*THE DEFENDER OF  
RIGHTS REPORT ON  
LEGAL PROTECTION  
OF VULNERABLE  
ADULTS*

With longer life expectancy and the appearance of age-linked disorders, the question of legal protection of vulnerable adults is

coming to affect the lives of increasing numbers of people. On 29 September 2016, drawing on observations resulting from complaints it had received and its own expertise, the Defender of Rights presented its recommendations in order for the State to take appropriate measures to improve support provided to all individuals under legal protection and the effectiveness of their rights.

*LAUNCH OF THE  
DEFENDER  
OF RIGHTS'  
COMMUNICATION  
CAMPAIGN: "THINK  
YOUR RIGHTS HAVEN'T  
BEEN RESPECTED?  
WE'VE GOT THE  
ANSWER"*

The Defender of Rights broadcast a nationwide information campaign on access to rights between 17 October and 6 November 2016; its main objective was to raise awareness among the greatest possible number of people of the institution's fields of intervention and ways of contacting it directly, while underlining the pillars of its identity ensuring its effectiveness: proximity, expertise and independence. The campaign took the form of 4 visuals and a 30-second video, disseminated in the daily press. A 30-second film was also broadcast on the Internet,

including on the Facebook and Twitter social networks, YouTube, and the Defender of Rights' website.

*THE DEFENDER OF  
RIGHTS AND THE  
CHILDREN'S  
OMBUDSPERSON  
PUBLISH THEIR  
ANNUAL REPORT ON  
CHILDREN'S RIGHTS  
"RIGHT TO EDUCATION:  
A SCHOOL  
FOR ALL, A UNIVERSAL  
RIGHT"*

On 20 November 2016, the Defender of Rights and its Deputy, the Children's Ombudsperson, published their report on the rights of the child, "*Droit fondamental à l'éducation: une école pour tous, un droit pour chacun*" (Fundamental Right to Education: a school for all, a universal right). Drawing on observations made during investigation of the referrals regularly made to it, the Defender of Rights asserted that access to schooling is not an effective right in France, in particular for the most vulnerable children, that schools struggle to ensure respect of such children's uniqueness and individuality, and that the effect of social and territorial inequalities and discrimination continues, and is even on the increase.

*THE DEFENDER OF RIGHTS' DELEGATES' CONVENTION, PARIS, 28 AND 29 NOVEMBER 2016*

On 28 and 29 November 2016, in order to bring together the network of 450 delegates who

represent it across national soil, the Defender of Rights organised an event with all its teams, with a view to giving delegates their say. It provided them with an opportunity to bring up their concerns with regard to the complaints they receive and their relations with local interlocutors. The meeting had a special side to it this year as, 5 years after setup of the

Defender of Rights, it was an occasion to assess the institution's activities and perspectives, in particular through external eyes and via the testimonies of representatives of the State

Law Commissions, the judicial authority and elected officials in the field.

*COLLOQUIUM ON THE TEN YEARS OF THE INTERNATIONAL CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, PARIS, 13 DECEMBER 2016*

On 13 December 2016, on the occasion of the 10<sup>th</sup> anniversary of the

International Convention on the Rights of Persons with Disabilities (ICRDP), the Defender of Rights, which is the national body

responsible for monitoring the Convention, organised an international colloquium in Paris on the subject "The ICRDP, what new rights?". The meeting provided an opportunity to inform and raise awareness among legal professionals and institutional and community actors responsible for questions of disability on the issues involved in implementation of the ICRDP, from the point of view of access to rights and legal discourse as well as of the drafting and implementation of public policies.



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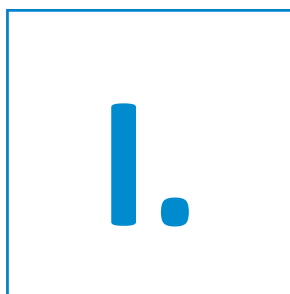




# Saisir le Défenseur des droits

par l'Intermédiaire de ses délégués  
présents sur le territoire national  
([www.defenseurdesdroits.fr/](http://www.defenseurdesdroits.fr/) /  
téléphonique : « Contacter un délégué »)

Formulaire en ligne,  
site :  
[www.defenseurdesdroits.fr](http://www.defenseurdesdroits.fr/) ,  
téléphonique :  
« Saisir le Défenseur des droits »



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# A priority: access to rights

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**T**he Defender of Rights has made access to rights one of the pillars of its action. It pays special attention, to people in temporary and long-lasting situations of vulnerability, whatever the cause.

The Defender of Rights pays close attention to social protection institutions and systems in order to provide itself with food for thought and examine the issue of access to rights. The sometimes insurmountable difficulties encountered by

users of public services, along with phenomena of non-take-up of rights calls into question the effectiveness of public action, i.e. the systems, procedures and practices with regard to access to rights.

The process of modernising the administrative apparatus and its modes of intervention is an endeavour that poses the question of users' access to public services. Such modernisation should find expression in simplification of procedures and transparency of decision processes. In an increasingly conflictual society in crisis, the multiplication of administrative procedures, their complexity,

instability even, and progressive digitisation create risks to access to equal rights.

The Defender of Rights finds that difficulties in access to rights result first and foremost from a lack of information on rights themselves and on what steps to take, as well as from flaws in support systems for implementation of rights. Such difficulties are sometimes worsened, even created, by the systems themselves, either because their administrative complexity leads individuals to abandon recourse to them, or







because the very design of such systems tends to exclude the individuals they are supposed to address.

In 2016, the institution received 86,596 requests, 80% of which were addressed to its delegates.

Although this was a marked increase compared with 2015, they are far from representing all the real situations coming under the institution's competences, which is why

the Defender of Rights carried out a national survey in 2016, in order to better grasp the scale of such situations and of non-take-up of rights, with regard to the social and demographic characteristics of the individuals concerned. It also set up an observatory on take-up of rights, collecting significant social and demographic variables on the individuals who refer their cases to it in order to

better characterise its activity.

Comparison of these two data sources enables it to assess the appropriateness of the action it takes and provides an essential source of knowledge of those informed of the Defender of Rights' existence or otherwise, to guide its actions on communication and promotion of access to rights.

# 1. The “Access to Rights” survey

The initial results of the “Access to Rights” survey confirm how widespread non-take-up of rights is in France, a phenomenon that particularly affects specific social groups.

## A. Relations with public services

One in five people experience difficulties in carrying out the administrative steps required, and the same proportion believe that an unfavourable decision on the part of a public service cannot be contested.

The survey\* also shows that 27% of those questioned had no Internet access or experienced difficulties carrying out administrative procedures on the Internet.

Over 50% of people questioned had experienced difficulties at least once over the last five years solving a problem with an administration or public service, with regard to waiting periods, lack of information, poor reception, etc. (Table 1).

But non-take-up of rights also refers to situations where experiencing such difficulties results in the user abandoning the procedure and waiving rights (benefits) to which he/she has a legitimate claim.

After experiencing difficulties, most of those questioned continued with procedures and contacted the administration or public service concerned (80%). However, 12% gave up altogether. The main administrative departments concerned were justice (36%), the Treasury (14%) and the social security scheme for self-employed workers (13%).

Abandonment of administrative procedures is most common among younger users (21% of 18-24 y/o) and the least qualified (18% of those with no bacalaurate).

Such abandonment is more usual in sectors of the public confronted with marked socioeconomic problems. Lack of proficiency in the French language, financial difficulties, and

TABLE 1

What sort of problem were you faced with last time?  
(Multiple answers allowed)

Repeated requests for supporting documents	38%
Difficulties contacting anybody	37%
Lack of information	30%
Absence of response	29%
Wrong information	24%
A lost file	22%
Poor reception	18%

*Field: Individuals stating they had experienced difficulties in their relations with public services in the last five years (sample group =2,867)*

\*See Focus, page 26

the fact of being a beneficiary of Universal Health Coverage (CMU) are all characteristics associated with higher rates of abandonment of procedures.

The main reasons given were the pointlessness and complexity of steps to be taken (Table 2). Lack of knowledge of possible recourses was also mentioned by 14% of individuals concerned.

The pointlessness of procedures was most often mentioned by the oldest members of the sample, as well as by farmers (58%), craftspeople /tradespeople/company heads (48%), intermediate professions (53%) and senior executives (47%). Complexity of procedures was more often mentioned by blue-collar workers (42%) and those not in work (46%).

Ignorance of what steps to take was particularly high among young people 18-24y/o (26%) and older people 65-79y/o (17%), as against 14% of the sample as a whole. This reason was seldom given by the most qualified (5%), who therefore seem better informed on possible means of recourse. It was also the most qualified categories who most often found alternative solutions.

## B. The rights of the child

Over a quarter of a century after ratification of the International Convention on the Rights of the Child (7 August 1990), almost one in every two people (48%) are unable to spontaneously cite even one of the rights of the child recognised by the Convention.

In total, 16% of the sample stated they had witnessed an infringement of the rights of the child over the course of the last 5 years. Most such infringements concerned children who were not the children of the individuals themselves (in 90% of cases).

In 9 out of 10 cases of infringements of the rights of one of their own children, steps were undertaken to report such infringements. When individuals witnessed an infringement of the rights of a child other than their own, a significant proportion of them (49%) took no steps.

TABLE 2

Why did you not try to contact or recontact the administrative department or public service in question?

(Multiple answers allowed)

No point in doing so	40%
Steps are too complicated	38%
Found a solution elsewhere	18%
Didn't know who to approach	14%
The problem solved itself	8%
Other	22%

Field: individuals who had abandoned procedures following a problem with a public service or administrative department (sample group=355)

The percentage is higher among men (58%) and the least qualified (59%). Farmers (64%), craftspeople, tradespeople and company heads (53%) and blue-collar workers (58%) were also less likely to take action than other socio-professional categories.

Reasons given (Table 3) included lack of proof for half the people concerned (53%) and the feeling that "it was none of their business" (40%).



TABLE 3

## Are there any special reasons for you not having taken any action?

*(Multiple answers allowed)*

		Numbers
Not enough evidence	53%	184
None of my business	40%	134
Don't know who to turn to	36%	129
There's no point	40%	116
No confidence in the justice system	21%	66
Fear of consequences	16%	41
No confidence in the police	12%	39
Fear of social services' reaction	10%	43
Other	11%	35

*Field: Individuals who had taken no steps after witnessing an infringement of the rights of a child other than their own (sample group=362)*

## C. Discrimination

Although the great majority of people questioned thought it was possible to lodge a complaint when faced with discrimination (96%), only 34% knew what recourses were available and what steps to take.

Almost half of those questioned reported having been personally confronted with a situation of discrimination in the last 5 years. Although not all cases of discrimination mentioned are recognised in law, they were nonetheless experienced as such and deemed worth taking to court or informing the Defender of Rights or associations of.

Confronted with such situations, 80% of individuals concerned took no steps to try to assert their rights. This was particularly true when it was a matter of discrimination in access to employment (93% of non-take-up) and when such discrimination was seen as being on grounds of origin (88% of non-take-up).

Reasons most often mentioned to explain lack of action in cases of discrimination above all

refer to the pointlessness of making any appeal (Table 4).

The pointlessness of taking steps (“there’s no point” or “it’s not worth it”) is most often mentioned by older members of the sample (45-79y/o) as well as by its youngest members (18-24 y/o). Individuals aged between 25 and 54 were most likely to put forward lack of evidence as a discouragement to taking steps to make the discrimination suffered known.

As regards qualifications, individuals whose highest qualification was the baccalaureate were also the most likely to mention the pointlessness of taking action, and also cited lack of confidence in the justice system or the police; this was also true of blue-collar workers. As an example, among individuals who had taken no action, 42% of blue-collar workers and 41% of individuals without a baccalaureate explained it by lack of confidence in the justice system, as against 31% of all those concerned.

Individuals who stated they were seen as black or Arab were also proportionally greater in number than others in the sample to mention lack of confidence in police and legal authorities. Among those who took no action, 47% said they did so because they lacked confidence in the justice system and 35% because they lacked confidence in the police, as against 29% and 19% respectively of individuals who thought they were seen as white.

## D. Ethics of those responsible for security

The Defender of Rights is responsible for compliance with ethics by actors in security as well as defence of the rights of individuals likely to be affected by such activities.

Almost everyone who took part in the survey (97%) thought that it was possible to lodge a complaint if members of the security forces behaved in an unethical manner (insults, humiliations, inappropriate gestures or unjustified use of violence).

Among the minority of people who stated that they had been the subject of an identity check in the last 5 years, (16% of those questioned), over one in five (23%) reported having been confronted with unethical behaviour on the part of security officers (disrespect, insults or brutality).

TABLE 4

Are there any special reasons why you didn't take steps to make this act of discrimination known?

(Multiple answers allowed)

There's no point	79%
It's not worth it	75%
No confidence in the justice system	57%
Didn't know who to approach	41%
No confidence in the police	39%
Lack of evidence	34%
Fear of consequences	23%
Other	4%

Field: individuals who had taken no action after experiencing discrimination connected with sex, age, origin or skin colour, state of health/disability or religion

(Sample group=1,657)



A small minority (5%) of those concerned had decided to take action to assert their rights. Reasons for such individuals' non-take-up are presented in [Table 5](#).

Once again, they refer to the feeling that it would be pointless to undertake any action to assert their rights.

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*Initial results of the “Access to Rights” survey confirm not only the prevalence of situations potentially coming under the Defender of Rights’ competences, but also the scope of the phenomenon of non-take-up of rights in France, whether it is a matter of difficulty in or relinquishment of assertion of rights (to a social benefit or public service, etc.) or of recognising a situation in which rights are infringed (discrimination, rights of the child, unethical behaviour by security officers, or relations with public services). In-depth analyses will be published throughout 2017. Combined with the study of referrals received by the Defender of Rights, they will enable provision of an accurate overview of issues involved in access to rights in France depending on the social characteristics of individuals concerned.*

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**TABLE 5**

**Are there any special reasons for your not taking action?**

*(Multiple answers allowed)*

There’s no point	<b>80%</b>
It’s not worth it	<b>64%</b>
Lack of proof	<b>48%</b>
No confidence in the police	<b>48%</b>
No confidence in the justice system	<b>47%</b>
Fear of consequences	<b>34%</b>
Didn’t know who to approach	<b>27%</b>

*Field: individuals who took no action after experiencing unethical behaviour on the part of the police (sample group=146)*



## FOCUS

## The “Access to Rights” survey

### General objective

Managed by the Directorate for Promotion of Equality and Access to Rights, the statistical survey sought to take stock of the situations coming under the Defender of Rights’ competences: countering discrimination, the rights of the child, security force ethics and relations with public services.

### An in-depth questionnaire

Sociodemographic data was complemented by specific questions relating to precarity (financial situation, type of work contract, state of health, etc.), Internet access, and characteristics reflecting motives prohibited by non-discrimination law (self-declared or perceived religion, actual or perceived background, sexual orientation, disability, etc.).

The questionnaire then put forward a series of theme-based modules bearing on the rights of the child, unequal treatment and discrimination, harassment

at work, racism, and relations with public services and the police. For each theme, sample groups were questioned on their knowledge of rights and systems likely to provide them with protection, as well as on their experiences (as witnesses or victims of infringement of rights).

### A randomly constituted sample

The sample was constituted in random fashion so as to be able to establish representative estimators of the 18-79 y/o population residing in Metropolitan France.

Selection of individuals was based on a two-stage random sampling. At the 1<sup>st</sup> stage, telephone numbers were drawn at random from a landline and mobile phone number base corresponding to the household population. At the 2<sup>nd</sup> stage, the survey set about questioning one individual per household whose telephone number had been randomly drawn. The person questioned was also selected at random from among eligible individuals in the household.

### Collection of data

The survey institute’s interviewers all attended a two-day training course run by the Defender of Rights’ team.

The survey was carried out between 19 February 2016 and 31 May 2016.

A total of 5,117 people were questioned by telephone. Average duration of interviews was 37 minutes.

The selected individuals’ participation rate was 57%. Only 126 out of 5,243 individuals (2% of those surveyed) called a halt to the questionnaire before they had replied to all questions. 87% stated that the survey interested them.

### Analyses

Analyses were weighted in order to take account of the survey’s two-stage sampling method and to ensure the sample matched the French population’s sociodemographic characteristics as typified by the census. Only statistically significant differences, at the 5% threshold, were signalled.

## 2. Overcoming obstacles in access to rights

Complaints are either sent direct to the head office, via an online questionnaire or by post, or, most often, to the delegates (80% of complaints), who constitute a proximity network dedicated to the reception of all individuals having problems asserting their rights, in 724 offices located throughout the national territory.

Delegates' observations largely corroborate the "Access to Rights" survey's results. They enable identification of difficulties with which individuals are confronted, their scale, and the real impact on access to rights of choices provided by public service managers.

Delegates are unanimous in condemning the increasing inaccessibility of services due to abolition of reception services, digitalisation and lack of telephone response. De facto, all Defender of Rights' reception systems provide information points on procedures and rights, and take on the task of contacting government departments and social protection bodies on behalf of all individuals who have not managed to contact them or obtain any reply. A number of social protection bodies have even suggested to local delegates that they have access to files so that they can themselves inform individuals on the progress of their submissions.

Complaints addressed to the head office also highlight lack of response, this time extending to the central government and the public justice service.

Apart from requests from individuals unable to find out what was happening to the files they had submitted, delegates and head office alike are also confronted with non-processing of requests, whether by reason of omission, error, delay or inadequate

resources, or because of inability to coordinate communication between several administrative departments required to process an individual situation.

Referrals addressed to the Defender of Rights also come from individuals whose rights have been suspended on suspicion of fraud, alleged overpayment or reassessment of rights, and who have obtained no response after having provided the explanations asked for, due to the fact that such files involve non-standardised personalised analysis.

In a society that organises solidarity by setup of complex social contribution and service systems, such-and-such a body's administrative requirements are all too likely to significantly and dramatically impair individuals' living conditions. The Defender of Rights constitutes an invaluable avenue for access to rights for anyone faced with wind-up of a pension plan, recalculation of social contributions, change of situation with regard to social benefits, change in tax situation, or major healthcare expenses, not to mention individuals in temporary or long-lasting situations of precarity.

## A. Information and rerouting requests to other bodies

When complaints do not meet the Defender of Rights' admissibility criteria, delegates or head office departments explain this to the complainants concerned and, where possible, redirect them to an institution likely to be able to help them.

For delegates, this particular activity accounted for 38,118 cases of provision of information and/or orientation over 2016. There were also almost 10,000 such requests addressed directly to the head office in 2016.

The great majority of such cases had to do with problems with public services.

Requests for information and reorientations	Delegates	Head Office
Relations with public services	21,542 (67.8%)	5,922 (52%)
Fight against discrimination	1,214 (3.8%)	1,462 (13%)
Defence of the rights of the child	744 (2.3%)	406 (4%)
Security ethics	208 (0.6%)	219 (2%)
Other	8,411 (26%)	3,356 (29%)
Total*	32,118	10,510

\*Subtotals lower than final total due to multiple classifications

## B. Individualised amicable solutions

When a request directly concerns the institution's competences, its services take action to ensure access to rights and equality between individuals. The Defender's actions often take the form of amicable settlements, re-establishing dialogue between complainant and the individual involved in order to ensure access to rights, resolve a situation or put an end to the dispute between them so as to avoid a long and costly court case.

This procedure is based on the institution's ability to obtain answers from its interlocutors and persuade them by proposing individual concrete amicable solutions. The great majority of such amicable solutions or settlements concern the problems many people encounter in their relations with public services.

The following examples illustrate the diversity of the cases processed by the Defender of Rights' departments during 2016. They reflect the difficulties reported by all members of the "Access to Rights" survey's sample group.

## Absence of response by the administration

Users awaiting a response are sometimes simply met with silence on the part of administrations. By referring to the Defender of Rights, complainants are, at minimum, usually provided with the information they have not managed to obtain from the public authorities on the progress of their files, whether responses are favourable or otherwise. They are then in a position to challenge decisions if required or complete their submissions.

- Referred to in July 2016 regarding the situation of a single mother, one of the Defender of Rights' delegates succeeded in obtaining reestablishment of payment of the *Allocation de Soutien Familial* (ASF - family support allowance) for a disabled child, which had not been paid to her since January 2012, since when her many complaints in writing and by telephone had gone unanswered (Amicable settlement 16-011775).
- A similar case occurred regarding a single mother with three children whose *Allocation Logement Familial* (ALF - family housing allowance) had been suspended after the departure of her joint tenant. The Defender of Rights' intervention with the *Caisse d'Allocations Familiales* (CAF - Family Allowance Fund) administrative mediation department enabled her file to be updated and her rights re-established (Amicable settlement 16-011697).
- A complainant domiciled in Belgium had his retirement pension suspended for over a year after sending the body a life certificate one of whose entries had been deleted following an administrative error. After several interventions with the body concerned, the Defender of Rights managed to get his rights re-established and obtain

back payment of his pension to a total of 10,493.63 euros. (Amicable settlement 15-009481)

## Documents undelivered by the administration

Numerous complaints bear on lack of response to requests for communication of a document, a priori one of the simplest requests but one that may sometimes be met with a whole range of obstacles.

- After having fruitlessly contacted the *Régime Social des Indépendants* (RSI - Social Security Scheme for Self-employed Workers) in order to obtain a certificate of removal of registration, a complainant found himself blocked from membership of the General Health Insurance Scheme. His referral of the matter to the Defender of Rights enabled him to obtain the required document (Amicable settlement 15-011484).
- A doctor at a healthcare centre called the Defender of Rights' attention to the difficulties encountered by a patient regarding a pension application submitted in March 2016. Eight months later, the insured individual had received no reply and was without any source of income. The Defender of Rights intervened with the *Caisse Nationale d'Assurance Vieillesse* (CNAV - National Retirement Insurance Fund) in order to make known the need for rapid action in the case in question; the issue was finally resolved in early November 2016 with back payment of the pension. We should highlight the role played by medico-social sector professionals, who sometimes enable identification of rapid deterioration in the situations of individuals whose situations may become extremely precarious in a few months or even weeks due to lack of response even though their rights are not in question (Amicable settlement 16-014164).

## FOCUS

## *What does administrative silence mean? Users caught between shock of simplification and a giddy number of exceptions*

Complaints addressed to the Defender of Rights, in particular in the realm of urban planning, emphasise how widespread public services' lack of response is to requests their users make to them.

The “shock of simplification” led to codification, in Article L. 231-1 of the Code on the Relations between the Public and the Administration (CRPA), of the principle according to which administrative silence means acceptance. Confronted with increasing numbers of exceptions, however, such silence poses a great many difficulties both as regards legal certainty and effective recourse and access to rights.

Although reversal of the previous principle, according to which lack of response meant refusal, a priori strengthens public service users' rights, we have observed that the high number of exceptions – with regard to principle and deadlines alike – generates very considerable complexification of the state of the law. It has been estimated that, while lack of response signifying refusal prevailed in over 80% of cases, the new principle, according to which silence signifies acceptance, would only fully apply in just over 60% of cases.

In order to cope with increasing numbers of such exceptions, Articles D231-2 and D231-3 of the CRPA stipulate that the list of procedures for which silence following a request means acceptance be published on the Légifrance website. Such lists are contained in four tables (State, local authorities, social security bodies, and other bodies responsible for a public service) of over a hundred pages in all – evidencing the complexity and lack of clarity of the system currently in force.

In order to figure out what administrative silence means, the user must find out whether his/her request is governed by one of the many decrees making an exception to the principle, or failing this – and providing he/she has Internet access – determine on a case-by-case basis, by going through the list concerned, whether his/her request comes under the system or not, and if the deadline to which the request is subject corresponds to the usual two-month deadline or to one of the overriding hypotheses in which silence signifies acceptance at the end of a longer deadline.

The task's complexity requires increased expertise in legal and administrative categories. As the Defender of Rights has observed, the only option open to users, who are increasingly often confronted with silence on the part of public services, is to appeal to the Defender of Rights itself in order to obtain a response or find out what absence of response signifies.

The Defender of Rights notes that the silence so often referred to throughout this report mainly concerns situations subject to exceptions and for which silence does not mean acceptance, as if the system had strengthened the administration's practice of not responding. This reality and the new legal framework create new needs that only the Defender of Rights meets: providing the necessary information and ironing out the administration's deficiencies.

The institution deplores the fact that the system's complexity hampers the right of recourse to the courts as users may wrongly believe themselves beneficiaries of an implicit favourable decision and so let the deadline run out within which they may challenge the administration's refusal of their request.

## Too many supporting documents requested by the administration

The Defender of Rights is regularly sent complaints regarding the growing number of supporting documents required in order to receive such benefits or allowances as the *Revenu de Solidarité Active* (RSA - earned income supplement). The RSA is a social benefit managed by *Départemental Councils* and paid out by CAFs and *Mutualités Sociales Agricoles* (MSAs - Agricultural Mutual Assistance Associations); it is intended to ensure its beneficiaries have a minimum income whether they are able to work or not.

Several Councils have recently increased the number of supporting documents needed to receive this benefit, requiring such items as bank statements for the previous 12 months or the beneficiary's insurance contracts, citing Article R262-83 of the Family and Social Action Code, which stipulates that *"upon request by the body responsible for the benefit service, and at least once a year, the beneficiary of the RSA as well as members of the household must produce all supporting documents required for control of conditions of entitlement to the benefit, in particular control of resources, including pay slips"*.

Beneficiaries also often have problems when they want to contact the administrative department concerned by post or telephone, and, when they manage to do so, get no appropriate reply to their questions, only generic information on the fact that their file is "being processed".

In addition, it should be borne in mind that such successive requests involve extra costs for users, particularly when they send their supporting documents to administrations by registered post with acknowledgement of receipt.

## Wrong information

The Defender of Rights also notes that information provided to users is sometimes incorrect, so hampering the very possibility of submitting a request. A social worker asked for the Defender of Rights' help on behalf of a complainant, a legal resident who wanted to bring her children over to France. As her request had been refused by the *Office Français de l'Immigration et de l'Intégration* (OFII - French Office for Immigration and Integration) and the Prefecture in June 2016, the complainant, in compliance with the remarks on the refusal decision, made hierarchical recourse to the Ministry of Immigration, Integration, National Identity and Co-development. In fact, this Ministry had been abolished in 2010 and its competences entrusted to the Ministry of the Interior.

The complainant was surprised to see her letters returned with the remark "no longer living at this address".

The Defender of Rights contacted the Prefecture concerned and got it to modify the contact details provided for the ministry competent to deal with hierarchical recourses in letters sent to applicants (Amicable settlement 16-12662).

## Errors made by administrations, employers or services contacted

Errors made by service referred to often hinder individuals' access to rights, as is illustrated by the reply sent to a complainant by the *Centre des Finances Publiques* (CFP - Public Finance Centre).

When she made her tax return for 2014 via the Internet, a complainant forgot to tick the box mentioning her 2 dependent children. She went to the CFP to rectify her return but was told it was not possible to modify a return

after receipt of the tax notice. The increase in her taxable income for that year due to the non-inclusion of children in her tax household would have the direct consequence of reducing her pension, which from then on would be subject to payment of the *Contribution Sociale Généralisée* (CSG - General Social Contribution) and *Contribution au Remboursement de la Dette Sociale* (CRDS - Social Debt Repayment Contribution). She therefore referred the matter to the Defender of Rights' delegate. To get around the problem, the Directorate of Public Finances proposed that an amended tax return be made including the deductions that she had not claimed (Case no.16- 3824).

## Responses not appropriate to users' condition

Many activities on offer by public services are poorly adapted to disabled users, often because no thought had been given to the problem. If it identifies a case of discriminatory lack of accessibility, the

Defender of Rights can then intervene in order to ensure that the necessary modifications are made to enable the disabled adult or child concerned to benefit from common law services like other users.

- A deaf child educated in an ordinary school environment, with the help of an *auxiliaire de vie scolaire* (AVS - classroom assistant) during school hours only, was unable to take part in his school's extracurricular activities as there was nobody who could communicate with him. After reminding the Mayor of his obligations regarding reception of all children, in the extracurricular activities organised by his municipality, the latter financed the training of a facilitator in sign language. She was made responsible for the elementary sign language training of other facilitators assigned to the same school group's municipal schemes. The child was therefore able to take part in his school's extracurricular activities without further difficulties (Amicable settlement 15-003721).

## C. Interventions in organisations

Certain referrals help identify structural or systematic failings not attributable to a public official's administrative practice but to the organisation of an administrative department or body responsible for a public service.

### Complexity of procedures

Certain administrative departments find it difficult to impose uniform practices, in particular because of the great complexity of procedures to be implemented.

In 2016, the Defender of Rights received a total of 160 complaints bearing on non-existent or incorrect responses from Public Prosecutor's Office officials responsible for assessing informal appeals bearing on the legality of proceedings with regard to motoring offence litigation

(fines base, contestation of contraventions, etc.). The Defender of Rights' intervention enabled amicable settlements in 49% of cases, in which the administrative departments concerned were able to endorse the Defender of Rights' interpretation and/or correct material errors or factual assessments, as against 15% of requests rejected.





### *Obtaining information on complaints submitted*

Accompanying and informing users with regard to access to rights should become a priority among administrative and legal authorities. After receiving complaints concerning difficulties in obtaining information on complaints submitted, mainly by victims, the Defender of Rights referred such matter to High Court Public Prosecutor's offices a total of 87 times. Responsible for carrying out criminal investigations and discretionary proceedings, the great majority of Public Prosecutor's offices lacked the resources to inform plaintiffs or respondents on follow-up of their complaint in good time – after several months or even years – obliging the Defender of Rights to submit them afresh. Public prosecutors are certainly very much involved in cooperation with the Defender of Rights and are systematic in providing it with responses. Nonetheless, there are no standard forms at national level for requests for information or public prosecutor's offices' replies. Such difficulties in communicating on their action lower the esteem in which legal authorities are held by litigants, victims in particular. Introduction of adapted responses is therefore an essential step in ensuring access to rights.

### *Communicating information to social welfare bodies*

The Defender of Rights also receives complaints highlighting the difficulties that beneficiaries of social benefits have in sending documents to social welfare bodies. Complainants have sometimes had

to send the same document several times in order to be able to benefit from a right. In such cases, the Defender of Rights may decide to send the document concerned direct in order to resolve the reported situation.

### *Change of name and renewal of identity card*

In 2016, the Defender of Rights referred 80 requests for information to the Ministry of Justice's Civil Affairs and Seal Directorate with regard to name-change requests underway, which take around 3 or 4 years to process. Legal provisions bearing on improvement of the 21<sup>st</sup>-century justice system, adopted on 18 November 2016, are designed to simplify the processing of such requests, but do not, however, address the situation of submissions whose processing is underway.

In the same way, prefectures and consular authorities responsible for delivery of identity papers were referred to by the Defender of Rights a total of 86 times in 2016. Non-uniform processing, in particular of requests for national identity card renewal, would appear to present a problem, given its consequences to users (difficulties in travelling around France or abroad, difficulties in initiating administrative procedures, etc.). By its Decision 2016-330 of 21 December 2016, the Defender of Rights wished to make a formal report of such difficulties to the Ministry of the Interior and the Ministry of Foreign Affairs.

# 3. The Defender of Rights’ actions to promote access to rights

In 2016, the Defender of Rights developed a series of initiatives bearing on communication to the general public and continued with awareness-raising work among its relays in the legal world.

## A. Communication actions

As the legislature and the Court of Auditors both emphasise, the Defender of Rights’ reputation and knowledge of its fields of competence necessarily add to the institution’s effectiveness.

A national information campaign aimed at the public at large<sup>1</sup> was carried out between 17 October and 6 November 2016 designed to raise awareness on the institution’s fields of intervention and ways of contacting it directly, while underlining the pillars of its identity that ensure its effectiveness: proximity, expertise and independence.

### 1. A new institutional image

The Defender of Rights has developed communication tools and actions with a view to informing, raising awareness among and accompanying the public in provision of better knowledge of the guarantees of fundamental freedoms and rights they possess.

Since the communication department was set up in 2015, the institution has been provided with

new tools designed to disseminate its productions to the general public, its partners and local authorities alike in optimal and continuous fashion. Creation of a new, more flexible and adaptable graphic charter met the aim of facilitating the public’s understanding of the various subjects processed by the institution. Definition of the new visual identity, which is both meaningful and easily recognisable, now ensures coherence and harmony between our many publications. The logo has also been refined, highlighting the Defender of Rights as one of the Republic’s institutions.

The institution has continued to develop information mechanisms, including presentation of its structure and operation via its institutional brochure and creation of leaflets distinguishing, explaining and illustrating each of its fields of competence –

<sup>1</sup>See the description in Part IV of the Report

tools that have been disseminated across national soil to 452 delegates and local elected officials.

The new institutional identity will be complemented in 2017 by further development of the website with a view to providing users with ever more rapid access to their rights and to the Defender of Rights' latest news, via simple, fluid browsing. It will also aim to provide users with step-by-step accompaniment in their initiatives, with introduction of questions, answers and user pathways designed to assist internet users in the understanding and qualification of situations they might encounter. In particular, the accompaniment module will make it easier to complete the referral form available on the [www.defenseurdesdroits.fr](http://www.defenseurdesdroits.fr) website. Anybody who so wishes will also have no difficulty in locating the nearest delegate and office, or finding out the best way of getting into contact with their delegate. In early 2017, the institution's legal publications – decisions, amicable settlements, follow-up of Defender of Rights' decisions by the courts, and companies and administrations complained about – will be accessible online in order to make them available to legal specialists.

Finally, there was major development of the Defender of Rights' digital presence over 2015, in particular on social networks, increasing its Facebook members fourfold in 12 months and bringing its number of Twitter subscribers up to 28,000. These networks have enabled dissemination of a whole variety of messages, through light-hearted educational campaigns designed to inform the widest possible public on the institution's delegates and the missions carried out by the *Jeunes Ambassadeurs du Défenseur des Droits* (JADEs - Defender of Rights' Young Ambassadors), as well as the fact that submissions by post are free of charge. In addition to such news in real time, the institution continues regular publication of other channels of information: its newsletter and the twice-yearly letters intended for magistrates.

## 2. A national campaign

As the legislature and the Court of Auditors both emphasise, the Defender of Rights' reputation and visibility of its fields of competence necessarily add to successful accomplishment of the institution's mission of ensuring respect of rights and freedoms. The Defender of Rights therefore created an information and access-to-rights campaign, disseminating it across French soil from 17 October to 6 November 2016.

The campaign's chief objective was to inform as many people as possible on the institution's fields of intervention and ways of contacting it directly, while underlining the pillars of its identity that ensure its effectiveness: proximity, expertise and independence.

**“Think your rights haven't been respected? We've got the answer”**



**VOUS PENSEZ QUE VOS DROITS N'ONT PAS ÉTÉ RESPECTÉS ICI**

**NOUS AVONS LA RÉPONSE.**

Les situations de travail ont été améliorées sans qu'il ait été prévu. Un dispositif qui fonctionne à l'administratif, mais le salarié n'est toujours pas payé. Il s'est adressé au Défenseur des Droits. Le Défenseur des Droits, se sera plus de 200 équipes ont de chez nous pour répondre à vos questions. Quelle que soit votre situation, ils nous aident à faire valoir vos droits gratuitement. En toute indépendance face au droit, nous sommes tous égaux.

Contactez nous : [defenseurdesdroits.fr](http://defenseurdesdroits.fr) - 09 69 38 30 00\* - gratuitement par courrier\*\*

\* Proximité géographique  
\*\* maximum de 2000  
\*\*\* 09 69 38 30 00

**D**  
Défenseur des Droits  
Indépendance - Proximité - Expertise

It was designed to inform the population as well as ensure maximum promotion of equality for all, both by highlighting the various fields concerned and by better understanding of the recourse and protection that the Defender of Rights can provide. Difficulties in accessing rights are also in part due to lack of information on rights themselves and the systems that exist to help assert them, as well as to the complexity of such systems. The campaign targeted the general public, who is often put off by administrative red tape and may even regard an appeal or attempt to rectify a situation as pointless.

### *Stories mirroring reality*

Any one of us may one day find him- or herself confronted with a situation of discrimination (illness, age, pregnancy, sexual orientation, origin, etc.) or with difficulties in relations with public services... The Defender of Rights can provide answers to these very real difficulties, ensuring application of the rules of law. The campaign wished to mirror situations lived by individuals who had been received, listened to and advised by the Defender of Rights' teams, its delegates in particular. As essential links in close contact with the public, delegates make up a territorial network of close to 450 of the institution's representatives, who receive and provide guidance to the public free of charge in over 720 reception points in Metropolitan and Overseas France. They took an active part in designing the campaign, helping to ensure that it expressed the reality of stories they heard on a daily basis. Four situations were depicted, illustrating the situations in which the Defender of Rights can intervene and provide answers: a case of fruitless flat-hunting, a recruitment interview that received no reply, complicated administrative procedures, and finally, the situation of a deaf child coping with extracurricular activities.



### *A facility in the heart of France's territories*

Taking the form of 4 visuals and a 30-second film, the campaign was disseminated in the regional daily press and its TV magazine supplement – an audience of over 12 million readers in Metropolitan France and close to a million in Overseas France. Over 31 million static screen postings of the campaign were counted.

The 30-second film was broadcast online, including on the Facebook and Twitter social networks, YouTube and the Defender of Rights' website, with more than 1.3 million contacts.

The campaign was also deployed on mobile phones, enabling smartphone users to be geolocated and the locations of Defender of Rights delegates' offices closest to their house to be suggested. This personalised approach made all essential information about how to make an appointment available with a single click, and enjoyed great success with over 7 million contacts.



On Tuesday 18 October, all French Twitter users were able to view a message along with the campaign film by logging on to the social network. The institution enjoyed maximum exposure throughout the day (more than 9.6 million postings of the hashtag #EgaxFaceAuDroit and 2.3 million postings of the tweet-plus-video in 24 hours). Over the course of the day, Defender of Rights' teams responded directly to messages and requests from users, clear evidence of the general public's interest in the institution.

In parallel, over 9.2 million people were able to view our messages on Facebook.

At the end of the campaign, the Defender of Rights noted an up to 40% increase in calls to the call centre, 30% more complaints compared with October 2015, and a major increase in complaints received via the online referral form. The same increase was observed in November.

## FOCUS

### *Writing to the Defender of Rights is now free*

In order to improve access to the institution, the Defender of Rights set up a reply-paid address on 1 October 2016. It is no longer necessary to put stamps on mail addressed to the institution.

Alongside the information and access-to-rights campaign, an animated

film presenting the institution and the possibility of contacting it by post free of charge thanks to the Reply Paid system, was broadcast in all French post offices equipped with screens.

[Reply-paid address:](#)

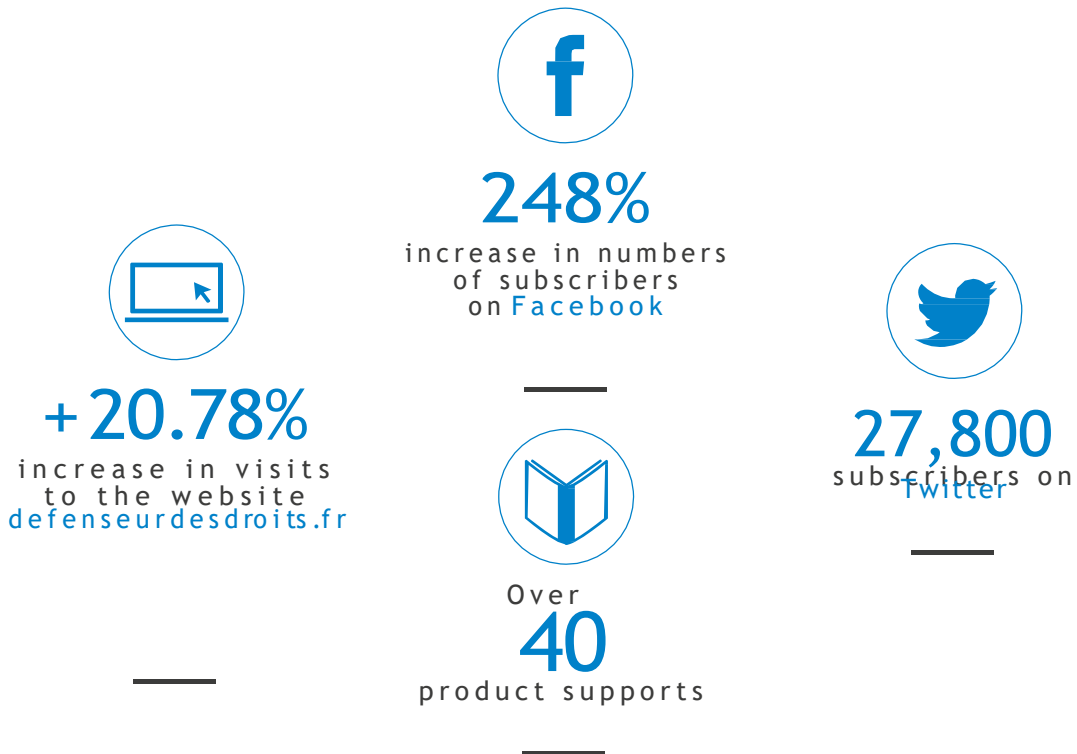
Défenseur des droits  
Libre Réponse 71120  
75342 Paris Cedex 07



Finally, as part of a more traditional information action, a range of tools (leaflets, guides, reports and videos) was published in 2016 to raise awareness among the public and professionals concerned with regard to rights coming within the Defender of Rights' jurisdiction and ways of asserting them. These tools are presented by field of competence in the website's "Our Missions" section.

Apart from these productions, the Defender of Rights' teams also contributed to the design of tools for its partners' use, usually to provide legal expert assessments ([CSR Challenge Guide to Professional Equality](#); [Women's Rights and Gender Equality Service \(SDFE\) sheets on sexual harassment](#); The Directorate General for Administration and the Civil Service (DGAFP) Guide on violence at work [during 2017]; [French Association of Diversity Managers \(AFMD\) Guide on discriminations connected with origin](#)).

## KEY COMMUNICATION FIGURES



## KEY CAMPAIGN FIGURES



increase in calls and  
requests in October and  
November 2016

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### 3. Local action

In parallel, at local level, Defender of Rights territorial advisors and delegates carried out reputation-building activities designed to increase knowledge of the institution, including through partnerships with local authorities, whose services are in direct contact with the population. Almost 530 operations aimed at increasing the institution's reputation were carried out in 2016.

They were also responsible for a range of actions promoting rights, designed to inform and raise awareness among the public and institutional and community actors alike. They

were particularly active in City Policy priority areas, where experiments were carried out fostering access to rights in Bouches-du-Rhône, Rhône and Seine-Saint-Denis.

In 2016, such actions concerned the defence of users of public services' rights and freedoms (186), defence of the rights of the child (218) and the fight against discrimination (286).

As regards action on prison inmates' access to rights, intervention in penal institutions was stepped up in 2016.

#### FOCUS

## *Greater presence in penal institutions*

Article 37 of the Organic Law of 29 March 2011 bearing on the Defender of Rights stipulates that it appoint a delegate to each penal institution *"in order to enable inmates to benefit from the provisions of this organic law"*.

At end 2016, a total of 146 delegates were active in one or more penal institutions. Out of the existing 185 institutions, 168 had a delegate assigned to them. The 17 institutions currently without a permanent delegate correspond to three vacancies for which recruitments are underway, 11 open prisons and three Overseas institutions with very few inmates.

2016 was also marked by assignment of delegates to five of the six penal institutions for minors. A delegate will be assigned to the Porcheville institution in Yvelines during 2017.

95,000 copies of the *"Faire valoir vos droits durant la détention"* (Assert your rights while you're in prison) leaflet were printed and copies were given to all new inmates upon arrival at penal institutions.

Finally, over the last two years, delegates assigned to penal institutions took part in 8 out of the 10 interregional meetings of the Prison Administration, in the presence of all prison wardens and managers of integration and probation services.

## B. Training, studies and research

The Defender of Rights designs and delivers training courses carried out by its Training Department and the Defender of Rights' territorial advisors.

Whether addressed to National Education Directorate staff, future security force members or legal professionals<sup>2</sup>, these courses remind participants of the applicable legal arrangements and draw on case studies. Such actions enable the Defender of Rights to promote knowledge of its fields on intervention *in situ* and make all participants future relays of access to rights.

The Defender of Rights supports independent studies and research work related to its fields of competence (Article 34 of the Organic Law of 29 March 2011). Programming is drawn up on an annual basis by a Studies Committee bringing together representatives of all services.

In addition to the national survey on access to rights carried out by the Defender of Rights in 2016, the results of several studies funded or cofunded by the institution and published in 2016 shed light on the issues involved in access to rights<sup>3</sup>.

The study on "*L'accès à la santé des enfants pris en charge au titre de la protection de l'enfance: accès aux soins et sens du soin*" (Access to healthcare by children in care in the child protection system: access to healthcare and the meaning of care), carried out by Paris Ouest Nanterre University's Family Education and Social Intervention (EFIS) research team with support from the Universal Health Cover (CMU) Fund led to better understanding of the questions raised by access to healthcare by children in care in the child protection system.

### FOCUS

## Main studies published in 2016 :

- S. EUILLET, J. HALIFAX, P. MOISSET and N. SEVERAC, *L'accès à la santé des enfants pris en charge au titre de la protection de l'enfance (ASE/ PJJ): accès aux soins et sens du soin*, Paris Ouest Nanterre La Défense University;
- Y. LAIDIE and P. PICARD, *Le principe de non-discrimination: l'analyse du discours du juge administratif*, Credespo – University of Bourgogne;
- J. PRELMAN and M. MERCAT-BRUNS, *Les juridictions et les instances publiques dans la mise en œuvre du principe de non-discrimination: perspectives pluridisciplinaires et comparées*, Sciences Po (School of Law/CEVIPOF) and Panthéon-Assas University-CERSA;
- F. BELLIVIER and J.M. THOUVENIN, *La lutte contre les discriminations à l'épreuve de son effectivité*, Paris Ouest Nanterre La Défense University;
- *Accès à l'emploi et discriminations liées aux origines – résultat de l'appel à témoignages*, Études&résultats, September 2016 ;
- *Accueil téléphonique et dématérialisation des services publics – résultats de l'enquête mystère*, Études&résultats, September 2016

<sup>2</sup> See Part II of the report

<sup>3</sup> The other studies funded by the Defender of Rights are presented in the part presenting the institution's missions.

In 2016, the Defender of Rights also funded a study on legal analysis of the issues involved in exceptions made in the context of the state of emergency, a study on lawyers' career paths, a survey among homeless teenagers lodged with their families and former teenagers who had grown up in hotels, on the impact that lack of a fixed address had on their daily lives and development.

It also continued to collaborate with partner institutions. For example, it was associated with work carried out by the *Direction de l'Animation de la Recherche, des Etudes et*

*des Statistiques* (DARES - Directorate for Research, Studies and Statistics) on assessment, using the discrimination testing method, of discrimination in the recruitment process and implementation of company collective agreements and unilateral action plans on equality in the workplace. It also contributed to a study bearing on sexism in the world of work, carried out among non-managerial employees by the *Conseil Supérieur de l'Egalité Professionnelle* (CSEP - Higher Council for Professional Equality).

## FOCUS

# The Defender of Rights Thesis Prize 2016

Intended to encourage and develop academic research relating to the institution's fields of competence, in whatever area of human or social sciences, this year the prize was awarded to Ms Lola Isidro for her thesis "*L'étranger et la protection sociale*" (Foreigners and social protection) presented at Paris Ovest Nanterre University (Doctoral School of Law and Political Science).

Law is also living matter. The Defender of Rights has a clear vision of the difficulties involved in effective implementation of the rule of law, and sometimes even of the inadequacies of the rule of law itself.

Its expert approach enables it to produce, either on its own or in partnership, or support in-depth work intended for a well-informed professional audience.

## FOCUS

# Two illustrations

*Proceedings of the colloquium on "10 years of non-discrimination law"*

Organised by the Defender of Rights in partnership with the Council of State, the Court of Cassation and the

National Bar Council, the colloquium devoted to "*10 years of non-discrimination law*" provided an opportunity for European and Supreme Court Judges to present an overview of jurisprudential contributions, developing the specificities of each court's approach. The various jurisprudential developments show that non-discrimination

law has come a long way and renewed the principle of equality, which has become a general legal principle without undermining the law's traditional foundations.

The colloquium also gave the floor to a number of lawyers who, in their own fields of expertise, have contributed to drafting of legal strategies and levers of jurisprudential construction. They

4  
1

presented the major issues involved in the cases they had processed and which had led to the emergence of this new legal instrument. A variety of topics were brought up, including foreigners' access to fundamental rights, the emergence of litigation on gender equality at work, the specificities of the requirements of criminal evidence, and litigation with regard to ethnic profiling.

The colloquium's proceedings, published on 25 November 2016, present the particular views of various key actors in construction of non-discrimination law, and constitute a step forward in institutional recognition of the law's judicial corpus.

*The study bearing on the direct effect of the provisions of the International Convention on the Rights of Persons with Disabilities*

The Defender of Rights entrusted Michel Blatman, Honorary Magistrate at the Court of Cassation, with drafting this ambitious study, in the expectation that jurisprudence will progressively provide a precise assessment of it.

The study focuses on the approaches different national, European and Community courts take to international law on human rights, and examines a number of questions and case studies.

The study also takes a closer look at the contents of the ICRPD, examining first of all its effect on development of notions of "disability" and "reasonable accommodation" in the context of the Convention's provisions' interaction with the European Union Court of Justice's and European Court of Human Rights' jurisprudences. It also presents an analytical table of Convention provisions likely to be directly or indirectly applied, cited or used by national courts as tools for interpretation of domestic law.

The study therefore contributes to development of knowledge on the question, without focusing solely on individual solutions.



Patrick Gohet,  
Deputy to the Defender  
of Rights, Vice-Chair of  
the Board for the Fight  
against Discrimination  
and Promotion of  
Equality

**D**  
enseur des droits  
FRANÇAIS

**DROITS NOUVEAUX ?**  
décembre 2016

**D**

**V** \_\_\_\_\_ **ensez**  
**que vos droits**  
**n'ont pas été**  
**respectés ?**

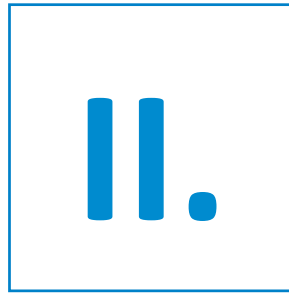
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# One institution: key interventions

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**T**he Defender of Rights' services select the appropriate modes of intervention to enable all citizens' access to rights, depending on the subject of the complaint, complainants' expectations, the circumstances of the case and possibilities of intervening in an individual situation, practice or opportunity for reform.

In addition to the powers provided for by law, the diversity of situations it is called upon to intervene in and its moral authority have led it to develop original modes of intervention combining onsite visits, interventions with public services and private individuals on behalf of complainants, and individual or general recommendations. The Defender of Rights plays the role of court officer, drawing on its credibility in the eyes of courts and

relations with Public Prosecutor's offices.

2016, however, was a special year, in the course of which the Defender of Rights asserted its role as monitor of the major issues involved in fundamental rights, both as watchdog and reporter. At the same time, it continued to assert its function as a protector of rights by making good use of the tools available to it and step up its role as a contributor to the establishment of legal standards.



# 1. A monitoring function

## A. A watchdog role

The Defender of Rights pays close attention to the situation of rights in France and exercises its role as watchdog.

The institution was the first to publically oppose the proposed constitutional revision bearing on deprivation of nationality, emphasising that this would turn our “indivisible Republic” into a divisible Republic<sup>4</sup>, a fundamental principle as “citizens are equal and there are no citizens who are less citizens than others”.

What took place in 2016 led the institution to pronounce publically on the key events affecting the exercise of fundamental rights.

### *Fundamental rights and freedoms in the context of the state of emergency*<sup>5</sup>

In the exceptional context of restriction of freedoms brought about by the state of emergency declared on 26 November 2015 and since extended, most complaints referred to the Defender of Rights bore on measures regarding searches (how searches were carried out and their consequences) and/or on house arrest (complaints about methods employed, etc.). Various measures taken were also likely to have professional consequences (dismissal, etc.) or consequences on individuals’ freedom of movement (refusal of access to public places, etc.).

Between 26 November 2015 and the end of 2016, the Defender of Rights received a total of 92 complaints, 65 of which concerned measures expressly taken

under the state of emergency (42 searches; 20 house arrests, 2 searches followed by house arrest and prohibition to leave French territory, and 1 search followed by house arrest and a request for cancellation of subsidiary protection); 27 referrals concerned situations indirectly connected with the state of emergency and which had professional consequences or affected freedom of movement, as well as testimonies and complaints relating to the carrying out of searches and their impact on individuals.

Investigation of these complaints, along with information from the institution’s 450 delegates, led to its recognition of the tensions arising from operations connected with the state of emergency, within the population and families alike. In February 2016, the major impact that such operations had on children, whose presence had not been taken into account in the measures, led the Defender of Rights to adopt a recommendation on awareness of the presence of children in homes being searched (Decision 2016-069).

In addition, noting that searches did not systematically lead to delivery of a report and in view of the testimonies it had received, it drew up recommendations to the Minister of the Interior bearing on formalisation of relations between security forces and individuals in the context of such searches.

<sup>4</sup><http://www.defenseurdesdroits.fr/fr/actualites/communique-vers-un-etat-de-crise-permanent-dans-une-republique-divisible>



It recommended that a circular be disseminated to the security forces, instructing them to notify target individuals of the Prefect's order upon first contact, produce an accurate detailed written report on the execution of each search, and deliver a report and information document on applicable law regarding compensation for any damage caused. Finally, it recommended that the Minister plan for a special scheme covering repair of damage caused, in a recommendation relating to the system for compensation of damage caused by searches (Decision 2016-153).

In this context, the Defender of Rights' intervention brought about a number of changes in constraints resulting from the house-arrest measure, enabling better account to be taken of complainants' day-to-day realities (family situation, etc.). The Defender of Rights also intervened to provide complainants with legal support to their initiatives and obtain from the authorities any documents authorising house arrest or search measures to be taken (orders, reports, etc.).

Investigation of complaints received also led to a number of observations that resulted in the Defender of Rights drafting several recommendations. The Minister of Justice showed his interest in the Defender of Rights' recommendations in a Decision issued on 26 February 2016 bearing on the ways in which the security forces should act in households where children were present, and on which the Prefect of the Paris police acted (collecting information on the presence, number and ages of children present prior to intervention; putting children in a separate room; if possible, ensuring the presence of officers specialising in protection of minors; and, during initial and continuing training of security forces, including coverage of all precautions to be taken).

In addition, the Defender of Rights' recommendations seeking to facilitate access to the right of compensation (Decision 2016-153) by providing special

mechanisms for reparation of damage caused by measures taken by the administrative police in application of the state of emergency and causing an abnormal disturbance, and for informing the individuals concerned of them, were taken up by the opinion of the Council of State delivered on 6 July 2016.

And finally, it should be noted that the Defender of Rights regularly repeated its concern over the fact that the state of emergency brought about an exceptional state of affairs that, over time, might well become seen as a normal state of our legislation, all the more so as it is regularly reinforced by permanent measures restricting freedoms.

#### *Foreigners' fundamental rights<sup>6</sup>*

The Defender of Rights employed a wide variety of strategies to intervene in the situation of foreigners in France, including reports, onsite visits, and the processing of a great many individual situations.

On 9 May 2016, deeming that respect of foreigners' fundamental rights is a key marker of the degree to which defence and protection of freedoms is upheld in a country, the institution published a report via which it intended to highlight all the obstacles hindering foreigners' access to fundamental rights, drawing on its past decisions and also identifying new legal problems ("*Droits Fondamentaux des Etrangers*" [Fundamental rights of foreigners] report).

His visit to Calais, and those paid by his delegates and services, enabled the Defender of Rights himself to question the public authorities on living conditions and humanitarian requirements, and request them to monitor operations undertaken with all due care.

<sup>6</sup> <http://www.defenseurdesdroits.fr/fr/mots-cles/droit-des-etrangers>



FOCUS

## Migrant children's rights

The Children's Ombudsman led the movement in defence of migrant children's rights, which called upon national governments to ensure that adequate resources were committed to ensuring they were respected.

The Defender of Rights' teams were also in action during all Calais and Paris ("Stalingrad") camp evacuation operations in October and on 4 November 2016.

In December 2016, the Defender of Rights published a report summarising its observations on and analysis

of these operations. It emphasised that the "sticking points", which always seem to reassemble as soon as they are evacuated, seem to be a symptom of the failure of the European refugee intake policy. Although, as it had reminded those concerned several times, an operation for evacuation of land occupied without right or title should first of all be subject to measures preparing and informing the (by definition vulnerable) individuals concerned, observations made by the Defender of Rights in Calais and Paris alike show that such preparation and information had been lacking. In addition, the Defender of Rights noted the extent to which minors' interests had been ignored in these operations. Commitments had been made, and yet lack of

anticipation in these operations, which should have been adapted to the very specific population involved, led to creation of an exemption from common law that made it hard to ensure children's fundamental rights and, quite simply, their protection. The Defender of Rights concluded by recommending that the public authorities provide young people in *Centres d'Accueil et d'Orientation des Mineurs Nonaccompagnés* (CAOMIs - Centres for Reception and Orientation of Unaccompanied Minors) legal, administrative or judicial status and guarantee their access to rights, education and healthcare.

## B. An early warning role

As well as intervening in situations resulting from the immediate present, the Defender of Rights also plays an “early warning” role.

As part of its mission to promote rights, the Defender of Rights publishes several reports a year that review one or other of its fields of activity and outline the analyses resulting from its observations and experience. It also processes subjects by drawing up reports after having held hearings and produces fresh overviews of subjects coming under its jurisdiction. The best known of such reports is that published on 20 November each year and devoted to a particular aspect of the rights of the child (see Part III of this report). The Defender of Rights deals with a range of subjects every year. In 2016, apart from the various documents mentioned in this activity report, there are three reports in particular that illustrate the diversity of the institution’s areas of intervention.

### *Legal protection of vulnerable adults*

These days, largely due to longer life expectancy and the appearance of age-linked disorders, the question of legal protection of vulnerable adults is coming to affect the lives of increasing numbers of people. It is a subject to which the Defender of Rights pays continuous attention in the context of its mission in defence of users in their relations with public services.

In addition, as an independent mechanism responsible for monitoring application of the International Convention on the Rights of Disabled Persons (ICRDP), the Defender of Rights ensures compliance with legislation in force, which asserts the right of disabled people to benefit “*from legal capacity in all fields, on the basis of equality with others*”, which supposes transition from a (guardian-type) system of substitute decisions, in which

individuals are deprived of their legal capacity, to a system of accompanied decisions.

Although such principles are for the most part expressed in Law no.2007-308 of 5 March 2007 bearing on reform of legal protection of adults, the Defender of Rights nonetheless observed that, in practice, most adults in a protection scheme are deprived of much of their legal capacity.

It noted deprivation of a number of fundamental rights guaranteed by the Convention on the Rights of Disabled Persons, including the right to vote, the right to marry, enter into a civil partnership or divorce, the right to choose where to live and to respect of privacy, and the right to autonomy and respect of dignity.

The Defender of Rights therefore decided to make its recommendations so that the State could take appropriate measures to ensure effective exercise of such rights by all those placed in legal protection schemes. Well aware of the complex nature of such issues and the inadequate resources available to courts, the Defender of Rights is determined to get the public authorities to give thought to preparing the possible changes of principle that it recommends in good conscience.

### *Fines and road traffic*

Fines and road traffic are the third main reason behind referrals to the Defender of Rights, accounting for 7% of the some 100,000 situations submitted to its head office and delegates. Most complaints

bear on difficulties encountered by motorists during exchanges with public prosecution service officers following receipt of a notice of contravention sanctioning an infringement of the Highway Code that the individual denies committing, or the procedures involved (non-receipt of the initial fine, infractions subsequent to transfer of a vehicle, falsified registration plates, identity theft, repayment of pound fees, or ticketing of a citizen holding a disabled person's parking card).

Complainants are frequently left wondering about what has happened to their applications for exemption, due to lack of explicit response on the part of the public prosecution service officer concerned or of receipt of an enforcement order (increased fixed fine, notice of administrative opposition, etc.), lack of precision as to the reason for which the public prosecution service rejected their application, or non-receipt of a summons to appear before a court competent to rule in the context of adversarial proceedings, despite the European Court of Human Rights' jurisprudence<sup>7</sup>.

The Defender of Rights also observes recurrent difficulties connected with payment of fines and exchanges with treasuries or with reimbursement of deposits following dropping of charges or acquittal, and problems connected with invalidation of a driving license with no point balance.

In order to provide complainants with information, the Defender of Rights is in daily contact with the competent public prosecutor service officers, the Minister of the Interior's *Fichier National des Permis de Conduire* (FNPC - National Driving-License Registry) department, the *Trésorerie du Contrôle Automatisé* (TCA - Speed-Camera Finance Office), local government finance offices and prefectural departments.

Following on from its two reports drawn up on 12 June 2012 and 1 March 2013, which

had already enabled significant progress to be made on behalf of users, a third report was published on 12 July 2016 that emphasised the need to simplify applicable rules and procedures and render them coherent, as well as making proposals designed to secure motorists' rights.

Noting that a number of citizens receive notices of contravention regarding vehicles they no longer owned, due to the highly variable periods of time it takes prefectural departments to register declarations of transfer of vehicle ownership, the Defender of Rights recommended, among other things, that numbers of new acquirers' licenses should be systematically added to the information included on the declaration of transfer of vehicle ownership form, and that address details be added to the registration file. It also recommended homogenisation of deadlines for objections with regard to torts and contraventions, traceability of purchase of fine-payment stamps, and improvement of procedural education on driving licenses, withdrawal of points, and their renewal.

### *Employment of disabled women*

Major progress has been made since the introduction in 1987 of an obligation to employ disabled workers. Nonetheless, many disabled individuals, women in particular, continue to come up against obstacles and discrimination in access to employment and in their careers. In this regard, Article 6 of the ICRPD requests that States take special measures to guarantee the rights of disabled girls and women.

The exploratory study carried out by the Defender of Rights on multiple and intersectional acts of discrimination shows that disabled women are faced with an accumulation of difficulties and acts of discrimination, because they are women, because they are disabled, as well as specific forms of discrimination, because they are women and disabled. The study was carried



out in a context of inadequate statistical knowledge of the situation and needs of disabled individuals, and, most of all, insufficient gender data.

Women are farther removed from the world of work than their male counterparts, and when they are employed, they are also subjected to discrimination. They are concentrated in certain activity sectors and have difficulty in accessing positions of responsibility. Although 10% of disabled men are in management positions (as against 21% of men in general), only 1% of disabled women hold such jobs (as against 14% of all employed women).

This being so, the Defender of Rights calls for special vigilance in their respect, in particular in

the context of common law policies and, above all, in the context of policies on women's rights and the disabled. It has also issued various recommendations concerning:

1. knowledge of the disabled population, women in particular, and access to and dissemination of such information;
2. visibility of disabled women and countering stereotypes;
3. access to schooling and higher education;
4. access to employment and careers on the part of disabled women.

## 2. A protective function

### A. Amicable settlements

The Defender of Rights' first mode of intervention is to resolve the difficulties of those who refer to it in order to ensure that their rights are upheld. Situations in which it is called upon to intervene concern all spheres of our fellow citizens' lives and reveal a complex, compartmentalised society that tends to increase the vulnerability of anyone wishing to assert their rights.

Difficulties in relations with social protection bodies account for 40% of all referrals to the institution. Apart from the situations already mentioned, in particular lack of response to requests, such difficulties are often to do with errors, in analysis of facts, application of procedures and calculation methods alike.



*A nursery assistant at a municipal crèche, the complainant was recognised as being permanently incapable of doing any kind of job and removed from the books due to disability, but the town hall did not dismiss her as required and she was unable to register at Pôle Emploi to receive the benefits due to her. Following the Defender of Rights delegate's intervention, the woman concerned was dismissed retroactively to the date of her removal from the books, but Pôle Emploi rejected the request due to the fact that the period her employer had in which to recognise her dismissal had run out. Deeming that the responsibility for the situation fell upon the town hall, the Defender of Rights intervened to repair the loss suffered by the complainant. The town hall compensated her up to the sum*

*of the allowances she could rightfully claim from Pôle Emploi for the 18 months that had gone by.*



*A pair of retired shopkeepers*

*wanted the RSI to reimburse over-contributions they had made. Despite the letters they had sent and calls they had made since their retirement, they received no response from the RSI. They considered that they had been "robbed" by the RSI and supplied the delegate with all the documents they had sent to the administration. The delegate intervened with the RSI, which, after careful study of the couple's situation, decided to reimburse the overpayment.*



As regards access to retirement pensions, the Defender of Rights received complaints concerning various situations of non-response, as well as of lack of information from retirement funds on contributions paid by certain employers or social bodies, preventing calculation of pensions.





*In 2013, the Fund for Pension Insurance and Health at Work told a complainant that it was unable to make her a retirement pension proposal due to the absence of salary deferrals on her account for the years 1971 to 1973 and 1974 to 1975. Her employers during these periods told her that they were unable to provide her with an attestation. Deeming that the Caisse d'Assurance Retraite et Santé au Travail (CARSAT - Fund for Pension Insurance and Health at Work) for local authority officials should have banked employers' and employee's contributions for the civil servant concerned, the Defender of Rights requested it to communicate the total of such contributions to her employers in order to reconstitute the salaries, which was done. The Caisse Nationale de Retraite (CNR - National Pension Fund) was able to rectify the situation for the whole period in question (Amicable settlement 14-007011).*



*The Defender of Rights was referred to regarding lack of enforcement of a military pension tribunal's judgement in favour of revaluation of the beneficiary's lifetime allowance granted to a widow following her husband's death. Repeated attempts to have the judgement enforced proved fruitless. After the Defender of Rights intervened, the widow's allowance was granted as from 10 January 2008 and the pension paid out with all arrears due included (Amicable settlement 14-15512).*

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The Defender of Rights also wishes to emphasise the large number of referrals connected with complaints relating to types of social benefit fraud in which it was called upon to intervene. A report will be devoted to this subject in 2017.

As regards access to goods and services, citizens are faced with difficulties in their relations with social landlords, transport network customer services, and hospital departments and services.



*The complainant being under protection, his legal guardian contacted the Defender of Rights. A letter threatening termination of lease had been sent because he had sent his tax return for 2013 late owing to his personal situation. Following the Defender of Rights' intervention, the social landlord indicated that it would halt all proceedings and await communication of the tax return for 2015 (Amicable settlement 15-004858).*



*The complainant received a formal notice to pay rent on gardens in département 93 although he had never owned or rented a garden. It appeared that this was due to a problem of homonymy. The situation formed the subject of a complaint made in 2012 to the Public Finance Centre, and the matter seemed to have been put right until the order to pay arrived on 7 April 2016. The Defender of Rights asked the Public Finance Centre to check the identity of the garden owner in its FICOBA register (national bank and assimilated accounts file) and rectify the situation so as to ensure the complainant received no more formal notices that did not concern him. The Public Finance Centre admitted its mistake (Amicable settlement 16-005479).*



*The complainant was hospitalised and operated on for a fracture; the hospital had no more double rooms available, so he was put in a single room. As his private health insurance would not pay for the extra cost of hospitalisation in a private room, he immediately remarked on the fact to the healthcare team, who assured him that no extra costs would be billed to him. When he left, he received a bill requesting him to pay the private-room supplement — a bill that the*



*hospital refused to cancel. The matter was referred to the Defender of Rights. It intervened, citing the patient's right to be provided with full information on the conditions (financial, in particular) of his hospitalisation and give his consent. The hospital cancelled the bill in question (Amicable settlement 15-11361).*

Amicable settlements are also the usual means of intervening in matters concerning the rights of the child.

●●●  
*The Defender of Rights was referred to by the parents of a young Lycée student suffering from psychological disorders, who, after having attended several lycées, finally succeeded in finding one that suited him. However, in September 2015, due to a mistake made by the parents in their son's reenrolment procedure, he was transferred to a new lycée where he had great difficulty settling in. His parents therefore decided to school him at home. As there was a vacant place available, the Defender of Rights asked the National Education authorities to ensure that the boy was sent to the lycée he had attended the previous year, which they did (Amicable settlement 15-012144).*

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Difficulties connected with economic activities also come within the Defender of Rights' field of competence.

●●●  
*A company director left office and set about producing the statements and carrying out the formalities required of him by the competent Centres de Formalités des Entreprises (CFEs - Business Formalities Centres). As he wished to embark upon a new activity in another département, he tried to register as an auto-entrepreneur but his declaration was refused by the regional Union de Recouvrement des Cotisations de Sécurité Sociale et d'Allocations Familiales' (URSSAF - Organisation for Payment of Social Security and Family Benefit contributions) Business Formalities Centre because he was still registered as the managing director of several companies in two other départements, as his old SIRET numbers had not been deactivated. Called upon by the Defender of Rights, the Institut National de la Statistique et des Etudes Economiques (INSEE - National Institute of Statistics and Economic Studies) updated the SIRENE (Business Register) Directory, making the complainant's cessation of activity official and enabling him to carry out the procedures required to start up a new activity (Amicable settlement 15-13624).*

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## B. Individual recommendations

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Where alternative ways of resolving conflicts cannot be applied (failure of an attempt to reach an amicable settlement, disputes raising questions of principle, misconduct constituting an infraction or even an offence, etc.), the Defender of Rights may be led to use its power of recommendation, a more constraining normative technique although not legally binding.

## FOCUS

## Onsite checks

Among the investigative powers it possess, Article 22 of the Organic Law authorises the Defender of Rights to pay visits to the administrative or private premises of individuals against whom complaints have been lodged, as well as to places, premises and means of transport accessible to the public and premises exclusively used for business purposes. When carrying out such checks, the Defender of Rights may hear any individual likely to provide information. Reports are drawn up on all such onsite monitoring missions.

However, under Article 37 of the Organic Law bearing on the Defender of Rights, only officers duly authorised by the Chief Prosecutor of their local appeal court may carry out such checks.<sup>67</sup> Defender of Rights staff members are so authorised. In addition,<sup>49</sup> sworn officers specially authorised by the Public Prosecutor may report in writing on discrimination offences.

In 2016, 5 visits were made in order to take account of conditions under which individuals were questioned and detained, in connection with specific complaints regarding security ethics, along with one visit to check

accommodation conditions of vulnerable individuals and their access to care, one visit to take account of the physical context of a case of alleged sexual harassment and discrimination, and 6 visits to check conditions under which young people, unaccompanied minors in particular, were lodged, with regard to defence of the rights of the child.

The Defender of Rights also made over 11 onsite visits in 2016 to observe conditions under which exiles were received.

In order to ensure that the fundamental rights of exiles in Calais' Lande camp were respected, and following several onsite visits paid by its teams, the Defender of Rights published a report on 6 October 2015, entitled "*Exilés et droits fondamentales: la situation sur le territoire de Calais*" (Exiles and fundamental rights: the situation in Calais). While drafting the report, the institution was particularly surprised by the contrast between the massive presence of unaccompanied minors in the shantytown and the fact that little mention of such minors was made in what the public authorities had to say. As a result, it decided to step up its presence, both on the site and in its contacts with the public authorities and civil society, in order to assess

the phenomenon and uphold the rights of the most vulnerable camp members.

The Children's Ombudsperson visited the Lande camp in February 2016 to make the necessary observations and meet with all actors concerned, returning on 1 April 2016 accompanied by her British counterpart to identify possibilities of reuniting families and improving cooperation between the two institutions in the interest of unaccompanied minors. On 20 April 2016, following these visits, the Defender of Rights delivered a decision aimed at alerting the public authorities on the situation and future of unaccompanied minors in Calais and requesting their immediate, unconditional sheltering (Decision 2016-113); the Defender of Rights himself visited the site on 30 June 2016.

Being especially concerned about the future of minors following announcement of the dismantlement of the Lande camp's south zone, the Children's Ombudsperson returned to Calais on 13 October 2016 with her Walloon, Flemish and British counterparts.

The constant watch that the Defender of Rights kept on respect of the fundamental



rights of exiles in Calais led the Ministry of the Interior to invite it to observe the dismantlement operations. Defender of Rights teams, made up of officers authorised to check that security forces complied with ethical standards and officers authorised to check respect for the rights of the child, were therefore present in the Lande camp throughout the week it was being evacuated. Officers from the Defender of Rights' Defence of the Rights of the Child division also visited a number of *Centres d'Accueil et d'Orientation des Mineurs Non Accompagnés* (CAOMIs - Centres for Reception and Orientation of Unaccompanied Minors). Onsite checks were extended to Paris during evacuation of the "Stalingrad" camp. The Defender of Rights' objective was to take full account of

the appropriateness of the means deployed by the State to ensure that operations complied with the obligations incumbent upon it to respect fundamental rights.

The professionalism shown by security forces during the operations is to be commended.

However, as regards protection and care provided to unaccompanied minors following evacuation of Calais' Lande camp, their selection appeared random and based on purely visual indices, and there was very considerable heterogeneity in care provided to minors, teams recruited, relations with *départements* and information communicated to young people as regards their accompaniment, which was inadequate in all cases.

The observations contained in the report delivered by the Defender of Rights on 20 December 2016 indicate to what extent solutions implemented, even when seemingly humanitarian, were more to do with considerations connected with control of migratory flows than with requirements of respect of the fundamental rights of those concerned. It regretted that the interests of unaccompanied minors had not been made a priority and hoped that the public authorities would give young people in CAOMIs legal status and guarantee their access to the rights of education and healthcare.

**Individual recommendations, whether by themselves or accompanied by general recommendations, provide the Defender of Rights with a way of taking a reasoned position of principle in order to report a situation and request that the hierarchical authorities take measures with regard to disciplining public officers, or security ethics.**

The Defender of Rights was referred to by a complainant concerning the conditions under which he was received when he went to lodge a complaint after an assault on his wife, who had to be hospitalised as a result. The Defender of Rights noted that the three police community support officers and the graded civil servants who had dealt with the complainant's telephone call to the police headquarters had shown a lack of humanity and rigour, and had also

contravened the provisions of Article 15-3 of the Code of Criminal Procedure, which stipulates that criminal investigation departments are bound to accept complaints lodged by victims of infractions of criminal law. Finally, it deemed that the 11 days it took before a police team visited the hospital to take the wife's statement was too long. The Defender of Rights was informed that the civil servants, police community support officers and tenured police officers concerned had been given a "stern reminder of instructions concerning the taking of complaints and reception of victims" and that "any further infringement on their part would lead to disciplinary proceedings". Although the Defender of Rights deemed that the stern reminder to the police community service officers was appropriate, it considered that the circumstances of the case in question

justified more severe measures being taken against the experienced police officers, and recommended that disciplinary action be taken in their regard (Decision 2016- 303).

In cases where an amicable settlement has not been reached and where complainants have not wished to take immediate legal action, individual recommendations may serve to formalise the Defender of Rights' position and, when they are acted on, lead the individual complained against to find a solution to compensate the complainant or resolve the problem in question. They are highly effective in combating discrimination.

The Defender of Rights received a complaint relating to a refusal to enrol an autistic child in a swimming course for beginners. The child already went to the swimming pool regularly with his class, accompanied by an *auxiliaire de vie scolaire* (AVS - classroom assistant) without any problems arising. The manager said that his decision had not been based on any incapacity on the child's part but rather on the lack of staff with "*handisport*" (disabled sports) qualifications or a certificate of "adaptive sports qualification". He deemed that reception of a child during school time was different from reception during summer courses because of the educational responsibility involved, which rested with National Education staff. The Defender of Rights noted the municipal swimming pool manager's suggestion to try accepting the child for the next summer swimming course as long as he was accompanied by a third party, and also recommended to the municipal swimming pool manager and the mayor that they take appropriate measures to ensure that disabled children would in future be accepted in swimming courses for beginners (Decision 2016-124).

### *Recommendations bearing on mediation / transaction*

As provided for by Article 26 of the Organic Law of 29 March 2011, the Defender of Rights is empowered to provide a framework for initiating dialogue and finding solutions. The Defender of Rights makes its recommendations and may organise mediation with a view to coming to a transactional agreement.

Receiving a complaint relating to difficulties encountered by a woman carrying out an internship followed by a professionalisation contract in the context of a feminisation of BPW professions programme, the Defender of Rights turned to mediation in order to resolve the dispute. After noting that racist remarks had been made, according to which her origin was a "worse handicap" than her sex in being able to work on a construction site, the Defender of Rights emphasised that the human resources manager had known of the hostile and humiliating treatment suffered by the complainant because of her sex and origin, and recommended that the employer compensate the complainant for the harm caused, and improve its action plan for prevention of sexist behaviour. The accused party requested the Defender of Rights to initiate mediation so as to enable the parties to find an agreement in order to carry out its recommendations. A settlement agreement with the company against which the complaint had been lodged was signed and various measures were taken to improve its action plan in favour of diversity (Decision 2016-073).

The Defender of Rights was referred to by a complainant who had been a candidate for recruitment to a position as mission officer at a local authority, but whose candidacy had been rejected because she was pregnant. The local authority said that she had stated that she was pregnant too late in the recruitment procedure. Evidence collected during the investigation confirmed that the complainant's announcement of her pregnancy had swayed the local authority's decision. Two candidacies had been shortlisted, one of which was the complainant's, but hers



had been put aside they day she announced that she was pregnant. In this regard, the Human Resources Manager's voice message left no doubt: "*your pregnancy changes things a little*" "*we shall not be following up on our recruitment proposal given the new circumstances*". The local authority maintained that the woman's pregnancy was not the main reason for rejecting her candidacy, but rather that its decision was based on the complainant's lack of sincerity. The local authority's argument, however, did not justify violation of the principle of non-discrimination. The Defender of Rights recommended to the chairperson of the local authority that he contacted the complainant in order to see what could be done to repair the harm caused by the discriminatory nature of the decision (Decision 2016- 26). On 15 December 2016, the complainant and local authority chairperson signed a settlement agreement providing for significant compensation to be paid to the complainant

#### *Recommendations in equity*

Under Article 25 of the Organic Law, the Defender of Rights may recommend settlement in equity of situations referred to it. It can happen that strict application of the law may lead to a solution that penalises the complainant. In such cases, which are often of a complex nature, the only solution consists of interpreting the letter of the law in such a way as to ensure that its spirit is adhered to and reaching a less injurious agreement, without of course any fault being laid at the door of those against whom the complaint was lodged. The notion of equity may be understood as a remedy enabling adaptation of a necessarily general law to the complex circumstances and the unique nature of concrete situations.

Review of amicable settlements reached shows that the Defender of Rights' services and delegates have managed to correct the unjust consequences of strict application of the law.

The "*La Vie devant Soi*" (Life before Us) association was set up to take in and care for brain-damaged individuals. It had premises built in order to carry out its mission and hoped to benefit from the reduced VAT rate. In order to do so, it had to sign a convention with the *départemental* prefect, which formalised the owner of the premises' commitment to assign the buildings to the accommodation of elderly and disabled individuals. The administration refused to apply the reduced VAT rate, putting the association's future at risk, as the deadline for signature had been exceeded. The Defender of Rights asserted that the association had always taken care to act in compliance with the law and the many administrative steps required. In addition, the social nature of creating a medicalised reception centre was in no doubt. Due to the association's non-profit making activity and altruistic management, the tax authorities allowed measured application of the tax law and granted the "*La Vie devant Soi*" association's request. The Public Finance Directorate agreed to repay the association a sum corresponding to the difference between the two VAT rates. (Amicable settlement 15-07811)

A complainant was the holder of five savings bonds he had acquired in 1983 and which expired in 1988; as he had been serious ill, he had not been able to assert his rights before 2013. In 2015, he went to the post office to get his bonds reimbursed, but his request was refused on the grounds that the deadline for reimbursement had been 2013. Following the Defender of Rights' intervention with the economic and financial ministries' mediators, it was agreed to extend the five-year deadline and the complainant was able to get his bonds reimbursed.

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## C. Contributions to the pursuit of justice

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Under the Organic Law, the Defender of Rights is an officer of the court and can assist the course of justice by producing its investigative brief, analysis and observations before the judge.

The eye the institution keeps on effective access to rights provides impartial analysis intended to enlighten judges and an expert viewpoint within its field of competence.

The legal precedents arising from its observations are reference points that help clarify the reach of the rule of law. They are then expressed in the conclusion of amicable settlements of legal questions that have been resolved.

The impartiality of the Defender of Rights' position is recognised once again by the legislature in Article 5 of Law no. 2016-1547 of 18 November 2016 bearing on modernisation of the 21<sup>st</sup>-century justice system, in which it is assigned a concrete role in proceedings before administrative courts, intervening upstream of judges in order to reach amicable solutions of disputes with the administration.

### 1. Observations before courts.

The Defender of Rights may present observations in the context of the processing of cases it has investigated when they are brought to court, as well as in the context of disputes of principle in which, without investigating the cases concerned, it sheds light on applicable law.

#### *Regarding non-discrimination law*

The Defender of Rights was referred to by a complainant with regard to her working conditions following her return from

maternity leave. After investigating the complaint, the Defender of Rights decided to intervene before the Paris Appeal Court (Decision 2013-220). The company against which the complaint had been lodged argued the inadmissibility of the Defender of Rights' intervention and presentation of oral observations at the hearing, as well as of its lawyer's intervention. In an order of 11 September 2014, the Paris Appeal Court rejected the complainant's action, deeming that she had not presented enough evidence of the alleged discrimination, but also rejected the objection of inadmissibility advanced by the company concerned. The employee challenged the ruling and the company filed a cross-appeal against the Appeal Court's ruling rejecting the objection of the inadmissibility of the Defender of Rights' intervention. In its Decision 2015-236, the Defender of Rights decided to present its observations. In an order dated 28 September 2016 (appeal no. 14-26387), the Court of Cassation rejected the employer's cross-appeal and confirmed the Defender of Rights' competence to make written and oral observations before courts and be represented by lawyers during hearings. The Court of Cassation also overturned the Paris Appeal Court's ruling in which it had considered that the employee had not presented enough evidence of discrimination and sent both parties back to the Paris Appeal Court with a differently constituted bench.

The Defender of Rights also intervened before the *Commission d'indemnisation des victimes d'infractions* (CIVI - Standing committee for the compensation of victims of injury) on behalf of a victim of a criminal act. Following a civil



ruling whereby the Assize Court declared the complainant's civil action to be admissible and well-founded, and by which the individual against whom the complaint had been lodged was ordered to pay him damages, the case was referred to the CIVI to rule on the compensation concerned. The *Fonds de garantie des victimes des actes de terrorisme et d'autres infractions* (FGTI - Guarantee Fund for the Victims of Acts of Terrorism and other Crimes) presented its observations to the President of the CIVI, dismissing the ruling due to the fact that the complainant, who was a foreigner, was not legally resident in France at the time his request was submitted. The Defender of Rights therefore presented its observations to the Standing Committee, maintaining the applicability of the legislative reform brought about by the Law of 5 August 2013. In a decision taken on 16 September 2016, the CIVI, ruling in court chambers, agreed with the Defender of Rights' observations for the same reasons and deemed that the complainant's request was admissible. The CIVI also requested the FGTI to draw up a proposal for compensation (Decision 2016-147).

The Defender of Rights also decided to present observations to the Administrative Court following a Regional Council's refusal to act on its recommendation to reclassify and compensate a complainant (Decision 2014-094), a local technical assistant who claimed to have suffered harassment due to her disability at the hands of the principal of a hotel school. The investigation emphasised that the isolation that the complainant suffered owing to her employer's lack of action had contributed significantly to the worsening of her working conditions and state of health. In addition, when she had been declared unable to carry out her job as technical assistant, the Regional Council had not taken the appropriate steps (reclassification in an administrative job and provision of the required training) to enable the complainant to work in untroubled conditions. In its ruling of 8 July 2016, the Administrative Court considered that the Regional Council had not implemented appropriate measures to enable the complainant to continue working in a suitable position. Significantly, it took account of the



conclusions of the report drawn up by the Defender of Rights following a visit in situ, considering that the employer had not complied with medical recommendations (Decision 2016-089).

The Defender of Rights also presented observations to the Appeal Court in the context of a complaint concerning discriminatory harassment due to the complainant's sexual orientation. The harassment took the form of emails with sexual connotations sent to his **professional mailbox**, in which his immediate superior and colleagues made mocking and humiliating references to his homosexuality. Investigation showed that the complainant, who worked in a team responsible for financial markets, had been edged out of the group. In addition, comparison of his situation with that of employees in similar positions showed that his fixed salary had been cut and his variable pay cancelled with no objective justification. The complainant said that he had been forced to join a voluntary redundancy plan. Evidence gathered during the course of the investigation showed that the discriminatory harassment he had suffered due to his sexual orientation vitiated the consent he had given. The Defender of Rights found that the complainant had been a victim of discriminatory harassment due to his sexual orientation, that such discrimination was also expressed by an arbitrary salary cut, and that the termination of his work contract in the context of a voluntary redundancy plan was null owing to the vitiated consent resulting from the prior situation of discrimination. The complainant's request that the discrimination he had suffered and the nullity of the termination of his work contract be acknowledged was rejected by the *Conseil de Prud'hommes* (Labour Relations Board). By an order of 22 September 2016, the Appeal Court agreed with the Defender of Rights' observations, finding that the complainant had been the victim of discriminatory

harassment and of salary discrimination due to his sexual orientation, and also that there was a chauvinist and sexist work climate at the company concerned, which encouraged homophobic behaviour. The Appeal Court also concluded that the discrimination suffered vitiated the employee's consent to the work-contract termination agreement (the first legal precedent set on this point). Consequently, the Appeal Court ruled that the company pay the employee over 608,000 euros in damages. It distinguished the harm done by the humiliation suffered from that done to his state of health as a result (Decision 2016-171).

The Defender of Rights also pronounced on the termination of the contracts of nine untenured municipal officers who had taken part in the former mayor's election campaign. The new mayor had terminated their municipal work contracts just after the change in the municipal council resulting from the March 2014 municipal elections. Investigation of the case corroborated the concomitance between the decisions bringing an end to the labour relations under dispute and the municipal election results. Arguments advanced by the municipality citing budget restrictions, the need to lower staff costs and reorganisation of departments were not based on any perceptible tangible evidence attesting to their truthfulness. Positions corresponding to the complainants' grades and qualifications had been created by the new municipal council soon after the decision to terminate the disputed contracts. The Defender of Rights recommended to the new mayor that he compensate the harm suffered and remind his departments of the principle of avoidance of measures having nothing to do with provision of good service but based instead on very different criteria such as their political opinions or convictions, in ignorance, in particular, of Article 6 of the above-mentioned law. As the mayor refused to comply with the Defender of Rights' recommendations, the complainants

referred the matter to the Administrative Court, requesting annulment of the decisions along with compensation for the harm suffered. On 22 September 2016, the Administrative Court annulled the disputed decisions and decided to award between €4,000 and €18,000 to each of the complainants for the harm they had suffered following the decisions (Decision 2015-241).

The Defender of Rights presented observations before the Court of Cassation in the context of appeals relating to litigation brought by thirteen plaintiffs holding the State responsible for identity checks carried out by the police that were discriminatory on grounds of origin. After the complainants had referred the case to the Defender of Rights and following the latter's intervention before the Paris Appeal Court (Decision 2015-021), the court, in thirteen rulings delivered on 24 June 2015, considered that identity checks carried out for discriminatory reasons – race or origin in particular – were an attack on the principle of equality of treatment and a flagrant violation of fundamental rights, as well as serious misconduct for which the State is liable under Article 141-1 of the Judicial Organisation Code (COJ), and that, lacking the traceability of such checks, a change in the burden of proof was required. It concluded that the identity checks in question were of a discriminatory nature for which the State was responsible in five cases. An appeal was lodged against the rulings of 24 June 2015.

On 9 November 2016, the First Civil Chamber of the Court of Cassation decided that individuals deeming themselves to be victims of discriminatory identity checks could invoke the State's liability, lodging appeals on the basis of Article 141-1 of the COJ. Following the Defender of Rights' observations (Decision 2016-132), the Court of Cassation deemed that "ethnic profiling" identity checks were discriminatory measures with regard to the European Convention on Human Rights, in particular the principle of non-discrimination upheld in

Article 14 of the Convention and to the freedom of movement protected by Article 2 of Protocol no. 4. As regards form of proof, implicitly acknowledging the lack of legal obligation of traceability of identity checks and the need to provide the litigant with effective means of appeal in the sense of Article 13 of the European Convention on Human Rights, enabling the reporting of identity checks of a discriminatory nature and obtainment of compensation for harm suffered, the Court of Cassation confirmed that a change should be made to rules on burden of proof, a principle that prevails with regard to discrimination.

These rulings constitute a major step forward in providing citizens with real protection against discrimination.

#### *Regarding the rights of the child*

The Defender of Rights intervened in a number of individual cases to do with children's situations in school environments, establishment of their civil status, care provided in the event of disability, and monitoring of unaccompanied minors.

In one case, it was referred to regarding allegations of physical and psychological violence committed by the teacher and principal of a nursery school against the children in her charge. Several parents had lodged complaints against the teacher. On 15 January 2016, the Criminal Court dismissed all the charges against her for lack of evidence. Among other things, the court considered that "*in the present case, (...) a judicial decision may not be based on what was said or supposed to have been said by children of around 3 to 5 years old. That would be against all reason and positive law, which only envisages taking account of a minor's testimony if the child is capable of discernment (Articles 388-1 and 372-2-11 of the Civil Code, and 1186 of the Civil Procedure Code)*". The Defender of Rights presented observations in the context of an appeal lodged against the decision by the Public Prosecutor before the

Limoges Appeal Court. It was concerned about the way in which the testimony of children “incapable of discernment” might be received in the context of criminal proceedings if account were not taken of their words, nonverbal aspects of their behaviour or any psychological damage noted by a physician. It pointed out that the articles cited by the Criminal Court were applicable to the hearings of children during civil proceedings but not during criminal proceedings. In a ruling of 27 May 2016, the Limoges Appeal Court sentenced the teacher to 12 months’ imprisonment suspended and 5 years prohibition to work in contact with children. The teacher appealed (Decision 2016-90).

The Defender of Rights is referred to in numerous cases of refusal to deliver identity papers, certificates of French nationality or transcriptions of foreign birth certificates in French civil registers for children born via surrogacy. It processes such complaints by following up requests for transcriptions with the administrative and legal authorities, bringing the full force of its powers to bear.

Following the *Mennesson* and *Labassee* rulings confirmed by the *Foulon and Bouvet vs France* ruling of 21 July 2016, in which the ECHR sanctioned France for violation of children born via surrogacy’s right to respect for privacy, guaranteed by Article 8 of the European Convention on Human Rights, stressing the primacy of the child’s interests over society’s and third parties’ interests: France has the right to prohibit surrogacy on its territory given the margin of discretion left to States, but it may not infringe children’s right to identity and filiation.

The Defender of Rights submitted its observations as *amicus curiae* in litigations before the Plenary Assembly of the Court of Cassation, which delivered two rulings on 3 July 2015, in which it deemed that in future the Convention on Surrogacy should not hinder recognition of the filiation of children born of one French parent, and that if a foreign

birth certificate is in good order and authentic, and the facts stated thereupon correspond to reality in the sense of Article 47 of the Civil Code, its transcription may not be refused. Since then, lower courts have ruled on the question several times, sometimes in different ways.

In 2016, the Defender of Rights submitted observations in two cases bearing on refusal of transcription of birth certificates, basing its arguments on legal precedents set by the ECHR (Decisions 2016-102 and 2016-255). The first resulted in a ruling delivered by the Rennes Appeal Court on 27 June 2016, declaring the judge in chambers incompetent to rule on the request, while the second ended in a favourable ruling on the part of the Nantes High Court, delivered on 24 November 2016 (TGI Nantes, no. 15-06805), ordering transcription of a birth certificate containing the biological father’s name and that of the mother who had not actually given birth to the child. In the court’s eyes, the fact that the mother named on the certificate had not given birth to the child “*could not, given the higher interests of the child as determined by the [ECHR], justify refusal to acknowledge the maternal filiation, which [in this case] is the only filiation legally recognised as having been duly established in the country of birth, and which corresponds to legal reality*”.

The Defender of Rights was also referred to regarding the President of the Mayotte *Départemental Council*’s decision to refuse to grant a so-called “*allocation au tiers digne de confiance*” (allowance to a trustworthy third party) benefit to the complainant appointed as “trustworthy third party” for a 17-year-old child by a decision delivered by a children’s judge. It decided to present its observations in the context of an application for an interim order suspending implementation of the decision before the Administrative Court. The Defender of Rights reminded the court that, under the provisions of the Social Action and Family Code, the *Départemental Council* was obliged to

pay the said benefit once the Children's Judge had delivered a decision to that end. The Defender of Rights also reminded the court that payment of such allowance is a compulsory jurisdiction of all *départements*, and that methods of payment should have been provided for in *départemental* social assistance regulations. Expenditure on modifying the said regulations so as to organise methods of paying the allowance was also compulsory. Consequently, the President of the *Départemental* Council could bring up his own failure to provide for payment methods as an argument against the beneficiary of the allowance, a failure that constituted a negative incompetence causing grave doubts as to the legality of the abovementioned decision to refuse to grant the benefit. In a decision of 19 December 2016, the Mayotte Administrative Court agreed with the Defender of Rights' observations and ordered payment of the allowance (Decision 2016-310).

### *Regarding access to rights in public services*

The Defender of Rights' observations to courts have become an intervention strategy in their own right as far as access to public services goes. Non-existent in 2011, they now account for 42% of observations presented by the Defender of Rights.

The Defender of Rights received a complaint bearing on the Public Finance Directorate's collection in August 2008 of remunerations that had been wrongly paid out by a local education office between June 1996 and February 2002. In July 2002, the local education office had issued a demand for payment of almost €16,000, corresponding to overpayments made between June 1996 and February 2002, which the complainant disputed without any follow-up to the complaint. The Public Finance Directorate sent a reminder letter in August 2008, and then, following rejection of the request for deferral of payment, sent a final demand in September 2014. The claim had been partially prescribed when the demand for payment was sent in

July 2002, and fully prescribed in August 2008, when the Public Finance Directorate restarted the recovery procedure. The Defender of Rights decided to present observations before the Administrative Court, referring to former Article 2277 of the Civil Code, which instituted a five-year prescription on actions to recover remunerations wrongly paid to public officials. On 7 November 2016, the Administrative Court ruled that the State's debt had been prescribed at the date the final notice was sent on 4 September 2014 and considered that more than five years had passed between the date the payment order was issued, on 26 July 2002, and the first dunning letter sent by the Regional Directorate of Public Finance (Decision 2015-091).

## 2. Relations with Public Prosecutors' offices

Enshrined in law by Article 33 of the Organic Law, relations between the Defender of Rights and the judicial authority have developed into a real partnership between the Defender of Rights and High Courts' Public Prosecutor's offices. In 2016, the Defender of Rights and Public Prosecutors signed 11 Memorandums of Understanding, bringing the total number of such memorandums signed between them up to 27.

These memorandums provide a framework for Public Prosecutors' and courts' requests for opinions, requests for authorisation to investigate, transmission of files to Public Prosecutor's offices for follow-up and presentation of observations before courts.

For the Defender of Rights, the quality of exchanges with Public Prosecutor's offices improves efficiency in processing complaints. The Memorandums of Understanding facilitate identification of its interlocutors at Public Prosecutor's offices, enabling it to request authorisations to investigate, opinions and information on monitoring of complaints, and ensure the visibility and clarity of its recommendations.



In 2016, the Defender of Rights sent a file to the Public Prosecutor's office following investigation; the case in question bore on a dental surgery's refusal of treatment on the grounds of the complainant's family name and Maghrebian origin. Discrimination testing on the part of the Defender of Rights had confirmed the alleged facts.

As regards best practices in operational ties between the two authorities, it should be emphasised that a number of Public Prosecutors are always ready to call upon the Defender of Rights for opinions on criminal investigations regarding discrimination.

In one particular case, the Defender of Rights had received five complaints that were also the subject of criminal complaints. The Public Prosecutor's office authorised the Defender of Rights to investigate, sending it the Public Prosecutor's own investigation file and requesting it to communicate its opinion on the file.

The case bore on complaints made by disabled individuals (with trisomy 21) who had met with difficulties in accessing various attractions at a leisure park. The various testimonies heard during legal proceedings and before the Defender of Rights showed that access to one extremely popular attraction, not identified in the guide, was systematically conditional to each mentally impaired individual on his/her own being chaperoned and visible to the chaperone at all times, and to the participation of a single mentally impaired individual per cycle either in a group or with his/her family. The argument put forward by the management in justification of the restrictive conditions for accessing some of the park's attractions was that of safety. Since the EasyJet ruling (Cass. Crim. 15 December 2015), restricting access to goods or services by reason of disability may only be based on justified concerns for safety imposed by law. The *actus reus* of the offence was making access to the attraction conditional to having a chaperone for each disabled person and to the imposed limit of a single mentally impaired

individual per cycle, whereas such conditions were not imposed by law or regulations. In the opinion it delivered to the Public Prosecutor, the Defender of Rights concluded that the legal entity's criminal liability might be involved, as the natural persons working for the company acted in the performance of their functions under its management and on their employer's duly validated instructions (Decision 2016-016).

In another request for opinion, the Defender of Rights was questioned by the Public Prosecutor on the legal characterisation of a shop's refusal to honour its "pay in three instalments" special offer when the complainant produced her Romanian identity card. The shop's manager justified his action by citing the lender's creditworthiness requirements. As neither the vendor who had examined the file nor the lender had been questioned to confirm his instructions, the facts of the case were inadequately characterised. In its opinion, the Defender of Rights indicated what complementary procedures might be implemented in order to advance the investigation (Decision 2016-2018).

The potential of this collaboration is not, however, limited to combating discrimination; it also facilitates exchanges regarding security ethics and access to rights in the context of drafting *départemental* victim support schemes.

Relations between the Defender of Rights and Public Prosecutor's offices must take account of the specificity of the role and jurisdiction of the judicial authority, in particular by ensuring that exchanges of information are in compliance with the secrecy of investigations underway, the *res judicata* and the principle of discretionary prosecution. The Defender of Rights provides the judicial authority with a work resource and expertise that are set to become yet more essential as mutual knowledge and possible collaborations increase.

# 3. A contribution to setting standards

The Defender of Rights does not have any formal normative powers. Nonetheless, in so far as its recommendations are now taken into consideration by the parties to whom they are addressed, they may sometimes be a source of what is known as soft law. In this sense, the Defender of Rights is a producer of standards. In addition, its contribution to composition of imperative legislative and regulatory standards continues to grow.

## A. General recommendations

### FOCUS

### *The Defender of Rights, producer of soft law?*

According to the definition put forward by the Council of State in the annual study devoted to it (2013), soft law is made up of texts aiming to modify or orientate the behaviour of their addressees (by attracting their support as far as it is possible to do so), not in themselves creators of rights or obligations, but presenting, through their

content and the way in which they are drafted, a measure of formalisation and structuring that affiliates them with the rules of law.

In bringing certain powers into play, the Defender of Rights pronounces on standards that, although not legally binding, are of a prescriptive nature that seeks to guide their addressees' behaviour. It is a source of soft law, based on and regulated by positive law, which aims both to defend and promote rights. This is above all the case with its power of recommendation.

When recommendations are individual, in other words addressed to the subject of a specific complaint, they may — as is exemplified by the decision on the above-mentioned case of discriminatory harassment

due to sex and origin — serve to rectify the situations of the individual whose rights had been infringed, repair the harm she had suffered (a transactional agreement to the tune of 60,000 euros was signed) and implement preventive measures (in this particular case, measures to prevent sexist behaviour and concrete measures to protect the health and safety of women working on construction sites, such as systematic installation of women's changing-rooms and toilets). (Decision 2016-073)

General recommendations, which are wider in scope, are addressed to such parties as the public authorities, which are likely to mobilise their own powers

in order to guide the behaviour of maximum numbers of citizens. With a view to improving the situation of unaccompanied minors, for example, the Defender of Rights not only wished to remind those concerned of a number of principles relating to the reception of and provision of care to unaccompanied minors, but also recommend ways of improving existing systems and stress the importance of all actors concerned being involved at all levels, and their all-round coordination in providing protection to unaccompanied minors (Decision 2016-183).

The Defender of Rights also has the power to recommend

legislative and regulatory modifications it deems useful (Article 32 of the Organic Law). This being so and with the aim of improving professional gender equality in the civil service, it invited the public authorities to add family situation to the list of criteria of discriminations prohibited by law no.83-634 of 13 July 1983. This recommendation was included in positive law by Article 55 of Law no. 2016-483 of 20 April 2016 bearing on civil servants' ethics, rights and obligations.

Promotion of equality and access to law may also be a source of soft law. It helps replace recommendations of a purely unilateral nature

with normative instruments shaped by a consultative partnerial approach open to the complexity of situations. Such an approach may draw on ethical charters such as the "*Ensemble pour l'égalité dans les recrutements*" (Together for equality in recruitment) Charter signed with recruitment agencies mobilised against discrimination in hiring, and the Charter for promotion of equality in the civil service. Promotion of rights also draws on best practices guides, designed as appropriate operational tools likely to change behaviour with regard to various standards, legal standards in particular.

Investigation of individual cases has led the Defender of Rights to note difficulties resulting from administrative practices, erroneous interpretations and complexities, whose impact goes well beyond complainants' individual situations, and to make recommendations with a view to rectifying such situations and giving its observations a collective impact.

In addition, the number of cases it deals with concerning relations with social organisations, discrimination in companies and relations with prefectural services enable it to act as an observatory in its fields of competence and draw conclusions on in-house practices and rules whose modification it deems necessary.

**In 2016, it made a number of general recommendations regarding individuals' relations with healthcare services,**

concerning difficulties in obtaining medical files, disputes over hospital bills and reception, and refusal to take account of the exemption from payment of advance fees granted to beneficiaries of *aide à l'acquisition d'une complémentaire santé* (ACS – complementary health insurance acquisition assistance system).

In another case, the day after the death of her mother, who was a resident in an *Etablissement d'Hébergement pour Personnes Âgées Dépendantes* (EHPAD - care centre for dependent senior citizens), the complainant went to the institution to see the deceased's body. The staff told her that, as the EHPAD did not have a mortuary, the body had to be taken to an undertaker's in a nearby town. The complainant signed a

request for the body to be transferred to the undertaker's, which involved her being billed for the considerable cost of doing so: a bill the management refused to cancel. The Defender of Rights made a recommendation based on the institution's obligations to keep the bodies of deceased residents and inform families; the bill was cancelled and the EHPAD held information meetings and revised its protocol for communicating with families (Decision 2016-120).

The Defender of Rights received a number of complaints relating to refusal to take account of the exemption from payment of advance fees granted to beneficiaries of *aide à l'acquisition d'une complémentaire santé* (ACS - complementary health insurance acquisition assistance system). Telephone testing confirmed that, when a patient informed them that he/she was an ACS beneficiary, the secretariats of the practices in question stated that they were unaware of the existence of this type of medical aid and application of third-party payment. The Defender of Rights reminded the practices concerned of the rules applicable to ACS beneficiaries and recommended that physicians be made aware of existing aid schemes and acceptance of total or partial third-party payment.

**Regarding the operation of public services,** the Defender of Rights may be led to make general recommendations bearing on administrative shortcomings and drawing the public authorities' attention to the need to intervene, or to review various conditions for access to rights that it deems inequitable, in particular for families.

The Defender of Rights was referred to by a father who complained that Territorial Brigade officers had taken no notice of his reports concerning his wife's unlawful removal of their two sons to Morocco, and called into question action on the part of the social services and gendarmerie that facilitated their departure. After it had investigated the matter, the Defender of Rights noted the overall ignorance of the system for opposing a child's departure from France displayed by all

the professionals who had dealt with the situation, and therefore reminded them of the interest of such a system and the way it operated. It noted a lack of vigilance on the part of the social worker authorised to make enquiries by the unit responsible for collection of disturbing information regarding risks of departure with children. It also noted various failures largely to do with lack of discernment concerning risks of removal of children abroad, and noted the absence of special contact with the dedicated deputy public prosecutor. In the face of these observations, and apart from its recommendations that staff concerned be reminded of the legal texts involved, the Defender of Rights made recommendations on raising awareness among all actors concerned, the need to improve the ways information was circulated between the authorities concerned, in particular the Brigade, the Public Prosecutor's duty office and the deputy public prosecutor assigned to cases of intrafamily violence; it recommended that thought be given to creation of gendarmerie units specialising in dealing with family conflicts, following the example of the police service's "Family Protection Brigade" and Public Prosecutor's offices' "minors-family" centres, which have developed special ways of dealing with intrafamily violence in the course of the missions they undertake (Decision 2016-166).

The Defender of Rights is regularly referred to by individuals who have met with difficulties in renewing *Cartes Nationales d'Identité* (CNIs - National Identity Cards) that appear to have expired but whose validity has been extended pursuant to Decree no.2013-1188 of 18 December 2013. In practice, a card's renewal or otherwise depends on where the request is made. However, a number of States do not recognise the validity of such identity documents, preventing French nationals from travelling to them. The regulatory framework therefore jeopardises individuals' freedom of movement and detracts from the equality of French citizens when it comes to renewing their CNIs. In order to remedy problematic individual situations (cancellation of travel

plans, administrative difficulties for expatriates, denied boarding, inability to open a bank account, crossborder workers being denied entry at borders, etc.), the Defender of Rights reminded those concerned of applicable law and made general recommendations to the Ministers of the Interior and Foreign Affairs to the effect that they remind town hall, prefectural and consular authority departments to renew the CNIs of any French nationals who so requested. It also recommended that they take wider communication measures to the attention of users and private service providers, informing them of applicable regulations, and implement compensation procedures (Decision 2016-330).

The Defender of Rights noted that difficulties often arose when it came to attaching children who had reached the age of majority to a new tax household that had been “recomposed” following remarriage. The tax authorities refuse to attach adult children to such new tax households and notify upward adjustment, as the principle set by Article 6 of the French Tax Code (CGI) allows an adult child to be attached to the parental tax household he or she belonged to before reaching the age of majority (Provisional Judgement, Nantes ACA, 13 November 2006). The Defender of Rights referred the situation to the *Direction Départementale des Finances Publiques* (DDFIP - *Départemental Directorate of Public Finances*) and the Minister of Finance and Public Accounts, stressing that this solution was hardly equitable. The Minister cancelled the income and property back taxes involved in the cases concerned and requested the DDFIP to issue rebates. He also indicated that a doctrinal change would be incorporated into the *Bulletin Officiel des Finances Publiques - Impôts* (BOFIP - Official Public Finance Gazette on Taxes) enabling adult children to request such attachment.

**Regarding discrimination**, general recommendations led to rectification of conditions of access to goods and services and of discriminatory company management rules to the benefit of all employees and customers.

**As regards access to goods and services**, the Defender of Rights received a complaint relating to a discriminatory situation resulting from a notary’s refusal to allow an individual to sign a deed she had drawn up without the presence of witnesses, as she had been blind from birth, whereas if she had lost her sight, she would have been able to sign the deed without witnesses being present. The Defender of Rights recommended to the Minister of Justice and the High Council of French Notariat that they put an end to discriminatory notarial practices, reminding notaries that, pursuant to the legislative and contractual provisions in force, it was possible for any individual afflicted with blindness of whatever origin to sign notarised deeds, except in the event of the individual concerned stating he/she did not know how to or was unable to sign, pursuant to the provisions of Article 93° of the law of 25 Ventôse year XI, it also recommended that measures be taken to secure individuals’ consent and the notarised deeds, while guaranteeing their full legal capacity. As yet, neither the Minister of Justice nor the High Council of the French Notariat has replied to the Defender of Rights (Decision 2016-100).

A well-known furniture store hires out vans. The store’s employees, however, refused to allow the complainant, who holds a British driving license, to hire one of them, saying that he had to have a European driving license. The Defender of Rights also noted that a minimum age of 21 had been set for hiring a van. The store manager replied to the complainant in writing, telling him that, in order to hire a van, he had to present a French identity document and proof of residence in France, in addition to a European driving license. The fact of requiring a French or European driving license, and that of requiring French identity documents, makes such hiring conditional to an individual’s nationality. Such behaviour is an example of the type of discrimination prohibited by Articles 225-1 and 225-24° of the Criminal Code. Similarly, the fact of setting an

age limit for hiring a vehicle is also a form of discrimination prohibited by the above-mentioned Articles of the Criminal Code. The Defender of Rights decided to remind the store in question that its refusal to the complainant was an act of discrimination provided for in Article 225-2 1° of the Criminal Code, behaviour punishable by three years imprisonment and a 45,000-euro fine. It recommended to the store that it put its procedures in compliance with such prohibition of discrimination and remind its employees that foreign passport and national identity cards act as proof of their holders' identity. It recommended to the company that hired out the vehicles that it improve the documentation it provided to its customers' employees relating to the hiring of vehicles to private individuals (Decision 2016-258).

**Regarding employment**, the Defender of Rights received a complaint relating to conditions under which “back-to-school half-days” and leaves to care for a sick child were attributed at a large company. Such advantages, which were provided for by general instructions last updated in the early 1980s, were not granted to male employees unless they were widowers with children to take care of. The condition had not been extended to female employees. The Defender of Rights considered such differences in treatment of female and male employees by reason of their sex discriminatory. The systems in question did not come under any of the exceptions to the principle of non-discrimination provided for by law. In particular, they could not be regarded as positive measures taken to the benefit of women – on the contrary, even though the authorisations of absence concerned enabled easier reconciliation of private and professional life, the fact of their priority attribution to women, including when they did not live alone with the children they were responsible for, served to perpetuate a notion of division of

domestic duties between women and men that was finally damaging to women. The Defender of Rights acknowledged the company's undertaking to open discussions with unions with a view to modifying conditions under which such authorisations for absence were granted. The Defender of Rights finally recommended that the company approach the author of the referral with a view to compensating him for the harm done. The company told the Defender of Rights that it had started on negotiations with unions and that the institution would be regularly informed of how such negotiations were going (Decision 2016-071).

A number of complaints received by the Defender of Rights concerned a large railway company, highlighting discrimination based on origin and often expressed by situations of harassment. It appeared that the seriousness of what was happening often made it difficult for the employer to intervene when its obligation to ensure its employees' safety called upon it to take action. Referred to by an employee who deemed himself the victim of racist remarks on the part of his colleagues, some of whom were in supervisory positions, the Defender of Rights investigated the case and noted that, while the reality of the acts of harassment in question was not disputed, they were systematically minimised by their authors and various members of the management, and put down to good-natured jostling and camaraderie with no intention of upsetting the complainant, who was responsible for his own inability to make light of the situation. The Defender of Rights observed that the employer's reaction was not proportionate to the seriousness of the wrongdoing, and that it fell short in its obligation to ensure its employees' safety. The situations, which unfortunately arose all too frequently, led the Defender of Rights to make several recommendations to the employer (Decision 2016-28).



## B. Contribution to the law

This year once again, the Defender of Rights made major contributions to Parliament's and the Government's normative activities. It was heard by the National Assembly and the Senate on 27 occasions and published 21 opinions to Parliament, intervening in each of its fields of competence.

The positions it takes on various draft legislative and regulatory texts have not only influenced the final versions of such texts, but have also helped remove a great many obstacles to access to rights.

### FOCUS

## *Lively exchanges with Parliament*

Difficulties in accessing rights are sometimes connected with the design of the very systems intended to protect individuals. The Defender of Rights is therefore led to intervene by putting forward suggestions for legislative and regulatory reforms. Drawing inspiration from the individual complaints it processes – i.e. real cases – it makes general recommendations based on experience and principles alike.

Its power to suggest reforms, provided for by the Organic Law, is strengthened by its institutional and constitutional status, which gives the institution full legitimacy and great freedom to promote modifications in policies implemented by the legislation in force.

On a case-to-case basis, the Defender of Rights makes proposals for reforms to Parliament or the Government on its own initiative, in the form of letters, as well as general recommendations outside any specific political or legislative context. In addition, it is consulted in top-down fashion by the legislative and executive authorities with regard to the drafting of new standards; in this regard, the Defender of Rights' action has something of the political about it,

although it always remains technical. The institution has therefore gradually become one of the public authorities' regular interlocutors in the drawing up of standards. The Defender of Rights is increasingly called in directly by the legislative and executive authorities prior to the drafting of new texts, during preparatory work on the part of central administrations or the parliamentary committees to which they are then referred. Such requests for its input are frequent and have been ever more so over the last two years, both in the context of Parliament's legislative power (draft laws and proposals for laws) and of its power of monitoring government action (information missions, committees of inquiry, monitoring application of the law, monitoring the state of emergency, etc.). Individual requests also come from parliamentarians in the context of their work on behalf of individuals' rights and promotion of equality, in Parliament or in their constituencies.





As a result, the Defender of Rights publishes numerous opinions, which act as official formulations of its consultations by Parliament. It also likes to give account of its activities several times a

year before the competent committees, in particular before law commissions at the time its annual activity report is published. Such meetings have become a tradition and enable lively,

forward-looking exchanges on all subjects within the Defender of Rights' competence connected with the current political and legislative environment.

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As was the case last year, countering terrorism was a central driver of parliamentary debate. The Defender of Rights delivered opinions on a variety of texts bearing on control of immigration (Opinion 16-02), the state of emergency (Opinions 16-03 and 16-06) and combating organised crime, terrorism and their funding, and improving the effectiveness and guarantees of criminal proceedings (Opinions 16-04 and 16-08). The Defender of Rights systematically stressed the importance of providing for the guarantee required to ensure the right balance between

protection of rights and freedoms and the imperative of public safety and prevention and suppression of criminal offences.

### Security ethics

In its opinions relating to the above-mentioned texts, as well as during a hearing at the Senate in May 2016 devoted to private bill no.257 *aiming to combat abusive identity checks*, the Defender of Rights spoke out several times again this year on relations between the police and the population (Opinion 16-12). Once again, it took the opportunity to stress the importance of coming up with an

identity check traceability system, first of all because of the increasing numbers of reasons for such checks, and secondly because authority to carry out “identity checks”, and even frisk searches, had been extended to SNCF and RATP security officers by Law no.2016-339 of 22 March 2016.

The Equality and Citizenship bill enshrined this recommendation. An experimental arrangement was introduced for a year’s trial period, obliging members of the security forces equipped with mobile cameras to make use of them while an identity check was in progress pursuant to Article 78-2 of the Code of Criminal Procedure. It nonetheless seemed to the Defender of Rights that identity checks could create discriminatory situations that would not be resolved by simply recording them. It also reiterated its recommendation on setup of an identity check traceability system.\*

## Discrimination

Among the various advances made this year, we may first of all mention the enshrinement, by law no. 2016-1547 of 18 November 2016 bearing on modernisation of the 21<sup>st</sup>-century justice system, of class action with regard to discrimination, and extension of the list of prohibited reasons for discrimination and protection against discriminations in access to goods and services in civil matters to cover all criteria in compliance with the Defender of Rights’ recommendations (Opinions 15-23, 16-10, 16-15 and 16-19).

A new criterion regarding discrimination was also added to the list of prohibited reasons for discrimination, although without the Defender of Rights lending its support to the measure: that of the “ability to express oneself in a language other than French”. The Defender of Rights was also pleased to see the replacement of the term “sexual identity” by the term “gender identity” in the first paragraph of Article 1 of Law no.2008-496

of 27 May 2008, Article 225-1 of the Criminal Code and Article 132-77 of the Criminal Code – a change it was at the origin of and which provides a clearer and more inclusive expression in order to protect transgender individuals from any discrimination.

The law also added 3 further criteria to the list of prohibited criteria. Law no.2016-832 of 14 June 2016 adopted the new criterion of discrimination based on “particular vulnerability resulting from [an individual’s] economic situation, which is apparent to or known by the person committing the discrimination”, which sought to provide legislative expression of discrimination against social precarity. In addition, Article 39b of the Law on Equality and Citizenship created the criterion of “any distinction made between individuals because they have undergone or refused to undergo hazing”.

Also in the context of its competence with regard to combating discrimination, in Decision 2016-164 of 24 June 2016, the Defender of Rights spoke out against difficulties encountered by transgender individuals in obtaining a change in their civil status. The Law on modernisation of 21<sup>st</sup>-century justice provided for a new demedicalised procedure for changing civil status with regard to sex, by which any adult or emancipated minor who demonstrates by an “adequate combination of facts” that their civil status with regard to sex does not correspond to that “in which they appear and in which they are known” may obtain the modification. Although the Defender of Rights commended the procedure’s demedicalisation, it nonetheless regretted that it was still subject to judicial process. It also recommended to the Government that it instituted a rapid and transparent declarative procedure for registrars to follow, which seemed to it to be the only procedure in full compliance with the fundamental rights of transgender individuals as guaranteed by Article 8 of the ECHR.

\* See the survey “Accès aux Droits Vol. 1 - Relation police/population: le cas des contrôles d’identité”

The Defender of Rights also made various recommendations bearing on the procedure for assigning social housing. As regards the fight against discrimination, it recommended that the conditions of nationality set for access to the three civil-service categories as well as to employment in the private sector be set aside. The legislature followed its recommendation in part in the law enacted. The Defender of Rights also recommended that refusal to make reasonable accommodations for disabled individuals be expressly regarded as discrimination under the terms of the Law of 27 May 2008 and Article 225-1 and 2 of the Criminal Code. Its proposal was not acted on. The Defender of Rights also recommended creation of indicators enabling documentation of “equality of treatment” in large companies’ non-financial reports covered by Article L. 225-102 of the Commercial Code; institution of an obligation to audit prevention of discrimination in big companies and government organs, with legally specified periodicity; and appointment of an “equality officer” at all companies with 300 or more employees.

In the context of work carried out by the information mission on assessment of Law no. 2012-954 of 6 August 2012 bearing on sexual harassment, the Defender of Rights recommended that the possibility of taking civil action be provided to individuals who were victims of sexual harassment other than in the workplace, in order that they, like other victims of discrimination, might benefit from the modification of the burden of proof provided for by the Law of 27 May 2008. It also recommended that sexist conduct be prohibited in the civil service. The Law on Equality and Citizenship took note of this opinion and introduced such prohibition into Law no. 83-634 of 13 July 1983.

## Public service

It is also worth noting that the Law on modernisation of the 21<sup>st</sup>-century justice system provided for the testing out, over a 4-year trial period, of systematic mediation prior to filing appeals before administrative courts, for certain disputes, and directly involved the Defender of Rights’ delegates in the experiment.

In addition, with regard to simplification of administrative procedures and independently of opinions delivered to Parliament, the Defender of Rights called the public authorities’ attention several times this year to the issue of extending the duration of allocation of the adult disability allowance to five years (Decree no. 2015-1746 of 23 December 2015 relating to medical certificates attached to requests submitted in *départemental* centres for disabled persons) as well as to merging the parking card and priority access card into a single document, under Law no. 2016-1321 of 7 October 2016 for a Digital Republic, creating the mobility-inclusion card.

It also called the Minister of the Economy and Finance’s attention to the difference in tax treatment of expenses incurred in the care of dependent individuals, depending on whether they are accommodated in a care institution or are provided with home-help services. The difference gives rise to an unjust situation, creating a dual burden for families, spouses in particular, who often have no other choice than to put the disabled individual into a care facility. Still on the subject of taxes, it recommended that the total of deferred income not be entered into the household reference taxable income, in order to ensure that people with already modest incomes do not lose any possible social benefits or tax relief.

As regards Social Security, there was a positive response to the Defender of Rights’

request that a procedure be set up for buyback of contributions for certain artists/authors whose pension contributions had not been called in in due time. The mechanism was introduced as from 1 January 2017.

This year also, the Defender of Rights once again intervened in the context of the procedure for enacting the bill on funding the Social Security, recommending creation of methods of sharing family benefits in cases of alternating residence; entitlement to the *allocation de cessation anticipée d'activité des travailleurs de l'amiante* (ACAATA - early retirement allowance for asbestos workers) on the part of subcontracted and temporary employees in companies and professions likely to provide entitlement to the ACAATA; taking account of the *kafala* (sponsorship) system in entitlement to Social Security benefits; setting aside the prior condition of non-EU foreign nationals requiring a residence permit in order to receive the *allocation de solidarité aux personnes âgées* (ASPA - State pension for the elderly); granting family benefits to parents of foreign children (apart from family reunification procedures); attribution of the back-to-school allowance to children schooled at home; and adoption of special measures applicable to same-sex married couples, in order to take account of their years spent together under the Civil Solidarity Pact (PACS) scheme with a view to non-discriminatory access to survivor benefits by spouses of deceased civil servants.


## Defence of rights of the child

Heard on several occasions in the context of the parliamentary debate on the private bill on child protection, the Defender of Rights emphasised the importance of providing child protection policy with real management at national level, a concern also asserted by the UN Committee on the Rights of the Child in 2016, and was pleased to see the Law of 14 March 2016 creating a National Council for Child Protection under the Prime Minister. The law's inclusion of the need for stability in children's life paths in the realm of child welfare, one of whose central tools is the *Projet Pour l'Enfant* (PPE - Project for the Child), with the accent on children's health and appointment of a medical consultant on child protection, meet the Defender of Rights' recommendations. However, the Defender of Rights regrets that, contrary to its opinion, the use of expert assessments of bone age, in particular to determine the age of unaccompanied minors, was finally legalised despite such examinations' unreliability.

Confirming the Defender of Rights' analysis, Parliament enshrined extension of the legal deadline for declaring a child's birth to the civil registrar in Law no. 2016-1547 of 18 November 2016 bearing on modernisation of the 21<sup>st</sup>-century justice system. The deadline is now 5 days in order to avoid numerous cases of legal proceedings that can last up to eight months at a time, during which the child has no legal existence.

The Defender of Rights was also pleased to see that the Law on Equality and Citizenship has enshrined the legal right of access to canteens for all primary school children in law, in compliance with a recommendation contained in an opinion delivered the previous year.






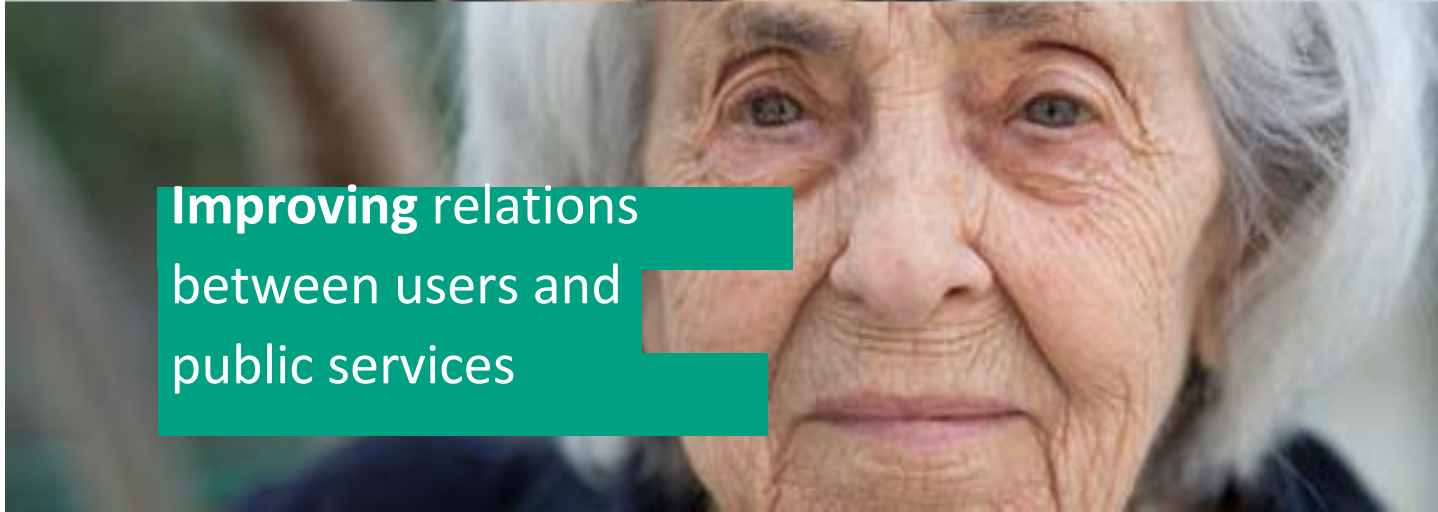
**Defending  
and promoting  
the rights of the child**



**Promoting equality  
and fighting  
discrimination**



**Ensuring compliance  
with the  
rules of ethics**



**Improving relations  
between users and  
public services**



# One mission, five fields of competence



# 1. Rights and freedoms of public service users

Public services play a key role in social cohesion. Their action serves to strengthen the sense of belonging to a single Republic, a feeling that seems to be becoming increasingly fragile. Above all, it is created by correct application of the rules of law by the organisations concerned, and also requires their flexible adaptation to an evolving society.

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## A. Protecting users' access to rights to preserve social cohesion

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Public services' action, which should above all be based on the principle of equality and continuity, helps reduce the scale of social inequalities by putting a number of benefits within the reach of all, the most insecure in particular.

It therefore conditions the effectiveness of fundamental rights. Access to rights on the part of public service users, including foreigners, is a guarantee of social cohesion.

### Telephone reception and digitisation of public services: the INC/DDD "Mystery Call" survey<sup>8</sup>

Users' access to rights has increased remarkably over the last dozen years due to the spectacular spread of Internet. The Defender of Rights carried out a one-of-a-kind survey in partnership with the *Institut National de la Consommation* (INC - National Consumer Institute), entitled "*Accueil téléphonique et dématérialisation des public services*" (Telephone reception and digitisation of public services). In the context of "all-digital", what are the responses provided by public bodies' call centres when many users

are faced with problems of access to and proficiency in using the Internet?

The survey, which consisting of testing out information given by three major public services, CPAM, CNAF and Pôle Emploi, to a variety of individual profiles, showed that callers were very frequently referred to the Internet, so presupposing access to it and proficiency in its use even though many people are still not equipped. When the latter are advised to go to a branch where they can be received in person in order to start on the procedures required, call centres do not specify the location or opening times of local branches... as such information can be found online.

<sup>8</sup>Published 27 September 2016



## FOCUS

## Opportunities and risks of digitisation

The development of electronic administration is a major step in the redefinition of the role played by public services and the meaning given to their relations with users. Its first aim is to reduce public services' operating costs. It also makes access to information simpler for most users.

It should not, however, serve to reinforce already existing factors of inequality if it is to avoid institutionalising a form of exclusion connected with situations of social and/or economic precarity. The Defender of Rights has noted that public services' digitisation of procedures excludes a good number of users, who are unable to carry out the required administrative steps. Published on 27 September 2016, the results of the mystery-call survey carried out by the Defender of Rights and the *Institut National de la Consommation* (INC - National Consumer Institute) among three major public service bodies (*Caisse Nationale des Allocations familiales*, *Pôle Emploi* and *Caisse Nationale de l'Assurance Maladie*) highlights the fact that call centres very frequently direct users to the Internet even when they do not have it available or are not proficient in its use.

The Defender of Rights regrets that some of the gains made by digitisation of public services are not redeployed to fund assistance to users in mastering digital technology or provision of an alternative system, as it had recommended in its two opinions (nos. 16-01 of 6 January 2016 and 16-09 of 7 April 2016) regarding Bill no. 3318 for a Digital Republic. It also recommended including a clause protecting vulnerable users in any public service's digitisation procedure by providing for an obligatory alternative to the digital service. Despite the existence of social tariffs, Internet access for those in situations of major precarity is an expense that many households cannot afford. In more general terms, there should be dialogue with the public authorities on the issues involved in digitisation.

The Defender of Rights has nonetheless noted a number of positive initiatives, one example being the tax authorities' assistance to individuals who have provided written proof that they do not have Internet access, in order to make their tax returns online.

### Removing obstacles to access to employment

Access to employment, which is a major factor in social integration, is sometimes hindered by the way public services operate. Obtaining work as a private security officer, which covers a good many professions, is conditional to prior obtaining of a digitised professional card issued by the *Centre National des Activités Privées de Sécurité*

(CNAPS - National Centre for Private Security Activities) and valid for 5 years throughout the national territory. Complaints addressed to the Defender of Rights highlighted both the slowness of the procedure and the existence of unjustified refusals, obstructing access to employment in all cases. The complaints led to an amicable settlement reached through close collaboration with the organisation concerned.

The Defender of Rights was also referred to regarding the case of an individual who was unable to sit for the competitive examination for the position of police officer as he had not taken steps to remove information about him in his *Traitement des Antécédents Judiciaires* (TAJ - criminal-record management) file. The information in question bore on an accusation made when he was 12 years old that led to him receiving a formal reprimand from the Criminal Mediator. The Defender of Rights referred the matter to the Public Prosecutor of the competent High Court, who indicated to it that he had ordered the TAJ management service to remove the information in question (Amicable settlement 15-9281).

In a different field, the Defender of Rights was referred to with regard to INSEE's failure to deactivate old Siret numbers, so preventing a former company director from taking up a new activity. The Defender of Rights intervened with the Institute, which carried out a check and updated its data, so making the concerned party's cessation of his activity as a company director official and enabling him to take the steps required to start on a new activity (Amicable settlement 15-13624).

## Ensuring payment of retirement pensions to retirees without bank accounts

The *Caisse Interprofessionnelle de Prévoyance et d'Assurance Vieillesse* (CIPAV - Interprofessional Fund for Pension Planning and Insurance) had decided to pay out all retirement pensions by bank transfer and stop paying them in any alternative way. Its decision led to the suspension of pension payments to an insured party who did not have a bank account and was therefore unable to provide the required *Relevé d'Identité Bancaire* (RIB - bank account identification details). The Defender of Rights observed that the decision had no legal foundation and was only based on the organisation's own management considerations. It therefore considered that suspending payment of the pension

constituted a violation of a public service user's rights and recommended that future monthly payments and those already due be made by a method of his choice, excluding bank transfer as the individual concerned did not have a bank account. It also recommended that CIPAV apply the same solution to all its members likely to be affected by the measure (Decision 2016-012).

## Developing *Maisons de Services au Public* (MSaPs)

*Maisons de Services au Public* (MSaPs - Public Service Centres) are shared essential public service facilities that combine human presence with digital tools to provide users with first-level information on and assistance in the steps required for them to access social benefits, employment, transport, energy, etc. They are designed to meet the needs of people living a long way from public service facilities, in rural and periurban areas in particular, by providing an extended service offer and local support. There are currently almost 500 certified MSaPs, the aim being to reach 1,000 of these centres in the very near future, via a partnership with the Post Office. The *Commissariat Général à l'Égalité des Territoires* (CGET - General Commission for Territorial Equality), which is overseeing the scheme, has entrusted the Caisse des Dépôts with running the network. Coverage of the national territory will be accompanied by networking of MSaPs with the aim of creating a common culture of reception of and services to the public.

This year, equality of access to rights and public services, which is one of the Defender of Rights' priorities, led the institution to relocate many local delegates' offices to existing MSaPs. By doing so, it has stepped up its presence and is able to intervene in urban, periurban and rural areas alike. In the context of its partnership with the CGET, the Defender of Rights participates in development of such actions as the training of MSaP staff. More specifically, through the inauguration of

three experimental sites, the Defender of Rights is looking to better identify needs with

regard to tool promoting rights, designed for MSaP users and professionals.



FOCUS

## The prefecture and subprefecture network

Prefectures and subprefectures, which were already heavily impacted by the *réforme de l'administration territoriale de l'État* (RéATE - State Territorial Administration Reform), were equally affected by the law bearing on the Republic's new territorial organisation and boundary changes of Metropolitan regions. 2016 saw the drafting of the *Plan Préfectures Nouvelle Génération* (PPNG - New Generation Prefecture Plan) relating to evolution of the prefectural administration's missions, complemented by a national orientation directive that set the network's priorities for 2016-2019. The guiding principle consists of eliminating the prefectural network's counter services via digitisation of procedures (except for a few complex cases such as reception of foreigners), to concentrate instead on 4 priority sovereign missions.

Delivery of documents will be totally digitised. Requests for driving licenses and vehicle registrations will henceforth be made online or via interactive terminals or third parties (driving schools, car dealerships, etc.). Users will no longer go to prefectures or subprefectures in person. Appraisals of applications for documents will be entrusted to specialised platforms. The setup of 47 *Centres d'Expertise et de Ressources des Titres* (CERTs - Document Expertise and Resources Centres) has been announced (21 for National Identity Cards and passports, 20 for driving licenses, 5 for vehicle registrations and 1 for foreign licenses), to be located on prefecture and subprefecture premises.

The major change made in services will enable reassignment of staff to other missions and cut down on the need to travel.

Nonetheless, the Defender of Rights calls for watchfulness on several points.

At a time when people are looking for points of reference and vigilance, it should be recognised that this may well symbolically represent the end of prefectures' and subprefectures' reception of the public, even though upcoming installation of

digital reception points in prefectures, *Maisons de l'État* (State administration centres) and Public Service centres has been announced. This perception is brought home by an identical movement in a number of public services (including public finance, social security bodies and the Post Office), giving the impression of an uncontrolled, uncoordinated movement towards the disappearance of public services at local level.

In addition – and several parliamentarians have remarked on the fact – longer processing times on the part of a number of passport issuance platforms recently set up are not “encouraging”. And there are other significantly longer waiting periods elsewhere as regards making appointments.

But, above all, it is a question of appropriately trained staff (such as the civic-service volunteers working in a number of prefectures and subprefectures) providing assistance to members of the public in difficulty (the disabled, the elderly, the illiterate, etc.) or/and not possessing computer equipment (not only a mailbox, but also a scanner to attach required documents).



The Defender of Rights repeated its request “that a proportion of all sums accumulated through reductions in staff costs resulting from a public entity’s digitisation of procedures be obligatorily allocated to assisting members of the public in difficulty”.

Finally, the new system taken as a whole poses two questions that are seldom raised.

First of all, problems receiving mail encountered in sensitive urban areas where theft of and damage to mail is commonplace.

Secondly, the length of journeys now “imposed”

for the required fingerprinting and submission of documents. We might mention as an example a Breton municipality where the reception point for the national identity card is about to be closed down. The nearest access point is 20 kilometres away, requiring a 40-minute journey there and another 40 back.

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## B. From strict application of the law to its necessary adaptation to social change

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The opacity of the law and applicable systems may well hinder access to rights by users unaccustomed to the mysteries of their workings.

This year, the Defender of Rights was also led to note that public services not only tended to interpret the rules of law to their own advantage, often in disregard of the terms of texts involved and of legal precedence, but also to resort to strict application of the letter of the law in order to refuse various rights whereas the situations concerned reflected ongoing social evolution and called for more flexible interpretation.

### Better indicating avenues and deadlines for appeal in notifications of decisions

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During its investigation of complaints, the Defender of Rights observed that notifications of decisions issued by various family allowance funds did not meet the obligation to indicate avenues and deadlines for appeal. In some documents, such information was summarised at the bottom of the page by the following paragraph: *“In the event of disagreement, you have two months to dispute this decision. For further information on avenues of appeal: consult [caf.fr](http://caf.fr), espace / mon compte /”*.

The Defender of Rights contacted the *Caisse Nationale des Allocations Familiales* (CNAF -National Family Allowance Fund), stressing that the paragraph, which simply told beneficiaries to go and look for information themselves on the CAF website, could not be regarded as adequately informing them on avenues of appeal. In addition, individuals with no Internet access are left without any useful information on such avenues. This being so, the category of beneficiaries most dependent on CAF benefits – largely made up of individuals in situations of precarity – are excluded. In reply, the organisation's Managing Director undertook to improve the quality of mail sent to beneficiaries and review the format of all notifications. The Defender of Rights noted these commitments and will be monitoring their implementation with due care.



—  
Bernard Dreyfus,  
General Delegate  
to Public Services  
Mediation

## Remedying public services' abusive invoking of the rules of prescription of debts

In 2010, following a reversal of legal precedent, the Council of State ruled that the five-year prescription of debts provided for in former Article 2277 of the Civil Code applied to all actions relating to remuneration of public servants “without distinguishing between actions in payment or in restitution of such payment” (CS, 12 March 2010, no.309118).

Up until the adoption of Article 94-I of Law no.2011-1978 of 28 December 2011, all sums owed relating to undue remuneration of public servants and which had not been the subject of a final decision were prescribed at the end of a five-year period from the date of their payment.

In 2012, despite this legal precedent, a local education office had demanded that a public servant pay a sum of over €11,000

for undue remunerations paid during a maternity leave between 1996 and 1997. Following adversarial investigation of the complaint, the Defender of Rights, appearing before the court to which the complainant had referred the case, asserted that the debt was both non-existent and prescribed (Decision 2016-10). In a ruling delivered on 10 May 2016, Orleans' Administrative Court considered that the State had instigated enforced recovery of a non-existent debt despite the claimant's appeals, and ordered it to reimburse the sum in dispute increased by €2,000 to compensate for the psychological harm suffered plus €1,500 in lawyer's fees. The offence had been aggravated by the fact that the administration had persisted in its errors without replying to the numerous requests made by the party concerned.

In an analogous case, the mother of a disabled pupil, who was only informed three years afterwards of the possibility of the *Départemental* Council providing her with financial assistance, requested

reimbursement of mileage expenses incurred by transporting her son to school, which she did in her own vehicle. As the local authority refused her request, she referred the matter to the Administrative Court and the Defender of Rights. The latter requested that the situation be re-examined from the standpoint of applicable law and the lack of information provided to the complainant, which prevented her from requesting that her expenses be defrayed. The *Départementale* Council complied with the request on the eve of the court hearing (Amicable settlement 16-007075).

### Blended families and access to rights: helping adapt schemes to social changes

Family structure has changed considerably, giving rise to new forms of family units. Although the law has been adapted to a number of such changes brought about by the increase in divorces, it sometimes happens that organisations resort to strict application of the rules of law in order to

avoid applying them in complex situations.

Difficulties encountered arise above all from the previously mentioned question of attachment of adult children to new tax households when these latter are “blended” following a remarriage.

As regards shared custody, it should be emphasised that, in 2016, the SNCF responded positively to the Defender of Rights’ recommendation to issue “Large Family” cards to parents in such situations (Amicable settlement 12-004625).

Such families are often faced with concrete day-to-day problems to do with their situation not being taken into account, for example, by online “Families” portals used by a city for management of extracurricular services. Following a request by the Defender of Rights, the local authority undertook to develop ongoing testing out of their software’s “Shared Custody” management module and incorporate the required changes (Amicable settlement 15-15795).



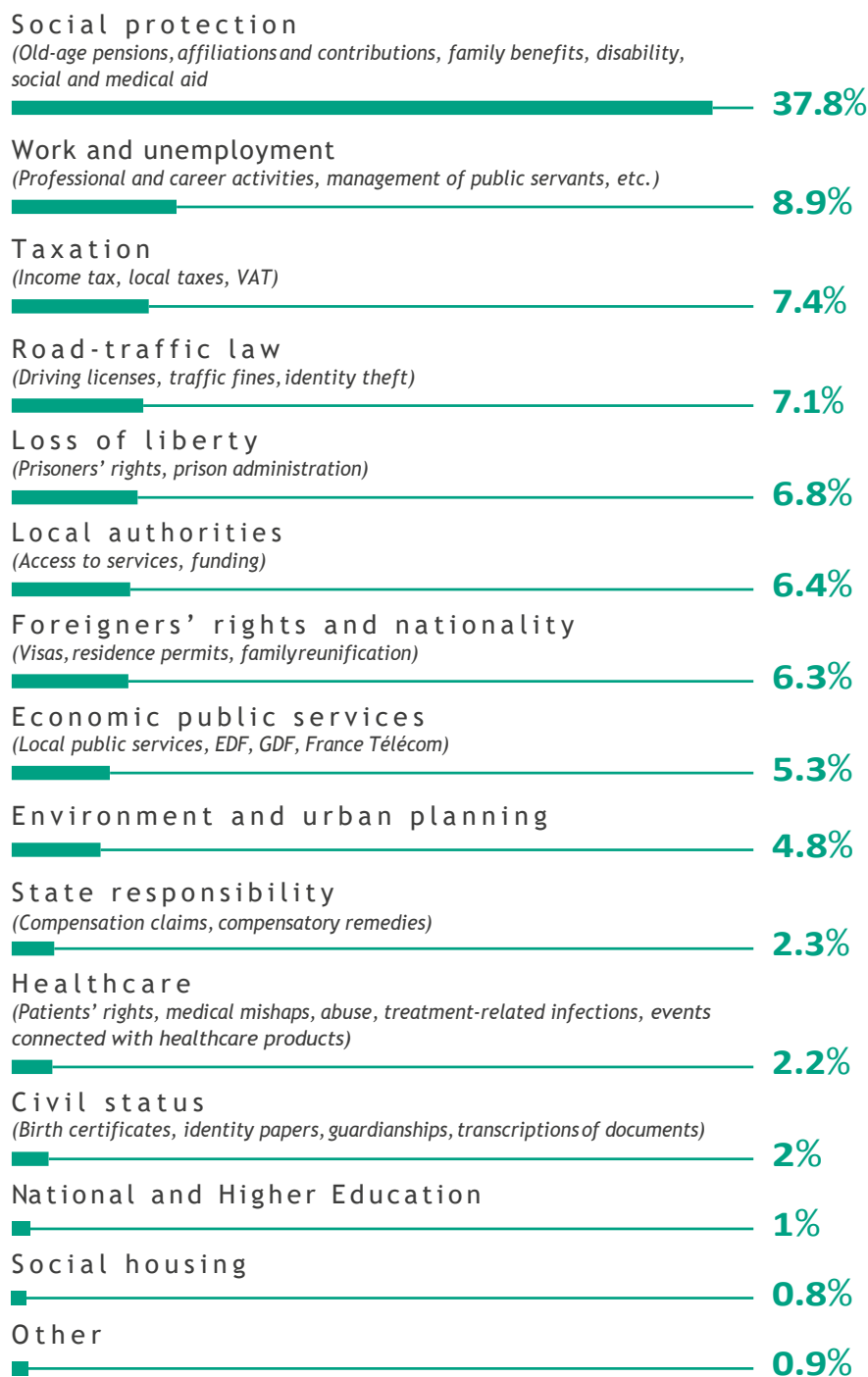
## LEGISLATIVE LANDMARKS

- Lax no.2016-1547 of 18 November 2016 on modernisation of the 21<sup>st</sup>-century justice system
  - administrative mediation
  - class actions before Administrative Courts
- Law no.2017-86 of 27 January 2017 bearing on equality and citizenship
  - digitisation of procedures for acquisition of French nationality
- Law no.2016-1321 of 7 October 2016 for a Digital Republic





## THE MAIN REASONS BEHIND COMPLAINTS ADDRESSED TO THE INSTITUTION IN THE AREA OF PUBLIC SERVICES



## 2. Defence of the Rights of the Child

The beginning of 2016 saw France being heard by the UN Committee on the Rights of the Child, an event that came at the end of the periodic examination procedure in which the Defender of Rights, as an independent mechanism for monitoring application of the International Convention on the Rights of the Child, took an active part: delivering its assessment report and complementary observations to the Committee; taking responsibility for coordination between institutions and representatives of civil society; and finally by developing an unprecedented collaboration with the Chair and France's two rapporteurs on the Committee. The Committee's final observations, which were published on 4 February 2016, made many of the same points as the highly contrasting assessment delivered by the Defender of Rights in 2015 of the effectiveness of children's fundamental rights in our country, in particular with regard to the most vulnerable among them.

The Committee was especially concerned about the precarious situation of foreign refugee children and families living in camps, violations of the right to education and healthcare, care provided to disabled children, and the situation in Overseas *départements*: all concerns shared by the Defender of Rights and which have once again led to numerous interventions this year.

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### A. Major mobilisation on behalf of unaccompanied minors

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2016 was very much marked by the Defender of Rights' and Children's Ombudsperson's actions to improve the situation of migrant children in Calais' Lande camp. Following several visits to the site and numerous meetings with public authorities and associations, the Defender of Rights delivered a number of general recommendations on 20 April 2016<sup>9</sup>. It urged the immediate unconditional sheltering of minors on the Calais site in order to enable tracking, monitoring and individualised assessment of their situations through winning their trust and obtaining information in consequence. Despite the State's and *département's* commitments, the project never came to fruition and the camp was

dismantled on 24 October with no prior protection provided to the minors living in it.

The absence of forward planning and lack of coordination on the part of the public authorities had very negative consequences for Calais' 1,786 unaccompanied minors, who were whisked off to reception centres for minors (CAOMIs), entirely State-run facilities exempt from common law on child protection, while awaiting the British authorities' decision as to whether or not they would be allowed into the United Kingdom. This all resulted in a state of extreme tension exacerbated by absence of any exact information on their future in the event of a British refusal. The Defender of Rights, present throughout the camp's dismantlement, took urgent steps to expedite checks in

several CAOMs, with a resulting report that also covered the evacuation of the “Stalingrad” camp in Paris.

Beyond these specific cases in point, the more general situation of unaccompanied minors continued to occupy the Defender of Rights’ attention in a context where *départements* pleaded budgetary constraints and overloading of their child protection schemes in order to justify unfavourable decisions. Consequently, the Defender of Rights intervened with *Départemental* Councils on several occasions to ensure that enforceable judicial decisions were properly implemented.

Regarding unaccompanied minors’ access to rights and justice, the Defender of Rights delivered Framework Decision 2016-52 of 26 February 2016, in which it called to mind a number of principles and guarantees applying to all litigants whatever their situation with regard to right of residence and whatever their age as finally decided upon by the courts referred to. It makes regular reference to this decision in the observations it presents before children’s courts in application of Article 33 of Organic Law no.2011-333 of 29 March 2011.

Similarly, the Defender of Rights presented observations before all levels of courts up to the Court of Cassation, reminding them of the probative value of civil status documents and the unreliability of bone age tests, which should only

be carried out as a last resort.

It also spent over two years monitoring its Decision 2014-127 of 29 August 2014 bearing on provision of care to unaccompanied minors in Paris, with a further Decision 2016-183 of 21 July 2016. The Defender of Rights was pleased to note that some progress had been made in line with its earlier recommendations. It emphasised the importance of all actors concerned being involved at all levels (*départements*, courts, the State education system and associations) and their all-round coordination in guaranteeing protection to unaccompanied minors. It nonetheless deemed it wise to call to mind the principles underlying reception of and care provided to unaccompanied minors and once again recommended avenues for improving the system. Finally, the Defender of Rights, first referred to over a year ago with regard to the situation of young exiles living in the Parc des Olieux camp in Lille, presented its observations before Lille Administrative Court’s judge in chambers, in the context of expulsion procedures against them. The court acted in line with its observations presented in August and October. A sheltering plan, drafted by the Prefect, the *département* and the municipality, was presented to the associations involved and then implemented in November. The Defender of Rights continues to keep a close watch on respect of minors’ rights.

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## B. The fundamental right to education: a school for all, a universal right

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2016 also saw major work carried out on behalf of all children’s right to education.

The right to schooling for all children is a universally recognised right. Refusing children the right to education on account of their origins, place of residence, religion, sex, disability or vulnerability resulting from their economic situation may constitute the offence of

discriminatory refusal of the benefit of a right within the meaning of Articles 225-1 and 432-7 of the Criminal Code. Furthermore, refusing a child the exercise of such right may also constitute a breach of equality in access to a public service.

Referrals to the Defender of Rights concerning effective implementation of the right to



education increased significantly in 2016. As in 2015, such referrals above all illustrate problems encountered by children living in shantytowns or accommodated in social hostels, unaccompanied minors in the care of child welfare services, and disabled children unable to benefit from the accommodations provided for in their schooling.

The Defender of Rights and the Children's Ombudsperson were therefore led to question the effectiveness of the right to education, in France, for all children, in their report on the rights of the child published on 20 November 2016, entitled "*Droit fondamental à l'éducation: une école pour tous, un droit pour chacun*" (The fundamental right to education: a school for all, a universal right). The report highlighted the fact that access to schooling was not an effective right in France for all children, in particular the most vulnerable, that schools struggle to ensure respect of such children's uniqueness and individuality, and that the effect of social and territorial inequalities and discrimination continues, and is even on the increase. It made recommendations to the government and the Ministries of National Education and Justice, as well as to local authorities.

Complementary to the report, the Defender of Rights took Decision 2016-297 asserting

mayors', prefects' and national education authority departments' responsibilities, in order to get them to work at their respective levels in favour of the higher interests of the child.

Over the course of 2016, the Defender of Rights also took note of serious failings with regard to the effectiveness of this right via an individual decision<sup>10</sup>. The mayor of the municipality where the children in question resided refused to let them go to school as the family had settled in the area illegally. The Defender of Rights deemed this to be a violation of the children's right to education as well as a form of discrimination prohibited under the law. It reminded the mayor of his obligation to ensure the schooling of all children living in his municipality, regardless of their nationality, origin or way of life. Local authorities may not make use of administrative disputes with families in order to hinder or even prohibit children's access to school. It went further, stating that in application of various legal precedents and circulars, the term "residence" must be understood in a wide sense as being the place that one calls home, with proof of such residence supplied by whatever means. The Defender of Rights communicated its conclusions to the competent Public Prosecutor to enable him to decide on what action to take.

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## C. Ongoing commitment on behalf of disabled children

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Although the Defender of Rights devoted its 2015 report on the rights of the child to disabled children in the care of child protection services, promotion of and follow-up on the report really developed in 2016. At the *Assises nationales de la protection de l'enfance* (National Conference on Child Protection) held in Metz in June 2016, for example, a workshop was devoted to the subject. The report was also presented to institutions, *départementale* professionals and social and medicosocial associations in Paris and the provinces on some fifteen occasions, with the Children's Ombudsperson very much in evidence. A number of recommendations have already borne fruit, in particular via a recent decision on the part of the *Commission Nationale de l'Informatique et des Libertés* (CNIL - National Commission for Information Technology and Civil Liberties), modification of questionnaires put out by the *Direction de la Recherche, des Etudes, de l'Evaluation et des Statistiques* (DREES - Research, Studies, Assessment and Statistics Directorate), and the provisions of Law no. 2016-297 of

14 March 2016 bearing on child protection and its implementation decrees, which make express mention of disability situations

In 2015, concerned about difficulties encountered by disabled children in taking part in extracurricular activities, the Defender of Rights set up an observatory bringing together actors in the field likely to be able to draw on best practices to provide concrete answers to problems encountered by families. In this context, a workgroup was set up in early 2016 in partnership between the Ministry of National Education and the Defender of Rights with a view to drafting a factsheet for local authorities, designed to help them improve reception of disabled children in extracurricular activities in the context of local educational projects.

Finally, receiving a complaint relating to an autistic child not being allowed to enrol in a swimming course for beginners, the Defender of Rights delivered a decision bearing on the discrimination the child had been subjected to, and took note of the municipal swimming pool manager's suggestion to try out enrolling the child accompanied by his care provider for the next summer swimming course (Decision 2016-124). The decision provided an opportunity to call to mind the legal framework governing reception of disabled children and the qualifications required for such reception.

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## D. Child protection and children's fundamental rights

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After having published its general recommendations in favour of the *Projet Pour l'Enfant* (PPE - Project for the Child) in April 2015, the Defender of Rights continued to promote its proposals. It emphasised the importance of children being ensured a stable life path and of their being consulted on decisions that concerned them. Through the processing

of individual complaints it received and the opinions it delivered on the private bill bearing on child protection and its implementation decrees, the institution stressed the importance of this dynamic practical tool, which continues to be all too infrequently implemented, being made full use of in all *départements*. It will continue to monitor deployment of PPEs in

<sup>11</sup> Decisions 2016-161, 162, 165, 199, 201, 202, 203, 204 and 206

2017 and do its utmost to encourage their appropriation by professional teams, as well as recommend that legal and regulatory obligations in this area be simplified.

One advantage of the PPE among many is its essential contribution with regard to children's right to healthcare. On this point, the Defender of Rights funded a study in partnership with the CMU Financing Fund (*Fonds CMU*) entitled "*L'accès à la santé des enfants pris en charge au titre de la protection de l'enfance (ASE/PJJ): accès aux soins et sens du soin*"<sup>11</sup>. Among other things, the study, which will result in a decision by the Defender of Rights, highlighted the lack of overall coordination on healthcare in provision of educational support, an observation complementary to that made in the 2015 Annual Report, which deplored the numerous interruptions in the care pathways of disabled children under child protection. A seminar held in partnership with the *Observatoire National de la Protection de l'Enfance* (ONPE - National Child Protection Observatory) and *Fonds CMU* provided an opportunity to present work in progress and exchange viewpoints on professional

practices designed to improve the account taken and monitoring of children's healthcare.

More generally, the Defender of Rights has been collaborating with the SOS Children's Villages association and the *Fédération Nationale pour la Protection de l'Enfant* (CNAPE - National Federation of Child Protection Associations) for the past two years, lending support to their participation in a European project aiming to reinforce childhood professionals' skills in order to develop an approach based on the rights of the child: by fostering their participation, enriching professional practices and contributing to improvement of the quality of support provided. Tools and training programmes have been developed to this end and an international colloquium was held in Paris on 8 November. Promotion of such work will be continued in 2017.

Finally, the Children's Ombudsperson was heard in the context of a consensus-building initiative on the fundamental needs of children entrusted to child protection services, and stressed the connections existing between the extent of needs and the effectiveness of rights.

## FOCUS

### *In 2016, child protection was still the main reason behind referrals to the Defender of Rights with regard to defence of the rights of the child*

Complaints received this year gave rise to great concern insofar as they illustrated the inadequacy of resources assigned to child protection, from prevention to provision of care to young adults. Drastic reduction of resources that *départements* allocate to specialised prevention, non-implementation of judicial placement decisions owing

to lack of places, failings in the care provided to unaccompanied minors, lack of care, psychiatric and medico-psychological solutions for children and adolescents, in particular those entrusted to child welfare services, overburdened child-parent meeting places, limitation of young-adult contracts: the list goes on and is getting longer. There

is evident overcrowding of facilities providing screening, care and support to parenting, such as early medicosocial action centres and medico-psycho-educational centres, where waiting lists are growing longer. The situation is worsened by a shortfall of school medical officers, which only serves to aggravate difficulties encountered by children and their families.

Child protection must be the concern of all public authorities: State, *départements*, the healthcare sector and municipalities alike. The Defender of Rights

continues to take action to spotlight these difficulties and their consequences for every child concerned, implementing all its powers in order to intervene in

individual situations and on general problematics alike.

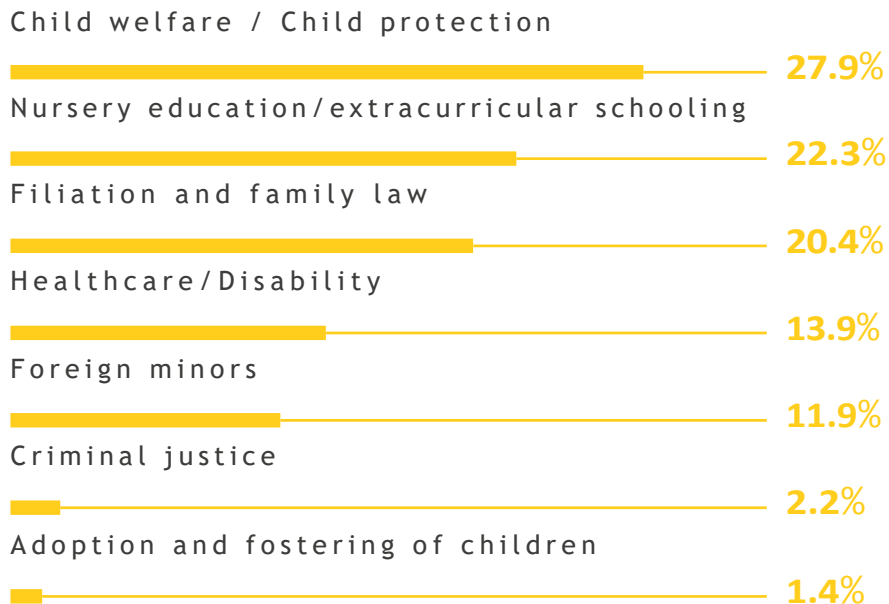


## LEGISLATIVE LANDMARKS

- Law no.2016-297 of 14 March 2016 bearing on child protection
- Law no.2016-1547 of 18 November 2016 on modernisation of the 21<sup>st</sup>-century justice system
  - extension of the deadline for declaring births;
  - abolition of juvenile criminal courts;
- Law no.2016-1771 of 20 December 2016 bearing on abolition of advertising in public television children's programmes
- Law no.2017-86 of 27 January 2017 bearing on equality and citizenship
  - right of access to primary school canteens (Equality and Citizenship Law)



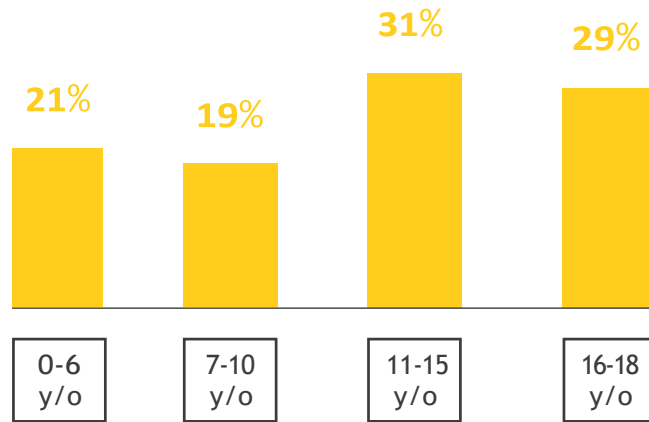
## THE MAIN REASONS FOR COMPLAINTS ADDRESSED TO THE INSTITUTION IN THE FIELD OF THE DEFENCE OF CHILDREN



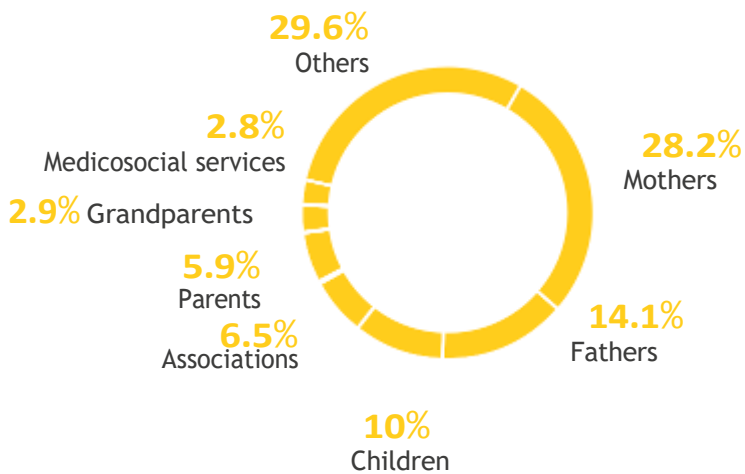




## BREAKDOWN ACCORDING TO CHILDREN'S AGES



## BREAKDOWN BY TYPES OF COMPLAINANTS



## 3. The fight against discrimination

Despite legal provisions introduced over the last fifteen years and action on the part of the HALDE and the Defender of Rights, the fight against discrimination in France is still not having the desired results.

Although the Defender of Rights' action – in particular through exercise of its power to intervene before courts – has contributed to the evolution of jurisprudence, it has to be said that discrimination during recruitment is a widespread phenomenon that is yet to be subject to any real judicial remedy, and that prosecutions are, to say the least, few and far between.

The above observation is also based on the increasing numbers of complaints received by the institution (3,132 referrals in 2012 as against 5,203 referrals in 2016) relating to the population's perception of forms of discrimination described in such documents as the studies funded by the Defender of Rights and the "Law and Justice" Research Mission, issued in September 2016. Such studies have helped identify the various (institutional, cultural, legal, jurisdictional, etc.) obstacles to effectively combating discrimination.

Strengthening of the legal framework in 2016 should have enabled the resulting challenge to be met. It is very much to be feared,

however, that class action with regard to discrimination, as provided for in the Law of 18 November 2016 on modernisation of the 21<sup>st</sup>-century justice system, will not succeed in resolving the situation.

The Defender of Rights intends to ensure full application of the provisions of the recent law, which amends Law no. 2008-496 of 27 May 2008 and extends the list of reasons for discrimination actionable under civil law with regard to access to goods and services. As was the case in the field of employment in the early 2000s, and in order to contribute to development of a more effective legal response, it wishes to promote institution of proceedings under civil or administrative law to enable victims to take advantage of the modification of the burden of proof. Subject to its enactment, the institution may also make use of various provisions, such as the one establishing the admissibility of situation testing in civil cases. It also means to continue the brokering of amicable settlements of disputes it developed in the field of discrimination.

### FOCUS

## *The criteria race*

The European Union has only retained 8 carefully considered criteria for illegal discrimination: sex, "race", ethnic origin, disability, beliefs, religion, sexual orientation and age. International human rights law provides for several more, their recognition

always expressing fundamental values and universal principles.

In 2004, when the HALDE (Equal Opportunities and Anti-Discrimination Commission) was set up, the law had already set 18 criteria for discrimination

In 2011, when the Defender of Rights took over the reins, it had 19 criteria to deal with. Between 2012 and 2017, the legislature extended the list further, adding an average of one criterion a year to meet new expectations as they arose, with the adoption of

the criteria of sexual identity (2012), place of residence (2014) and loss of autonomy (2015).

2016 saw the introduction of 5 new criteria for illegal discrimination. Social precarity became the rather more complex “particular vulnerability resulting from [an individual’s] economic situation, which is apparent to or known by the person committing the discrimination”, which may not be so easy to implement in practice. In addition, the Law of 18 November 2016 on modernisation of the 21<sup>st</sup>-century justice system

rightly introduced the criterion of “gender identity” – as a replacement for “sexual identity” – and the rather more surprising “ability to express oneself in a language other than French”, a substitute after the failure to ratify the European Charter for Regional or Minority Languages.

The Law of 27 January 2017 bearing on equality and citizenship introduced a highly specific criterion into the Criminal Code, to do with “undergoing or refusing to undergo hazing”, also including in the Educational Code a general principle of

non-discrimination in access to school canteens (as recommended by the Defender of Rights), while the “Real Equality Overseas” bill provides for institution of a criterion based on bank identification details.

In 2017 we shall be verging on some thirty criteria – more than enough to turn the concept of criteria for illegal discrimination based on inherent characteristics of individuals protected under the rule of law into an inventory of particular situations.

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## A. Combating discrimination at work: reinforcing the effectiveness of legal provisions

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Having a job provides you with an income and also facilitates access to numerous good and services – housing being one example. But although it is certainly a guarantee of social integration and cohesion, access to employment is nonetheless much affected by discrimination, a phenomenon that the context of economic crisis has only served to accentuate.

### Access to employment

In the spring of 2016, the Defender of Rights launched a call for testimonies in order to find out more about instances of discrimination during recruitment experienced by individuals of foreign origin (over 20% of complaints relating to private employment and the main reason behind referrals). Almost 800 people (80% of them with French nationality) responded spontaneously, many of them describing their experiences in detail along with the

consequences of discrimination on their professional and private lives. The results of the study, which was published in September 2016, show that, far from being an occasional phenomenon, discrimination connected with origin when seeking a traineeship or job occurs “often” or “very often”. A third of respondents considered they had been discriminated against for at least three reasons to do with their origin: physical appearance, religion or name. Legal action is still rarely taken by individuals confronted with such forms of discrimination. Fewer than one in ten



respondents took any action following the experiences they described, and only a fraction of them initiated legal action to remedy the discrimination. The scale of the phenomenon calls for all-round mobilisation on the part of the public authorities.

The Defender of Rights and International Labour Organisation's (ILO) 9<sup>th</sup> Barometer relating to "Perception of discrimination at work" sought to gather more information on the scale of discrimination based on physical appearance and as perceived by unemployed individuals in their opinions and in their actual experiences of discrimination in hiring.

Based on a survey carried out in late 2014 among 1,000 jobseekers, results highlight how important a factor candidates' conformity to accepted social norms is in recruitment, both as regards dress codes, which are not so hard to modify, and physical characteristics, which cannot be changed. Being unconventionally dressed or excessively corpulent, for example, are major disadvantages when it comes to getting hired, and may lead prospective employers to question candidates on their appearance during recruitment interviews.

In addition to the opinions its members expressed, the experiences of discrimination reported by the sample group corroborate this perception and enable better characterisation of the types of people most exposed to such unequal treatment. Discrimination in hiring based on physical appearance is reported more frequently by obese individuals or those with unconventional styles of dress, above all when they are women.

Fifteen years after its introduction into law, and with little jurisprudence as yet to draw on, the criterion of physical appearance continues to be a major reason for illegal discrimination.

The report entitled "*L'emploi des femmes en situation de handicap - Analyse exploratoire sur les discriminations multiples*" (Employing disabled women – an exploratory analysis

of multiple discrimination), published by the Defender of Rights in November 2016, emphasised that, although disabled individuals were more affected by unemployment than the general population, disabled women were particularly so. This multiple discrimination situation is further aggravated by age, which is also a major obstacle to access to employment.

As regards age conditions for employment in the civil service, last year the Defender of Rights recommended abolition of the 50 y/o age limit set for candidates sitting the competitive exam for hospital practitioner positions in French Polynesia (Decision 2015-36). On 8 July 2016, a local law abolished age conditions for access to all French Polynesian civil service competitive examinations.

The Defender of Rights was also referred to with regard to the practice implemented by a number of the territorial civil service's management centres, consisting of online publication of nominal lists of candidates admissible for and admitted to examinations, including their birthdates. Although information on such dates – which form part of candidates' civil status – is required for administrative management reasons, their publication and inclusion in candidacy submissions communicated to selection panels may lead to discriminatory behaviour. Accepting this argument, the managers of the centres concerned had all such information on age removed, action taken note of by the Defender of Rights (Decision 2016-253).

In the field of private sector employment, mechanisms designed to favour labour-market integration of certain categories of individuals sometimes lead to age-based discrimination. The Defender of Rights was referred to regarding job offers published by a company wishing to recruit staff between 18 and 26 years old on professionalisation contracts. Such contracts are designed to foster professional integration and reintegration alike, and are therefore not only open to individuals between 16 and 26 years of age, but also to jobseekers over 26 as well as beneficiaries of certain welfare

payments. Employers are therefore not allowed to make obtainment of such contracts conditional to being under the age of 26. The Defender of Rights recommended to the company that it modify the wording of the job offers in dispute (Decision 2016-065), which it did.

## Career paths

Acts of discrimination committed during the course of a career first and foremost affect women. This year once again, complaints processed by the Defender of Rights led it to speak out on the difficulties women tend to be faced with when they become pregnant. The most widespread case is that of women returning from maternity or parental leave, and who now had family commitments, not being provided with positions equivalent to the ones they had previously occupied. The Defender of Rights was pleased to see more numerous and heavier legal sanctions, to whose imposition it was able to contribute by presenting its observations before courts. For example, in a ruling of 9 November 2016, an Industrial Tribunal, taking note of the Defender of Rights' observations (Decision 2012-53), deemed that a refusal to renew a fixed-term contract was based on the criterion of pregnancy.

The Defender of Rights had already noted acts of discrimination against women in the context of independent contractor agreements, following announcement of pregnancy or upon return from maternity leave, in particular for women lawyers. This year, it was referred to by two such lawyers who had seen their working conditions deteriorate following announcement of their pregnancy. Their contracts were finally terminated shortly after their return from maternity leave. Following an investigation that revealed there was no basis for the reasons behind the decisions, the Defender of Rights considered that termination of the contracts in question constituted discrimination due to pregnancy and gender.

In two decisions (2015-264 and 2016-080), it recommended that both lawyers be compensated for the harm done to them, communicated its observations to the President of the Bar and, pursuant to Article 29 of the Organic Law, to the Bar Association, deeming that the facts brought to its knowledge justified the imposition of a penalty. As a result, the two lawyers signed a transactional agreement and the President of the Bar told the Defender of Rights that disciplinary action would be taken against the law firm partner concerned.

Failure to fit out workstations to accommodate disabled workers, including the mentally impaired (Decision 2015-203), is an act of discrimination that affects a great many employees and public servants, and is sometimes accompanied by incidents of psychological harassment. An occupational physician's recommendation of a few hours' telework a week, with no constraints as to time or productivity, was not acted on by an employer, as it had not provided an assistant with a computer enabling her to log on to the intranet network remotely. The Defender of Rights emphasised that this constituted an act of discrimination based on disability, citing the employers' lack of due diligence in making the necessary accommodations, and deeming that its repeated refusal to comply with the occupational physician's recommendations constituted discriminatory harassment (Decision 2015-044). In a ruling of 29 January 2016, The Douai Appeal Court deemed that the discrimination based on disability was characterised by failure to adequately fit out the workstation and by the persecutory, humiliating, degrading and offensive nature of such failure.

Similar acts of discrimination also affect public sector employment. The Defender of Rights recommended to a Regional Council that it reclassify a disabled complainant and compensate her for harm done by the acts of discrimination and harassment she had been subjected to (Decision 2014-094). When the



Regional Council in question failed to respond, the complainant decided to lodge a full jurisdiction appeal with the Administrative Court and the Defender of Rights presented its observations during the resulting proceedings (Decision 2016-089). In its ruling of 8 July 2016, the Paris Administrative Court deemed that the local authority had not implemented appropriate measures enabling the complainant to do her job at an adapted workstation. Significantly enough, the court based its conclusions on the report drawn up by the Defender of Rights following an onsite visit, which considered that the employer had not complied with medical recommendations.

With a view to preventing such acts of discrimination, and in the context of the convention concluded with the *École Supérieure de l'Éducation Nationale, de l'Enseignement Supérieur et de la Recherche* (ESENESR - National College for Education Management, Higher Education and Research), the Defender of Rights contributed to training and awareness-raising sessions aimed at management personnel, State-school medical officers and staff responsible for disability, focusing on questions of accessibility and the notion of “reasonable accommodation” of public servants’ workstations as provided for by the Law of 11 February 2005 bearing on disability.

FOCUS

## From sexual identity to gender identity

Noting that the legislature’s choice of wording in creating a prohibited criterion of sexual identity alongside that of sexual orientation might lead to a confusion of the two, whereas the two terms referred to two distinct realities, the Defender of Rights recommended that the criterion of “sexual identity” be replaced by that of “gender identity”.

Such modification was made with enactment of the Law on modernisation of the 21<sup>st</sup>-century justice system. The new term, which is clearer and more inclusive, enables better protection of all

transgender individuals against all forms of discrimination.

In the field of private sector employment, such discrimination often takes the form of moral harassment or refusal to recruit an employee following a change in his/her civil status.

As regards goods and services, the Defender of Rights took action against a mobile telephone operator

that refused to open a telephone line because the complainant's official civil status did not match her appearance or statements, even though she produced the ruling changing her first name (Decision 2016-247).

Finally, the Defender of Rights spoke out in favour of reforming the procedure for changing transgender individuals' civil status, to institute a procedure of change

via simple declaration to the Registrar (Decision 2016-164). Although the legislature took a step forward by putting an end to the requirement of proof of irreversibility of appearance and consequently of sterility, the Defender of Rights regrets that the procedure is still medicalised and subject to random court decisions.

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## B. Guaranteeing access to goods and services for all

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The harmful effects of discrimination at work, on private life and social cohesion alike, are often intensified and aggravated by acts of discrimination in access to goods and services committed against the same individuals.

### Activity sectors

In the sphere of insurance, the Defender of Rights received a complaint concerning an online advertisement in which an insurance broker specified that insured parties could not be under 25 or older than 75, had to have a driving license valid in France and obtained more than three years ago in a European Economic Area country, and be free of any serious illness or infirmity legally incompatible with the holding or delivery of a driving license. The Defender of Rights recommended that the age limits be removed and the requirements regarding the license and state of health or disability modified, suggesting that these latter be replaced by "medical condition incompatible with obtainment or possession of a driving license in compliance with the legal framework provided for by the Order of 18 December 2015 amending the Order of 21 December 2005" (Decision 2016-245).

Access to bank loans raises comparable difficulties, in particularly for the elderly. Referred to regarding a financial advisor's refusal of a loan to a borrower because of his age, its investigation of the case revealed that the credit institution had set up a short-term loan procedure for individuals over 75 years of age, handled by a special department and with an age limit set at 80. Although provision of such a procedure was not itself discriminatory behaviour, the Defender of Rights reminded the institution that setting age limits came under offences provided for in Article 225-24° of the Criminal Code. Taking note of the measures taken by the institution following its recommendations, the Defender of Rights also suggested it should compensate the psychological damage suffered by the complainant (Decision 2016-236).

A civil transaction whose terms were submitted to the Defender of Rights was drawn up and signed by the complainant after agreement had been reached on the amount



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FOCUS

## Rent without discrimination

Continuing on from the “*Louer sans discriminer*” (Rent without discrimination) guide aimed at property owners and the leaflet designed to inform individuals falling victim to discrimination when looking for housing of

their rights and what steps to take to ensure they are respected, a guide intended for real-estate professionals has just been published, entitled “*Louer sans discriminer, Un manuel pour professionnaliser ses pratiques*” (Rent without discrimination, a manual for professionalising practices). Resulting from consultation with actors in the private housing sector in 2016, it rounds off the 2015 “Rent

without discrimination” campaign. It is designed to accompany real-estate professionals, provide answers to questions they are regularly faced with when renting out accommodation, and act as a reference tool enabling them to make sure that their practices are in compliance with non-discrimination and fundamental rights.

## Criteria

It is worth noting that 21% of referrals regarding access to goods and services concerned discrimination based on origin. In particular, they highlighted the business policies of insurers or credit institutions which refused to cover hospital care or medical evacuation expenses because insured parties resided in Overseas France (Decision 2016-003) as well as refusals of access to night clubs resulting in criminal convictions (Decisions 2016-019 and

2016-252). The Defender of Rights also received complaints bearing on dental surgeries refusing treatment due to complainants’ Maghrebian names or origin. In one such case, investigated by means of a situation test, the Defender of Rights brought the facts uncovered to the Public Prosecutor’s attention and referred the matter to the *Conseil national de l’Ordre des chirurgiens-dentistes* (National Board of the Dental Surgeons’ Association) pursuant to Article 29 of the Organic Law (Decision 2016-006).

FOCUS

## The criterion of loss of autonomy<sup>12</sup>

This criterion falls within the Defender of Rights’ competence when it intervenes to protect the rights of individuals who

have been hospitalised or are resident in specialised establishments (the elderly and the disabled). The institution may make use of its competence with regard to protection of public service users when facilities carrying out a public service mission are the subject of complaints (60% of cases). The legal criterion of discrimination due to loss of autonomy also enables the Defender of Rights

to carry out its mission within private facilities in full legal certainty (40% of cases).

In concrete terms, taking all sectors together, this type of complaint accounted for some 220 submissions during the course of the year.

<sup>12</sup> Introduced by Article 23 of Law no. 2015-1776 bearing on society’s adaptation to an ageing population

Such complaints highlight various forms of abuse, mainly:

- *abuse through excess or negligence in 70% of cases*  
Failure to treat pain, no help with feeding or hydration, overmedication (sedation), infantilisation of elderly patients (e.g. making them wear diapers), major lack of showers, toilets, oral care or hygiene, lack of communication (care carried out while listening to music on headphones), unjustified requests for legal protection

measures, abusive termination of residence contracts, etc.

- *material abuse (15%)*  
Thefts, (recurrent) losses of dental appliances and hearing aids, inappropriate premises and equipment, requests for termination of Social Security cover as the patient's state no longer justified his/her being kept in a healthcare facility (e.g. major debt owed to the hospital by an elderly highly dependent patient: 150,000 euros.

- *psychological abuse (10%)*  
Insults, mockery, taking of nude photographs, indifference, restriction or prohibition of visits by loved ones, non-respect of choice of domicile
- *physical abuse (5%)*  
Blows, sexual interference, mishandling (injuries, dislocations, etc.), forced washing.

Discrimination based on place of residence may increase feelings of exclusion. For example, a large company refused to deliver an order of household electrical goods to a customer owing to the delivery address. When the matter was investigated, the company in question confirmed that it did not deliver in certain urban areas so as not to expose its employees to risks of assault, aggression or theft. The Defender of Rights showed that, in this particular case, the circumstances could not be considered as coming under the exception made in Article 225-3-6 of the Criminal Code, which authorises refusal of service based on place of residence “when the person responsible for provision of goods or a service is put in a situation of clear and present danger”. It therefore recommended that the company compensate the financial, material and psychological harm done to the complainant and modify its practices, ensuring free delivery and initial operation of household electrical products in all urban areas, without discrimination due to place of residence (Decision 2016-246).

Once again this year, complaints received by the Defender of Rights show that

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s application of the principle of secularity hinders access to goods and services. Apart from subjects that have continued to come up over the years, such as substitute meals in canteens and crèches, exclusion from vocational training (Decision 2016-23) and assessment sessions (Decision 2016-112), and measures excluding veiled mothers from accompanying their children on school outings, the Defender of Rights was also referred to regarding a request that a Muslim headscarf be removed on a transport card photograph. It intervened with the delegatee, reminding him that, according to the law currently in force, the requirement for a “bareheaded” identity photograph only applied to identity documents and the *Carte Vitale* (Health Insurance Card). The condition was removed from the regulations and a general reminder was sent out to all staff to ensure that such a situation did not occur again (Amicable settlement 15-016754).

The Defender of Rights also deemed that the obligation to leave the ears uncovered while sitting for examinations held at a university, an obligation designed to prevent cheating and which was only enforced on students wearing



headscarves, constituted discrimination based on religious conviction. Following its intervention, the university's Charter on examinations and methods of assessing knowledge was modified, with removal of all references to users' obligation to sit for examinations with face and ears uncovered (Decision 2016-299).

Although individuals of foreign nationality – including EU member State nationals, see inset below – are subjected to acts of discrimination in access to private services, such as the case of refusal of subscription to a mobile phone service due to the applicant's Romanian nationality (Decision 2016-222), it has to be said that this type of discrimination also hampers access to public services. In this regard, the Defender of Rights continues to be active in ensuring access to social benefits and family allowances for children entering the territory without going through the family reunification procedure, as applicable law, which varies depending on bilateral agreements signed between France and countries of origin, is often disregarded by the bodies concerned. The Defender of Rights also presented

observations before the *Commission d'Indemnisation des Victimes d'Infractions* (CIVI - Standing Committee for the Compensation of Victims of Injury), after the *Fonds de Garantie des Victimes des Actes de Terrorisme et d'Autres Infractions* (FGTI - Guarantee Fund for the Victims of Acts of Terrorism and other Crimes) had refused to compensate an individual due to the fact that he was not legally resident in France at the time the offence was committed. The Committee agreed with the Defender of Rights' observations and asked the FGTI to offer suitable compensation (Decision 2016-147). As regards complaints relating to refusals to enrol Roma children at schools or school canteens, it presented observations before the European Committee on Social Rights regarding France's compliance with its obligations under the European Social Charter with regard to children belonging to the Roma community (Decision 2016-184).

As they are now subject to ethical rules expressly prohibiting discrimination as well as to compulsory training in its regard, today's real-estate professionals will find guidelines

there enabling them to meet these new requirements: the legal framework governing non-discrimination in access to housing, concrete examples of discrimination in access to private housing drawn from situations processed by the Defender of Rights, mapping of the many pressures that such professionals have to deal with, as well as

practical tools to incorporate into their daily practice in order to prevent acts of discrimination, including an argument grid for use when faced with a discriminatory request and a model non-discrimination clause to include in mandates.

## FOCUS

### *A new European mission*

In a letter of 8 July 2016, the General Secretary for European Affairs informed the Defender of Rights that it had been designated to the European Authorities as having competence with regard to implementation of European Directive 2014/54/EU of April 2014 relating to measures facilitating the exercise of rights granted to workers in the context of free movement of workers.

The Defender of Rights was consequently made responsible for promoting, analysing, monitoring and upholding equality of treatment of European Union workers and members of their families without discrimination based on nationality, or unjustified restrictions on or obstacles to the exercise of their right to freedom of movement. It has become the interlocutor for

workers (including seasonal workers), responsible for providing them with or seeing they are provided with legal and/or other assistance in all areas of daily life (employment, education, housing, etc.).

In 2016, the institution handled almost 200 files potentially connected with this new field of competence. An illustration:

#### *Retirees resident in Spain*

One typical example of a structural problem that creates serious violations of individual rights concerns retired farmworkers living in Spain.

Since May 2015, the Defender of Rights has received over 150 complaints relating to this situation, which actually affects several thousand individuals of modest means living abroad and who have few avenues of appeal. A large number of Spanish nationals living in Spain have spent several years waiting for payment of their farmworkers' pensions or

allocation of a basic old-age pension after having worked in France. In November 2015 and again in July 2016, in the face of the sheer number of complaints received and the seriousness of the consequences arising from them, the Defender of Rights called the attention of the *Caisse Centrale de la Mutualité Sociale Agricole* (CCMSA - Central Fund for the Agricultural Mutual Insurance Scheme) to the necessary deployment of means to respond to the flow of requests from Spanish nationals if a violation of a public-service users' right and an act of discrimination were to be avoided. The Defender of Rights notes, however, that despite occasional processing of files sent by its departments, the ever-growing number of complaints it receives confirms the continuing structural failings already reported.

In this context, the Defender of Rights adopted a general recommendation which it communicated to the CCMSA (Decision 2016-329), pointing out that the lack of means



guaranteeing settlement of insured Spanish nationals' pension claims within a reasonable period of time constitutes a violation of public-service users' rights and represents differentiated management of pension claims according to insured parties'

nationality and residence apparently characterising discriminatory guidelines regarding foreign retirees; finally, it recommended to the Director of the CCMSA that he take all necessary steps as rapidly as possible to settle

present claims and ensure smooth management of all future claims.



## LEGISLATIVE LANDMARKS

- Law no.2016-832 of 24 June 2016 aiming to combat discrimination based on social precarity.
- Law no.2016-1088 of 8 August 2016 bearing on labour, modernisation of social dialogue and protection of career paths.
  - extension of the legal period for prohibition of termination of work contracts following maternity leave.
- Law no.2016-1547 of 18 November 2016 on modernisation of the 21<sup>st</sup>-century justice system.
  - class actions.
  - amendment of the Law of May 2008, extending civil actions with regard to goods and services to all criteria.
  - inclusion of prohibition of sexism in the civil service (amendment to the 1983 law).
- Law no.2017-86 of 27 January 2017 bearing on equality and citizenship.
  - new discrimination criteria: gender identity and ability to express oneself in a language other than French.
  - removal of the nationality condition for certain jobs / Government report on the advisability of removing the nationality requirement for access to positions on the SNCF's permanent staff.
- inclusion of discriminatory dismissals in the list of cases in which an employer guilty of abusive dismissal must reimburse Pôle Emploi for unemployment benefits paid out.
- setting of a minimum threshold for severance payments made in ignorance of the provisions bearing on protection of pregnant employees, discrimination and sexual harassment.
- modification of the burden of proof in cases of harassment and discrimination .
- addition of sexist behaviour to obligatory content of in-house regulations and employers' safety obligation.
- obligation to train recruiters and anybody responsible for recruiting in companies with over 300 employees in combating discrimination once every 5 years.
- admissibility of situation tests in civil cases.





## THE MAIN REASONS FOR COMPLAINTS ADDRESSED TO THE INSTITUTION IN THE FIELD OF COMBATING DISCRIMINATION

*Summary of main reasons for discrimination (Head Office and Delegates)*

Criteria Fields	Employment	Public services	Goods & services	Education Training	Housing	General total
Origin / Race / Ethnic group	9.1%	5.7%	2.9%	1.5%	2.1%	<b>21.3%</b>
Disability	8.2%	3.0%	2.5%	3.7%	1.6%	<b>19.0%</b>
State of health	8.7%	0.8%	1.2%	0.5%	0.4%	<b>11.6%</b>
Nationality	0.9%	4.4%	0.7%	0.4%	0.2%	<b>6.6%</b>
Age	4.1%	0.5%	0.7%	0.2%	0,2%	<b>5.7%</b>
Union activities	5.4%	0.0%	0.0%	0.1%	0.0%	<b>5.5%</b>
Loss of autonomy	0.0%	2.8%	1.8%	0.0%	0.0%	<b>4.6%</b>
Family situation	1.8%	1.0%	0.5%	0.3%	0.8%	<b>4.4%</b>
Pregnancy	3.8%	0.2%	0.0%	0.0%	0.0%	<b>4.0%</b>
Religious convictions	1.4%	1.0%	0.6%	0.6%	0.1%	<b>3.7%</b>
Sex	2.5%	0.2%	0.4%	0.1%	0.0%	<b>3.2%</b>
Physical appearance	1.4%	0.2%	0.5%	0.3%	0.1%	<b>2.5%</b>
Place of residence	0.6%	0.4%	0.6%	0.1%	0.3%	<b>2.0%</b>
Sexual orientation	0.9%	0.3%	0.3%	0.1%	0.2%	<b>1.8%</b>
Political opinion	0,9%	0.4%	0.2%	0.0%	0.1%	<b>1.6%</b>
Other	1.1%	0.6%	0.5%	0.0%	0.3%	<b>2.5%</b>
<b>General total</b>	<b>50.8%</b>	<b>21.5%</b>	<b>13.4%</b>	<b>7.9%</b>	<b>6.4%</b>	<b>100%</b>

## 4. Security force ethics

2016 was marked by a security context created by the terrorist threat and implementation of the state of emergency, with added problems arising from the migration crisis (the situation in Calais in particular) and widespread protests against the “labour” law.

Given the circumstances, there has been special need and mobilisation of the nation’s security forces. At the same time, requests made to the Defender of Rights criticising their intervention methods have also been on the increase. The number of referrals to the Defender of Rights rose from 910 in 2015 to 1,225 in 2016, a 34.6% increase. It should be noted at the outset, however, that numbers of claims of misconduct have not increased, but have remained stable since 2011, accounting for 9.3% of cases investigated.

The increase in numbers of referrals above all bears witness to the strained relations between a proportion of the population and the security forces. The Defender of Rights was active on two fronts: first of all, the processing of complaints in order to protect citizens’ rights and freedoms and re-establish the rights of complainants and defendants alike, and secondly to look for new methods of intervention in order to ease and improve relations between security forces and the population, by working further upstream with all actors concerned, through recourse to amicable settlements brokered by Defender of Rights local delegates, as well as downstream, making proposals on general methods of intervention on the part of security forces (presence of civil authorities, organisation in law enforcement, etc.).

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### A. 2016: a year of unprecedented mobilisation for all those involved in security

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The Defender of Rights received a number of complaints concerning implementation of police measures in the context of the state of emergency in force since 13 November 2015. It was also referred to with regard to incidents in Calais as well as the question of law enforcement during demonstrations.

#### Complaints connected with the state of emergency

Over a third of referrals to the Defender of Rights connected with the state of emergency, concern the ethics of security, in particular the way administrative searches are carried out.

In this context, the Defender of Rights above all received complaints regarding searches carried out between November 2015 and February 2016: as such measures had not been included in the law of 20 May



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Deputy to the  
Defender of Rights, Vice-  
Chair of the Board for the  
Ethics of Security

extending the state of emergency, before being re-established in July 2016.

Most complainants alleged night-time raids involving large numbers of officers armed with handguns and/or wearing balaclavas, and emphasised the lack of any explanation. Some of them also alleged physical and psychological abuse, in particular as regards children present, and sometimes, inappropriate discriminatory remarks due to their being of the Muslim faith.

Following initial analysis of such complaints, the Defender of Rights drew the Minister of the Interior's and Minister of Justice's attention to the proper application of administrative search measures provided for in Ministry of the Interior circulars, as well as their sometimes incomplete character and the ways they were carried out (presence of children, ways of notifying searches and compensation for damage done)<sup>13</sup>. Its

various recommendations were acted on. As mentioned in the previous section, the Minister of Justice and the Paris Prefect of Police stated that they had drawn the attention of the services concerned to the precautions to take when searches were carried out with children present. The Law of 21 July 2016 extending the state of emergency required that a copy of the search order be supplied to the party concerned. Meanwhile, on 6 July 2016, the Council of State delivered an opinion<sup>14</sup> specifying the legal framework governing searches carried out under the state of emergency, and acting on the Defender of Rights' recommendations with regard to formalisation of the reason for the search order being issued, the material conditions for carrying out searches, and the special care taken when children were present. The Council of State also acted on the Defenders' recommendations regarding access to compensation.

<sup>13</sup> Decision 2016-069 of 26 February 2016; Decision 2016-153 of 26 May 2016.

<sup>14</sup> CS, opinion, 6 July 2016, no. 398234; delivered at the request of the Cergy-Pontoise and Melun Administrative Courts.

## Enforcing the law

The number of referrals bearing on law enforcement has been rising steadily since 2013, with an unprecedented increase connected with demonstrations against the “labour” law.

The Defender of Rights received over 120 such complaints in 2016, many of them concerning the security forces’ use of force and weapons and above all highlighting the use of teargas, stun grenades, truncheons and Flash-Balls.

Although it is still too early to draw conclusions on the 2016 demonstrations, the Defender of Rights delivered several decisions over the course of the year bearing on law enforcement.

After being referred to ex officio, it concluded<sup>15</sup> that there had been no wrongdoing on the part of the gendarme who had thrown the stun grenade that caused the death of Rémi Fraisse in October 2014 during a demonstration in Sivens. Nevertheless, the Defender of Rights criticised the lack of clarity in instructions issued to the military by the civil authority and their superiors, as well as the civil authority’s absence at the time the event took place, despite the sensitive, dangerous and foreseeable nature of the situation. It also highlighted a number of shortcomings in the regulations on use of force and weapons, OF-F1 stun grenades in particular. Finally, it noted that the weapon that caused the young man’s death was especially dangerous, as it was composed of explosive substances that might prove fatal in the event of contact, and recommended its prohibition.

In two cases, use of the “kettling” technique, which consists of surrounding demonstrators and keeping them inside a perimeter on a public thoroughfare, sometimes for several hours, was considered disproportionate in the first but proportionate in the second,

<sup>15</sup> Decision 2016-109 of 25 November 2016.

<sup>16</sup> Decision 2015-298 of 25 November 2015; Decision 2016-036 of 17 February 2016.

<sup>17</sup> Decision 2016-036 of 17 February 2016.

<sup>18</sup> Decision 2016-304 of 1 December 2016.

after having assessed the balance between the violation of demonstrators’ freedom of movement and the breach of the peace they were causing<sup>16</sup>. The Defender of Rights recommended to the Minister of the Interior that thought should be given to the implementation of crowd-control techniques to ensure the avoidance of any abusive practices.

Finally, in a by no means isolated number of cases, several individuals were taken in for identity checks or verifications when they were carrying identity documents or had not been asked to show their papers<sup>17</sup>. The Defender of Rights criticised use of identity checks for purposes other than those they were intended for.

## The situation in Calais

Between late 2014 and autumn 2016, the Defender of Rights received 32 referrals alleging ethical failings on the part of the security forces in Calais. Testimonies and initial observations were included in the Defender of Rights’ report “*Exilés et droits fondamentaux: la situation sur le territoire de Calais*” (Exiles and fundamental rights: the situation in Calais), published on 6 October 2015.

In a Decision of 1 December 2016<sup>18</sup>, the Defender of Rights observed that migrants held on the premises of a gendarmerie brigade had been identified by numbers assigned to them following setup of a board. It established that several migrants had numbers marked on their hands visibly corresponding to the numbers marked up on the above-mentioned board, and pointed out that all such procedures were outlawed.

In another case concerning a migrant who alleged that he had been injured by a police vehicle, it was impossible to establish the cause of his injuries. Nonetheless, the Defender of Rights concluded that the four civil servants in the vehicle had been guilty of unprofessional conduct on several occasions and noted the individual measures their superiors had taken against them.

Finally, the Defender of Rights noted<sup>19</sup> that a police brigadier had shown a lack of rigour in not logging a report following an intervention regarding a migrant with leg injuries.

In view of the experience and interest that the Defender of Rights brought to the situation of migrants in Calais, the Minister of the Interior requested it observe the

dismantlement of the “Jungle” during the week of 24 to 28 October 2016. In this particularly sensitive context, staff visiting the site were able to move around and exchange freely with all those involved, and noted the professionalism of the security forces present.

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## B. Improving relations between security forces and the population

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In the ongoing strained security and social context, the Defender of Rights wanted to ease tensions between security forces and the population and continue dialogue with all actors concerned.

It therefore set about developing new responses, including experimenting with facilitation of amicable settlements by its delegates to resolve various types of dispute at local level, taking part in discussion forums between security forces and representatives of civil society, and stepping up its training activities among security forces.

### Amicable settlements brought about by delegates

Initiated on 1 October 2015, the experiment, in which six delegates covering five regions and two *départements* processed cases of inappropriate remarks and refusal of complaints involving national police officers and gendarmes by facilitating amicable settlements, was a success in the eyes of the delegates concerned and well as in the opinion of the security forces and, above all, the complainants. It led to the resolution of 43 situations in all, including 27 refusals of complaints and 16 case of inappropriate remarks or behaviour.

Persuaded of the interest, for complainants and security forces alike, of amicable processing of such cases, which can all too easily fester to everybody's detriment if not treated rapidly, the Defender of Rights announced the perpetuation and extension of the scheme during the Delegates' Convention held on 28 and 29 November 2016.

This new way of processing certain minor but all too frequent types of dispute enables provision of individualised, educational responses and helps ease local tensions in relations between security forces and the population.

### Participation in committees bringing together actors in security

The Defender of Rights is a member of the *Comité d'Orientation du Contrôle Interne de la Police Nationale* (COCIPN- Committee on Orientation of Internal Monitoring of the National Police), set up in September 2013, which meets twice a year and whose aim it is to promote the National Police service's openness and transparency.

The Defender of Rights also participates in the “Improvement of relations between the population and State security forces” *Cellule Nationale d'Animation* (National Network Support Unit) created in March

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2015, which seeks to identify best practices in this field in order to enable their development and dissemination.

## Training security force members

During 2016, Defender of Rights staff facilitated initial training sessions for classes of student police officers at all police academies, involving a total of 5,388 student officers in all.

Such training actions sought to provide knowledge on:

- the Defender of Rights' missions and actions;
- acts of direct and indirect discrimination prohibited by law;
- Defender of Rights' action with regard to compliance with ethical standards.

The Defender of Rights' deputy responsible for ethics pays regular visits to classes in all years at police officer and commissioner training schools.

In collaboration with Ministry of the Interior staff responsible for continuing training, the Defender of Rights drew up a continuing training module designed for national police trainers. The module was tested out on 30

police trainers on 10 November 2016, and is set to be deployed across national territory in 2017, to include all experienced actors in the field of security, who will themselves have the job of further disseminating their knowledge on ethical standards.

In parallel, at the request of a number of local authorities possessing municipal police services, the Defender of Rights undertook creation of a training module for municipal police officers, to be introduced in 2017.

A presentation of the Defender of Rights intended for security officers is scheduled for February 2017.

A partnership with the *Conseil National des Activités Privées de Sécurité* (CNAPS - National Council for Private Security Activities) is also under discussion, with a view to enabling the Defender of Rights to take part in the training of private security guards.

The aim is to ensure that, as from 2017, all those working in the field of security benefit from a presentation on the Defender of Rights, its powers, their rights and obligations when called upon by the institution, and their rights and obligations with regard to ethics.

### FOCUS

## *The Defender of Rights, external auditor of common law*

Under the law, the Defender of Rights has wide competence with regard to monitoring compliance with ethical standards on the part of all those involved in security activities, as such monitoring is not based on organic criteria (lists of

categories of actors), but rather on material criteria (the exercise of security activities on national soil). This being so, during 2016, the institution investigated a complaint concerning the behaviour of soldiers exercising such activities in

the context of Operation "Sentinelle".

It goes without saying, however, that professional constraints and requirements vary considerably depending on the nature of the activity in question.

It is for this reason that the Defender of Rights deems it necessary that each of the professions it is *de jure* responsible for monitoring adopt ethical rules that make reference to the instructions issued by the institution, which, as national external auditor and regardless of whatever other provisions have been made, has the job of investigating all complaints referred to it. This has been explicitly the case with the national police and gendarmerie since 2013<sup>20</sup>, the municipal police<sup>21</sup> since 2015, and members of the SNCF internal security service

(SUGE: General Security) and the RATP internal security service<sup>22</sup> (GPSR: Network Protection and Security Group) in 2016.

This is why it would be desirable that useful regulatory provisions be introduced without delay, in particular by the Minister of Justice for prison administration management and surveillance staff, the Minister of the Economy and Finance for customs officers, the Minister of Defence for staff assigned to public security missions,

the Minister of the Interior for employees of companies active in the field of private security as defined by the Internal Security Code, and the Mayor of Paris for those of his officers responsible for police services – in particular those connected with the recently formed “anti-incivility brigade” – so that the officers they employ are also fully informed of the Defender of Rights’ competence to investigate their professional behaviour if required and therefore have knowledge of all the controls their activities are subject to.



## LEGISLATIVE LANDMARKS

- Law no.2016-731 of 3 June 2016 stepping up the fight against organised crime, terrorism and their funding, and improving the efficacy and guarantees of criminal proceedings.
- Law no.2016-339 of 22 March 2016 bearing on the prevention of and fight against incivilities, breaches of public security, and terrorist acts on public transport.
- Law no.2017-86 of 27 January 2017 bearing on equality and citizenship
  - “street camera” experiment
- Senate: work carried out by the state-of-emergency monitoring committee  
[http://www.senat.fr/commission/loi/comite\\_etat\\_durgence.html](http://www.senat.fr/commission/loi/comite_etat_durgence.html)
- National Assembly: information report no.4281 of 6 December 2016 on parliamentary monitoring of the state of emergency  
[http://www2.assemblee-nationale.fr/documents/notice/14/rap-info/i4281/\(index\)/depots](http://www2.assemblee-nationale.fr/documents/notice/14/rap-info/i4281/(index)/depots)

<sup>20</sup> Decree no.2013-1113 of 4 December 2013, Article R434-24 Internal Security Code.

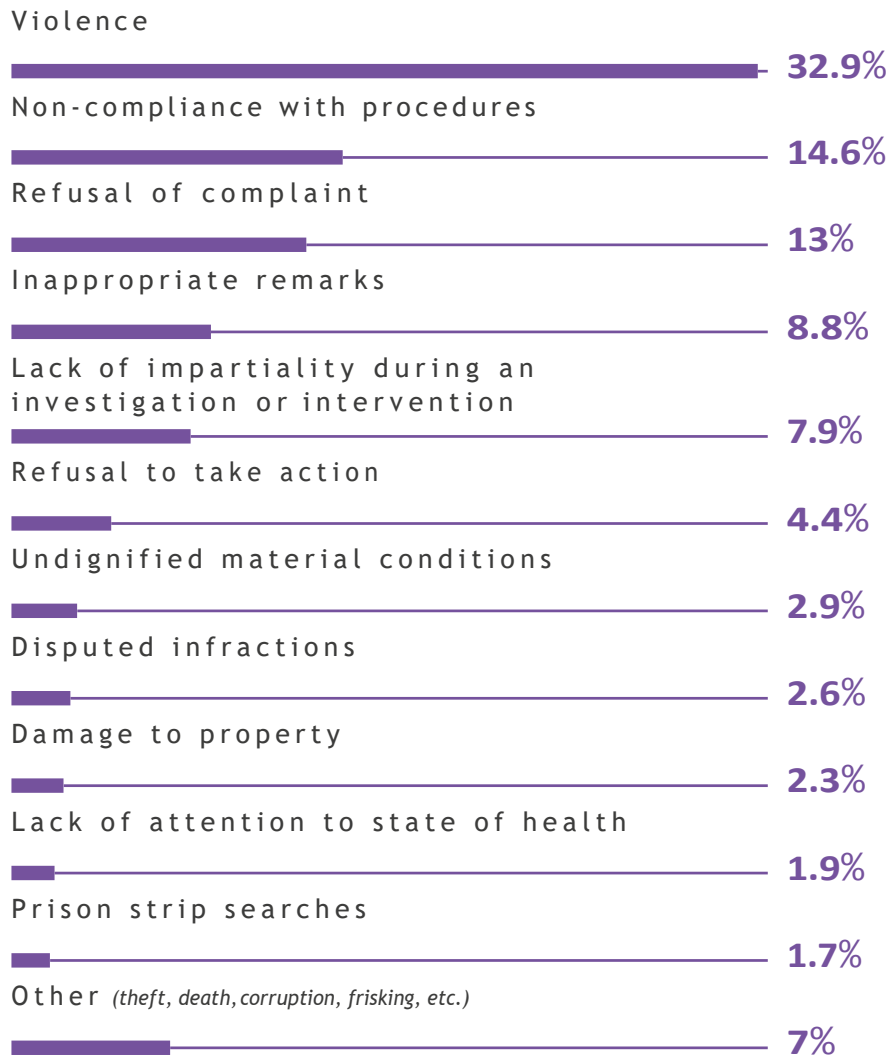
<sup>21</sup> Decree no. 2015-181 of 16 February 2015 bearing on application of the municipal police service code of ethics to directors of the municipal police, Article R515-21 of the Internal Security Code.

<sup>22</sup> Article 22 of Decree no.2016-1495 of 4 November 2016 bearing on the code of ethics of members of the SNCF and RATP internal security services: internal security service officers are subject to the Defender of Rights’ surveillance. They must therefore respond to any request or summons on its part, and inform their superiors as required.





## THE MAIN REASONS FOR COMPLAINTS ADDRESSED TO THE INSTITUTION IN THE FIELD OF SECURITY ETHICS



## SECURITY ACTIVITIES IN QUESTION

**54.9%**

National police

**22.7%**

Prison  
administrations

**13.6%**

National  
Gendarmerie

# Whistleblowers, the fifth field of competence

Law no.2016-1691 of 9 December 2016 bearing on transparency, the fight against corruption and modernisation of economic life and [Organic Law no.2016-1690 of 9 December 2016 bearing on the Defender of Rights' competence with regard to orientation and protection of whistleblowers](#) provide the Defender of Rights with a new competence.

In the opinions it delivered on the occasion of the parliamentary debate on the subject (Opinions nos.16-13and 16-17), the Defender of Rights emphasised the need to come up with an exact definition of the term “whistleblower”, as well as to update a mechanism to specify reporting and protection procedures and the exact role played by the Defender of Rights.

The Constitutional Council deemed unconstitutional the system by which the Defender of Rights was assigned competence to provide financial assistance or aid itself to individuals who might refer to it (Decision no.2016-740 of 8 December 2016).

Under the terms of the Law of 9 December 2016 (Article 6), “*A whistleblower is a natural person who reveals or reports, in disinterested fashion and in good faith, a crime or offence, a manifest serious violation of an international commitment duly ratified or approved by France, of a unilateral act by an international organisation carried out on the basis of such commitment, of the law or regulations, or a serious threat or prejudice to the general interest, of which he or she has personal knowledge*”.

The Defender of Rights' interventions are neutral; it is not its job to assess how well-founded a report is.

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## A role of information

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The institution is responsible for directing to the competent authorities any natural person alerting it under the conditions set by law. Such individuals may therefore address their report to it in order to be directed to the appropriate body to process the alert depending on the situation described, although a State Council decree is yet to be issued specifying “the appropriate procedures for collection of

reports made by members of staff or external, casual employees” of institutions in question. From this point of view, the Defender of Rights, in the context of its longstanding mission to provide information, will be developing an adapted reorientation procedure.





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## A role of protection

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If a whistleblower suffers reprisals or is subjected to retaliatory measures on the part of his/her employer or the company he/she works for, due to the report he/she has made, the Defender of Rights has to analyse whether measures taken were the direct result of the alert given and if such report was made under the basic procedural conditions provided for in the Law of 9 December 2016. Following its investigation, the Defender of Rights may use its powers of intervention to help protect the whistleblower. From this point

of view, the institution acts in the same way as it does vis-à-vis victims of discrimination suffering reprisals for having reported discriminatory treatment to which they have been subjected.

Therefore, rather than this being a new competence, the Defender of Rights is carrying out its traditional mission of protection of victims of discrimination but with a new public in view, no longer characterised by an objective situation backed up by a legal criterion (disability, origin, sex, etc.) but by an act: that of whistleblowing.



**Council of Europe    Conseil de l'Europe**



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# An International actor

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**T**he Defender of Rights is in regular contact with European institutions. It is involved in ongoing dialogue with the Council of Europe's Commissioner for Human Rights, Nils MUIŽNIEKS, on subjects of common concern including the state of emergency and its consequences on the exercise of rights and freedoms, and the situation of migrants, that of unaccompanied minors in particular. It was heard by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE)

in Brussels on 17 October 2016, where, after presenting its missions, it answered questions from members of the European Parliament relating to the institution's stance on measures taken by the French authorities in the context of the state of emergency and intake of refugees.

The Defender of Rights also cooperated with the European Union's Agency for Fundamental Rights in preparation of its comparative law report on intelligence service practices in the European Union and

respect of fundamental rights. In September 2016, Jacques TOUBON and the President of the Agency, Michael O'FLAHERTY, signed an open letter "Guaranteeing the effectiveness of fundamental rights"<sup>22</sup>.

The Defender of Rights continues to keep in close contact with European and international institutions, providing them with regular information on the situation of fundamental rights in France and the positions it takes on such current problematics as the implementation of the state of emergency, countering

<sup>22</sup> <http://fra.europa.eu/fr/news/2016/garantir-leffectivite-des-droits-fondamentaux>



terrorism and the situation of refugees and Roma communities, in the context of regular exchanges with its interlocutors in the European Commission, the European Parliament's LIBE Committee and the Council of Europe.

The Defender of Rights is continuing its cooperation with these institutions as well as with its counterparts with a view to developing European

and national legislation, and foster experiments and practices in Europe as a whole that pay greater respect to rights and freedoms in dealing with common problems. In this regard, the Defender of Rights is currently cooperating with the Council of Europe on combating propagation of racist slurs as well as on the design of a seminar on the defence of fundamental rights by security ethics institutions in a context of strengthened

antiterrorist legislation and policies.

In addition to these contacts, the institution has stepped up its action on protection of fundamental freedoms and rights in its capacity as special advisor on application of various international texts, as well as on promotion of rights through its contribution to the running of various networks.

# 1. The Defender of Rights, national advisor for European and international conventions

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## The European Convention for the Protection of Human Rights and Fundamental Freedoms (1949)

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Since 2014, the Defender of Rights has intervened before the European Court of Human Rights (ECHR) as an *amicus curiae* and has been associated with the monitoring of implementation of rulings delivered by the European Court of Human Rights.

On 12 July 2016, the ECHR issued five rulings sanctioning France for its practice of placing children in administrative detention centres, so reiterating the legal precedent set by the *Popov vs France* ruling in 2012, which concluded that Articles 3, 5 and 8 of the European Convention on Human Rights had been violated. In one of the five cases, *R.K. vs France*, the Defender of Rights had submitted observations before the Court in its capacity as *amicus curiae* (Decision 2016-035). In its decision, the Defender of Rights deemed that the decision to place a child and its parents in administrative custody was contrary to the higher interests of the child, the Convention on the Rights of the Child, and the European Convention. In its opinion, such a measure should be prohibited in law and in practice, and recourse to such alternative measures as house arrest should be systematic so as to reconcile the two imperatives of preservation of family unity and child protection.

In order to ensure that France implements the European Court of Human Rights' rulings without delay, the Defender of Rights may, if it so wishes, submit observations before the Council of Europe's Committee of Ministers. It did so in May 2016, concerning the *De Souza Ribeiro vs France* ruling of 13 December 2012 (Decision 2016-151), in which the ECHR deemed that the conditions under which a Brazilian national, resident in French Guyana, had been deported had not enabled him, before the fact, to obtain a sufficiently thorough judicial review of the measure's legality and providing adequate procedural guarantees. The Court concluded that Article 13 combined with Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms had been violated. The Defender of Rights also took part in a high-level seminar on implementation of ECHR rulings, organised by Member of Parliament Pierre-Yves, Parliamentary Assembly of the Council of Europe (PACE)



rapporteur on this question. A report on execution of ECHR rulings should be presented to the PACE in 2017.

In addition, for implementation of the Declaration of Brussels of 27 March 2015 adopted by signatory States of the European Convention on Human Rights following the Conference on “Implementation of the Convention, our shared responsibility”, the Government requested the Defender of Rights’ opinion on its draft action plan. In June 2016, the Defender delivered observations on a number of points including making

necessary information on the Convention available to applicants, ECHR jurisprudence, operation and procedures, Parliament’s involvement in execution of rulings, checking draft laws’ compatibility with the Convention via systematic quality impact studies, and institution of reinforced dialogue with all actors. A number of its recommendations were taken into account. There is greater communication between the Defender of Rights and the Government with regard to execution of rulings delivered against France.

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## European Social Charter (1961/1996)

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In 2014, the Executive Secretary of the European Committee of Social Rights, which is responsible for ensuring compliance with the European Social Charter, invited the Defender of Rights to communicate its observations more systematically with regard to cases involving France. The Defender of Rights did so on two occasions this year: firstly in the case of *Eurocef vs France*, concerning reception and care of

unaccompanied foreign minors in France (Decision 2016-02), and secondly in the case of *European Forum for Roma and Travellers (EFRT) vs France*, concerning the situation of Roma community families in France, their access to rights and the authorities’ compliance with the European Social Charter (Decision 2016-184).

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## The International Convention on the Rights of the Child (ICRC)

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Over the course of 2016, the Defender of Rights continued its actions to ensure effective implementation of the ICRC in France. In 2015, pursuant to Article 4 of the Organic Law of 29 March 2011, the Defender of Rights had submitted a report assessing the Convention’s implementation, along with complementary observations, to the UN Committee on the Rights of the Child. On 13 and 14 January 2016, the Children’s Ombudsperson, Geneviève Avenard, Deputy to the Defender of Rights, attended France’s

hearing in Geneva, alongside representatives of other associations that had participated in the Committee’s consultation process. On 4 February 2016, the Committee published its recommendations to France, which covered much the same ground as the Defender of Rights’ concerns and recommendations. In principle, the Government will have the five years until France’s next periodic review to implement the Committee’s recommendations in its national policies on child protection. In close collaboration with the associations



concerned, the Defender of Rights undertook work on rapid introduction of an operational mechanism for permanent monitoring of the Committee's observations. Two meetings were held, the first with representatives of the State and the second with associations that had delivered alternative reports to the Committee. The *Contrôleur General des Lieux de Privation de*

*Liberté* (CGLPL - Controller General of Places of Deprivation of Liberty) was also invited to attend. Such exchanges will enable the foundations of an altogether unprecedented monitoring mechanism to be laid, associating civil society and the *Commission Nationale Consultative des Droits de l'Homme* (CNCDH - National Consultative Commission on Human Rights) in their determination to establish permanent dialogue with the Government.

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## The International Convention on the Rights of Disabled Persons (ICRDP)

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Ten years after its adoption by the United Nations and six years after it came into force in France, it has to be admitted that many of those responsible for questions of disability still seem unaware of the ICRDP's existence and, *a fortiori*, the obligations it imposes. Courts have yet to take a decision on its provisions.

Complaints addressed to the Defender of Rights show that, due to lack of responses adapted to their needs, disabled individuals continue to be deprived of some of their fundamental rights.



It was in this context that the Defender of Rights, as the institution appointed to monitor the ICRDP's application in France, organised a colloquium on the theme "The ICRDP, what new rights", and published the results of a survey on direct application of the Convention, carried out by Michel Blatman, Honorary Advisor to the Court of Cassation. The report is divided into two volumes. The first bears on the direct effect of the stipulations of Human Rights treaties preceding the ICRDP and the ways in which various domestic, European and Community courts have regarded international law on human rights. The second bears more specifically on the ICRDP's content, first of all examining its impact on the development of notions of "disability" and "reasonable accommodations" in the context of the interactions of the Convention's stipulations with legal precedents set by the European Union Court of Justice and the European Court of Human Rights. Secondly, it presents an analytical table

of ICRDP stipulations likely to be applied directly or indirectly, invoked or used as tools for interpretation of domestic law by national courts. This approach implies that each stipulation must be subject to comparison with how well similar stipulations in other "sister" conventions have fared in French and supranational law.

In order to facilitate access and understanding of its content, a summary of the report and a guide to the Convention have also been published.

On 13 December, to mark the Convention on the Rights of Disabled Persons' 10<sup>th</sup> birthday, the Defender of Rights, as the body responsible for its monitoring, organised a colloquium at UNESCO bearing on the debates between judges of Supreme and European Courts and all actors in the disability sector, the work it has carried out on the Convention, and the issues involved in its application.

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## The Convention on Elimination of all Forms of Discrimination against Women (CEDAW)

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On the occasion of a joint meeting of three of the Defender of Rights' Boards on 28 March 2013, held in the presence of Nicole Ameline, Chair of the UN Committee on Elimination of all Forms of Discrimination Against Women (CEDAW), it was decided that the Defender of Rights could (as it did for the ICRC and the ICRDP) present its observations on the report delivered to the UN Committee by the French government.

It is for this reason that the Defender of Rights' Director of Promotion of Equality took part in the pre-session of the UN Committee on Elimination of all Forms of Discrimination against Women (CEDAW), held on 4 July 2016. On this occasion, the institution delivered an opinion presenting a number of actions carried out and recommendations made in the realm of gender equality since its creation in 2011.

The pre-session gave the Committee a chance to take an overall look at the assessments drawn up by independent institutions and competent associations before its review of France, which took

place on 8 July 2016 as part of the 64<sup>th</sup> CEDAW session, and during which France had to respond to numerous questions put by the Committee on implementation of the Convention as well as follow-up on the final observations that the Committee had addressed to it in 2008.

In its final observations published on 22 July 2016, the Committee drew on a number of the Defender of Rights' analyses and recommendations, in particular with regard to sexual harassment, job classifications, and class actions by and fundamental rights of foreign women.

Their complaints cover a very wide range of situations, including late payment of pensions due to poor coordination of French and foreign pension schemes, rejections of declarations of French nationality by spouses of French nationals living abroad, refusal of visas, and provision of medical care by the *Centre National des Retraités français de l'Étranger* (CNAREFE - National Centre for French Retirees Abroad).

**FOCUS**

# French citizens abroad

In April 2016, given the significant increase in complaints from expatriate French nationals, the Defender of Rights appointed a delegate responsible for complaints made by our

compatriots living abroad, as was also desired by a number of parliamentarians representing them.

During her eight months on the job in 2016, the new delegate received 98 complaints, mostly to do with public services (92%) and the remainder concerning children's rights (8%).

It is clear that the information travelled quickly, as French nationals living in some thirty different countries have referred cases to us. The largest percentages live in Europe (36%), Spain in particular, and in Africa, (28%), above all in Algeria.



## GEOGRAPHIC ORIGIN OF COMPLAINTS ADDRESSED TO THE DELEGATE FOR FRENCH NATIONALS ABROAD

**EUROPE**

**36%**

Germany, Spain, Estonia, Great Britain, Ireland, Portugal, Romania, Sweden, Switzerland

**AFRICA**

**28%**

Algeria, Cameroon, Ethiopia, Gabon, Madagascar, Mali, Morocco, Niger, DRC, Senegal, Tunisia

**AMERICAS**

**16%**

Brazil, Canada, Colombia, United States, Mexico, Peru, Venezuela

**10.7%**

Saudi Arabia, Israel

**9.3%**

Cambodia, Philippines, Singapore, Thailand, Vietnam



## 2. The Defender of Rights, facilitator of international networks

The Defender of Rights acts as the general secretariat of two international networks – one that brings together Francophone actors and another that associates countries bordering on the Mediterranean.

The Defender of Rights is also behind the setup of a European network (with Quebec as an observer) bringing together bodies responsible for monitoring security forces' professional ethics.

Finally, the institution acts as French partner in specialised theme-based networks.

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### The Association of Ombudspersons and Mediators of La Francophonie (AOMF)

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As Secretary General of the *Association des Ombudsmans et Médiateurs de la Francophonie* (AOMF - Association of Ombudspersons and Mediators of La Francophonie), the Defender of Rights coordinated the AOMF's 2016 programming, decided upon at the Bureau meeting held in Paris on 25 March. The programme designed to accompany member institutions was implemented once again. Among the various training sessions and study visits organised in this context, the Defender of Rights received its counterpart, the Mauritius Children's Ombudsperson, for a study visit focusing on cases concerning the rights of the child and the "young ambassadors of children's rights" programme, and a member of the Republic of Benin Mediator's staff for meetings on data-processing tools for complaints management.

The General Secretariat also coordinated organisation of two sessions at Rabat's *Centre de Formation et d'Echanges en Médiation* (Mediation Training and Exchange Centre) on "Objectives and communicational strategies for Mediation institutions in the era of the social web" and "Ombudspersons' role in protecting migrant children's rights during their migratory journeys" along with a Mediators' seminar in Monaco bearing on "Ombudspersons/Mediators and NRHIs: relations with UN bodies".

FOCUS

## The AOMF Committee on the Rights of the Child

The AOMF Committee on the Rights of the Child, which is chaired by the Defender of Rights' Deputy, the Children's

Ombudsperson, has set itself the objective of supporting AOMF members in their efforts to raise children's awareness of their rights. The Association lent its support to the organisation of an awareness-raising campaign on the rights of the child in Madagascar and of a training course on the rights of the child in Côte d'Ivoire. In support of its objective, it has also been decided to create a French-language awareness-raising

educational kit for use by facilitators and other professionals to help raise children's awareness of their rights. This kit includes a key tool, the guide to awareness-raising, along with educational materials (DVD, posters, games, etc.), focused on how best to communicate with children, with suggestions for activities and approaches.

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## The Association of Mediterranean Ombudspersons (AOM)

2016 saw increased activity on the part of the *Association des Ombudsmans de la Méditerranée* (AOM - Association of Mediterranean Ombudspersons), of which the Defender of Rights is Secretary General; it focused its action on the protection and promotion of migrants' rights. An international conference devoted to the question of "Ombudspersons' challenges connected with migratory flows", held in

Tirana on 8 September 2016, led to the adoption of a declaration by which members of the four main associations of ombudspersons (AOM, AOMF, the Ibero-American Federation of Ombudsmen and the International Ombudsman Institute) undertook to carry out continuous monitoring to ensure that States respected the universal and unalienable rights of migrants and refugees.

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## Independent Police Complaints' Authorities' Network (IPCAN)

Setup in 2012 of this network of independent authorities responsible for processing complaints against the security forces (IPCAN), which brings together a dozen or more international homologous organisations

intervening in the sphere of security ethics, seemed all the more to the point over the course of 2016 in that our interlocutors shared the same thoughts as ours in the context of the terrorist threat.





The 3<sup>rd</sup> IPCAN seminar will be held in Strasbourg in 2017 in collaboration with the Council of Europe, and will focus on security

force behaviour and respect for fundamental rights in the context of the fight against terrorism.

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## European Network of Equality Bodies (EQUINET)

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The Defender continued with its traditional contribution to the work of the European Network of Equality Bodies (EQUINET), through active participation in its Board of Directors as well as in its

various workgroups and productions, in particular with regard to discrimination based on origin and age in an “intersectional” perspective.

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## European Network of Ombudspersons for Children (ENOC)

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At the end of the 20<sup>th</sup> annual conference of the European Network of Ombudspersons for Children (ENOC), held in Vilnius on 20 and 21 September, and which Children’s Ombudsperson Geneviève Avenard attended, the network’s members adopted a declaration asserting the need to take all

necessary measures to eliminate all forms of discrimination that perpetuate inequalities in the sphere of education. This year once again, the network gave the floor to a dozen young people between 10 and 18 years of age, from various European countries, on the subject of



“Equal access to schools for all”. A range of proposals and opinions were presented in a film on the work carried out by the various

groups that had taken part in the project across Europe.

## FOCUS

### *Exceptional mobilisation in defence of migrant children’s rights*

The Defender of Rights had been fully mobilised with regard to the situation of the Calais shantytown since July 2015, being particularly concerned about unaccompanied minors, developing operational collaboration with other European ombudspersons for children. Continuing on from such action, the Defender of Rights convened European mediators and ombudspersons for children in Paris on 28 June for a day entitled “Children, Europe, Emergency. The protection and future of migrant children: a challenge for Europe”. A [common declaration](#) was adopted, calling on States to ensure effective protection of migrant children and aiming to strengthen the capacities and cooperation of children’s ombudspersons and mediators in this field. The floor was also given to young migrants via broadcasting of the film [“Article 6, témoignages d’enfants migrants”](#) (Article 6, migrant children’s testimonies), made by the Defender of Rights in cooperation with its Walloon counterpart.

The importance of work carried out on behalf of migrant children by institutions involved in the defence of fundamental rights has been recognised at international level, with the Children’s Ombudsperson being invited to join the panel at the 2016 Dialogue on “Children on the Move” organised in Geneva on 8 and 9 December by the United Nations’ High Commissioner for Refugees (UNHCR). A meeting was held in parallel between the UNHCR, the Children’s Ombudsperson and Latin American and European ombudspersons, enabling identification of avenues for concrete action, including strengthening of capacities, transmission of individual cases and raising awareness on children’s rights and the existence of ombudspersons’ institutions.



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**Geneviève Avenard,**  
Children's Ombudsperson,  
Deputy to the Defender  
of Rights, Vice-Chair of the  
"Defence and  
Promotion of the  
Rights of the  
Child" Board



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# Financial and human resources



**T**he merging of the four former institutions embarked upon in mid-2011 has now been achieved, and was symbolically expressed in September 2016 by the installation of all services under a single roof.

A series of actions was carried out in 2016, all of them leading to the augmentation and consolidation of the Defender of Rights' identity, enabling it to exercise its missions to the fullest extent, with common, shared tools to which all its officers can now refer (in-house regulations, code of ethics, IT Charter, job

directory, training plan, social audit, etc.).

2016, then, saw the restructuring of the institution's internal organisation and continuation of a dynamic human resources policy.

# 1. Renewed organisation for greater effectiveness

Although of recent creation (less than 6 years ago), the Defender of Rights has succeeded in building an identity of its own, with the institution evolving towards greater simplicity to enable greater efficacy.

## A. Reorganisation of the Services Directorate

The Defender of Rights has decided to simplify the way the institution's Services Directorate is organised.

The initial organisation set up by Dominique Baudis in 2011, with a two-headed management structure made up of a Managing Director of services responsible for support functions and a Secretary General responsible for professional functions, was introduced as a way to manage the unprecedented situation brought about by the merging of four former *Autorités Administratives Indépendantes* (AAIs - Independent Administrative Authorities).

Setup of the new institution had not been preceded by any form of prefiguration mission or budgetary assessment. Furthermore, when the first holder of the office was appointed in June 2011, no subsidiary statutory instrument had yet been adopted. As soon as he took up his post, the first Defender of Rights was faced with the simultaneous needs to revitalise and harmonise the activities of the independent administrative authorities

he had succeeded to, while setting about an administrative reorganisation aiming to create a single architecture and management system using extremely heterogeneous legal and human resources, with the latter spread across four separate buildings.

Consequently, he considered it necessary to have two managers under his direct authority, one responsible for the professional project and the other for the organisation project.

With initial setup of the new institution completed, the Defender of Rights wanted to return to a rather more conventional organisation model, doing away with the Services Directorate. The Secretary General now has functional and hierarchical authority over services.

[Decree no.2016-714 of 30 May 2016 amending Decree no.2011-905 of 29 July 2011 bearing on the organisation and operation of the Defender of Rights' services, published in the *Journal Officiel de la République Française* on 1 June 2016.]



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## B. Restructuring the organisation chart

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The new, pragmatically introduced organisation has enabled the institution to free itself from the “weight of history” and so evolve towards greater simplicity which should result in greater effectiveness.

It has led to the creation of a general administration department combining general affairs, human resources and IT activities.

It consisted of reorganising three departments’ investigative activities into two new directorates:

- the “Protection of Rights - Public Affairs” Directorate, processing cases mainly concerned with public law and relations with administrative courts; it brings together 4 theme-based branches, including a new one devoted to the “fundamental rights of foreigners”;
- the “Protection of Rights - Judicial Affairs” Directorate, responsible for cases mainly concerned with private law and relations with judicial courts; it brings together 5 branches, one of which was reorganised with the express purpose of handling cases to do with “fundamental rights and freedoms”.

It also did away with the General Secretariat’s “legal expertise” mission, with redeployment of its staff to operational directorates.

Finally, in order to foster greater effectiveness in the institution’s communications, Communication and Press Activity services were merged into a single entity.

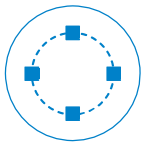
Management of all press and communication activities was entrusted to an advisor attached to the Defender of Rights’ Office.

Such reorganisation is expected to ensure:

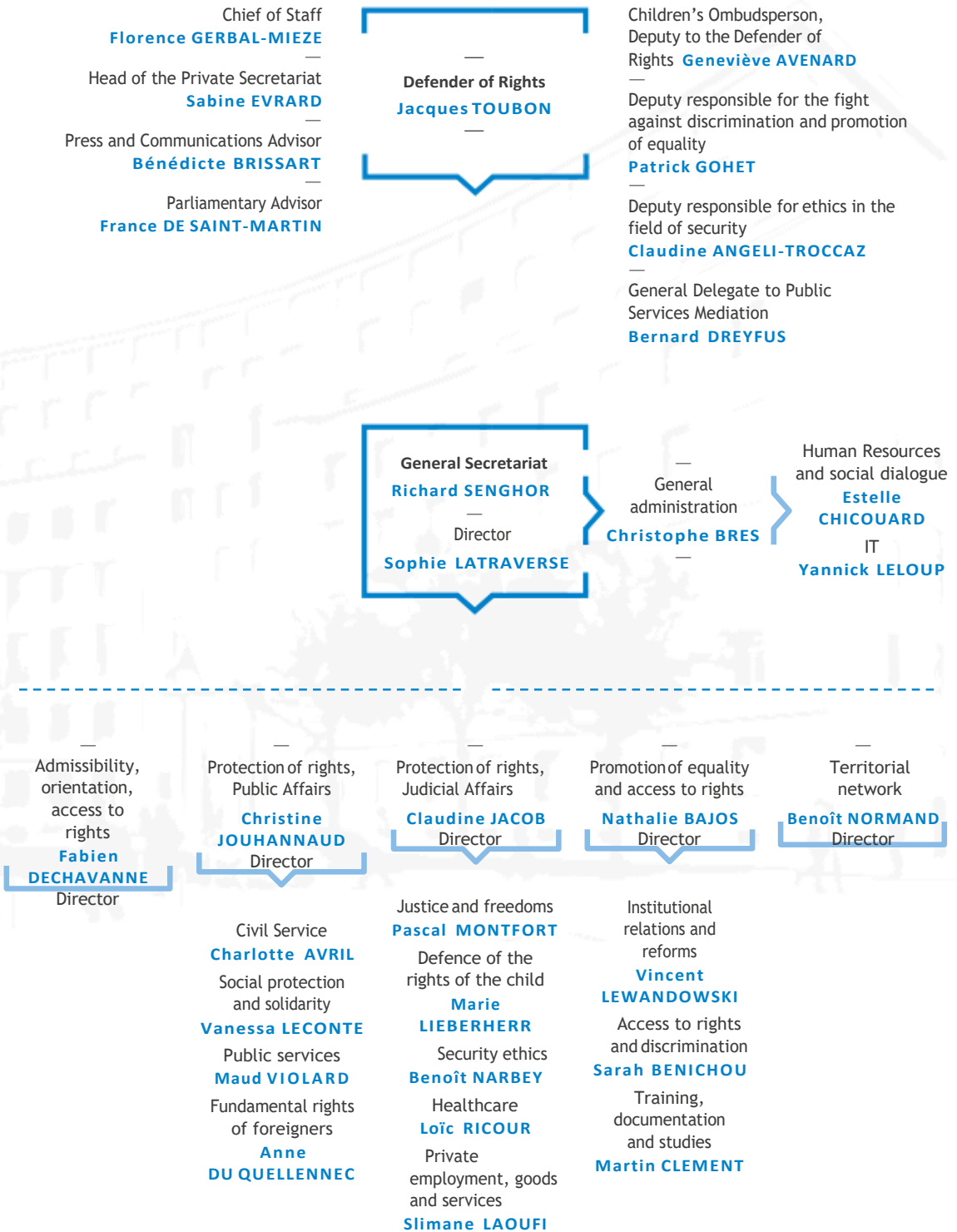
- greater coherence and clarity of portfolios entrusted to the new directorates,
- greater efficacy in processing complaints, in particular those involving more than one legal areas (e.g. foreigners),
- greater autonomy for directorates in expertise and harmonisation of our decisions’ jurisprudence,
- increased crosscutting cooperation with the “Promotion of Equality and Access to Rights” Directorate, whose restructuring was central to the reorganisation carried out in 2015.

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[Decision no.2016 – 121 of 5 July 2016 amending Decision no.2013 - 430 of 31 December 2013 bearing on the Defender of Rights’ in-house regulations, published in the *Journal Officiel de la République Française* on 5 July 2016.]



## ORGANISATION CHART - 2016







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## C. Rationalisation and pooling of support functions: finances, general resources and documentation

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Setup of the new general administration department covering all support functions was accompanied by a proactive initiative of pooling with the Prime Minister's *Direction des services administratifset financiers* (DSAF - Department of Administrative and Financial Services) via the projected regrouping of most of the Prime Minister's services on the Ségur-Fontenoy site along with independent administrative authorities. The operation has led to the transfer or abolition of 13 positions.

As from 1 January 2017, the institution's main services concerned in such pooling are the following:

- the accounting function : the DSAF's *Centre de Services Partagés Financiers* (CSPF - Shared Financial Services) is responsible for taking over the pooled departments' legal commitments;
- management: a common management system will be introduced on 1 January 2017;
- management of missions and travel reservations : a travel agency serving all pooled entities;

- the “purchases and procurement” function: the DSAF’s procurement office manages all procurements pooled between departments;
- the logistics function: the DSAF’s Heritage and Logistics Division provides logistics support to the entire Ségur-Fontenoy building ;
- the documentation function: creation of a single documentation centre in autumn 2017.

## D. Budgetary resources in 2016

The institution’s total budget assigned in Programme 308 (Protection of rights and freedoms, managed by the Secretary General of the Government) was consumed to the tune of 97.20% in CAs and PAs for Title 2, and 96.49% of CAs and 99.15% of PAs for “Except Title 2”.

Appropriations 2016	Commitment appropriations - CAs			Payment appropriations - PAs		
	IFL	Available	Consumed	IFL	Available	Consumed
Title 2 Staff Costs	16,285,648	16,204,220	15,751,070	16,285,648	16,204,220	15,751,070

Appropriations 2016	Commitment appropriations - CAs			Payment appropriations - PAs		
	IFL	Available	Consumed	IFL	Available	Consumed
Operating costs Except Title 2	10,140,074	8,678,86	8,374,578	13,835,819	12,464,712	12,359,319

A third of operating appropriations was used to pay the rent on premises occupied (rue Saint Florentin and rue Saint Georges). Operations on streamlining the expenditure chain, in collaboration with the Ministerial Budget and Accounts Controller and the Prime Minister’s Administrative and Financial Services Department, were continued and intensified, with over 20% of suppliers adopting the digitised invoice settlement process.

The overall financial impact of savings connected with the institution’s internal reorganisation is estimated at €1,107,729, a full €409,419 of which was generated in 2016 by the reduction in senior management staff, with the remaining savings accounted for by the restructuring of support functions, which should come into force in 2017.

## 2. A regulated recruitment policy and sustained social dialogue

### A. Head-office workforce

In 2016, the Defender of Rights continued with its transparent, structured recruiting policy. All the institution's vacant positions are published simultaneously on the intranet site and the *Bourse interministérielle à l'emploi public* (BIEP- Interministerial Public Employment Exchange). An average of some hundred candidates apply for each vacant position as a legal officer.

This year was largely devoted to reorganising services, moving all staff and trainees to a single site, application of salary and beneficiary measures, and implementation of the telework project.

The institution's consultative bodies held frequent meetings over the course of the year:

- 5 times for the Technical Committee (job directory, reorganisation of departments, promotion campaign, telework, and training plan)
- 5 times for the Joint Consultative Commission (individual situations relating to professions, assessment of the promotion campaign, 2 projected redundancies, and 1 non-renewal of contract)
- 3 times for the Health and Safety Committee (move to a single site, new presentation of the FONTENOY plans, Health and Safety report, and presentation of actions on the part of the occupational health physician and occupational psychologist)

Pursuant to Decree no.2016-151 of 11 February 2016 bearing on conditions and methods for introducing telework into the civil service and the magistracy, an *ad hoc* project group was set up, which met six times between 15 April and 14 October 2016. All methods for implementing telework were presented during the Technical Committee meeting of 8 December 2016, with implementation set for 1 March 2017, with a three-month trial period, renewable once.

[Decision no.2016-162 of 8 December 2016 bearing on conditions and methods of implementing telework at the Defender of Rights was unanimously adopted by the Technical Committee.]



FOCUS

## *Grouping services under a single roof*

Grouping independent administrative authorities and Prime Minister's services together under a single roof in the Ségur-Fontenoy building complex got underway on 26 September 2016 with the Defender of Rights moving house to the Fontenoy building.

It took just two days to move 280 workstations and 60 m<sup>3</sup> of equipment and furniture. Over 1,000 boxes and almost 200 data-processing registers were moved. Feedback from staff showed high levels of satisfaction with regard to setting, site and building.

Bringing the institution's services together on a single site, as against the previous four in 2011 and two in 2012, facilitates work between centres and enables staff to get to know one another better. It is a highly symbolic move five years after the institution's creation.



## KEY FIGURES

Workforce	2014	2015	2016
Head office	235	234	239
Local delegates	398	400	448

Title 2	2014	2015	2016
FTEs in IFL	227	226	226
IFL allocation	€16,094,814	€15,738,117	€16,285,684

The payroll was adapted to the institution's population: integration of staff theretofore available within the payroll and job ceiling.

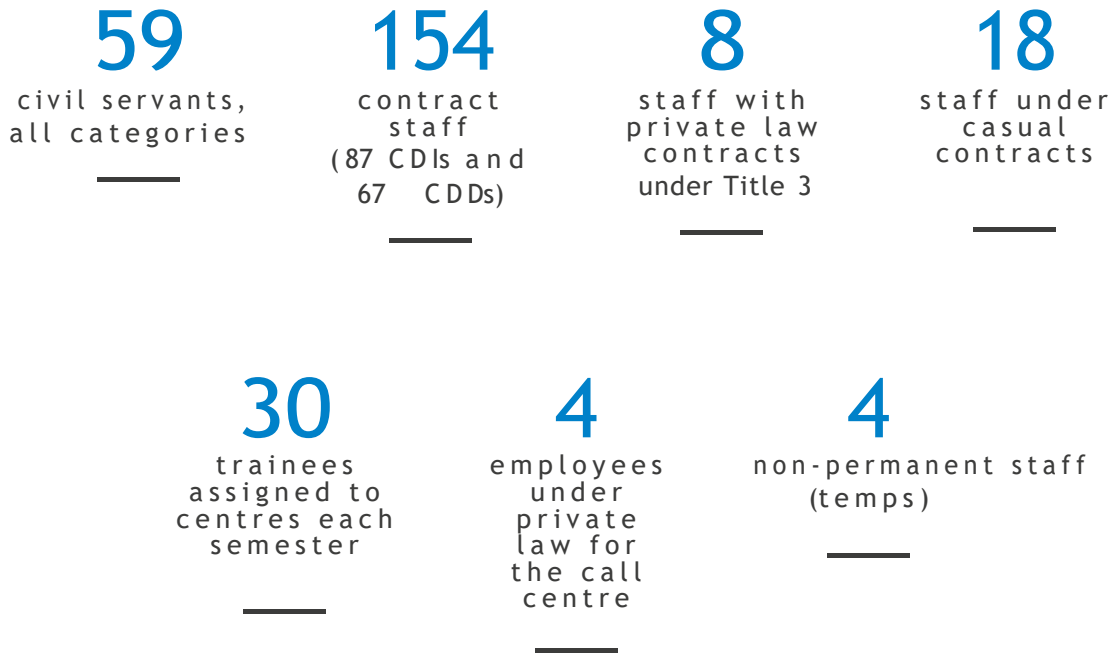
The 2016 Initial Finance Law (IFL) set the Defender of Rights' job ceiling at 226 full-time equivalents (FTEs). At 31 December, its workforce broke down as follows:

Workforce according to administrative situation from 2014 to 2016			
	31/12/14	31/12/15	31/12/16
Assigned staff	59	63	55
Civil servants in normal employment (PNA)	1	0	0
Seconded, reimbursed	1	1	0
Seconded, non-reimbursed	6	5	4
Permanent contracts (CDIs)	77	82	87
Fixed-term contracts (CDDs)	72	66	67
Casual contracts	12	10	18
Title 3	7	7	8
<b>TOTAL workforce</b>	<b>235</b>	<b>234</b>	<b>239</b>

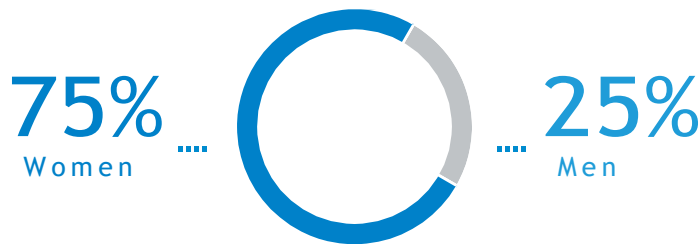




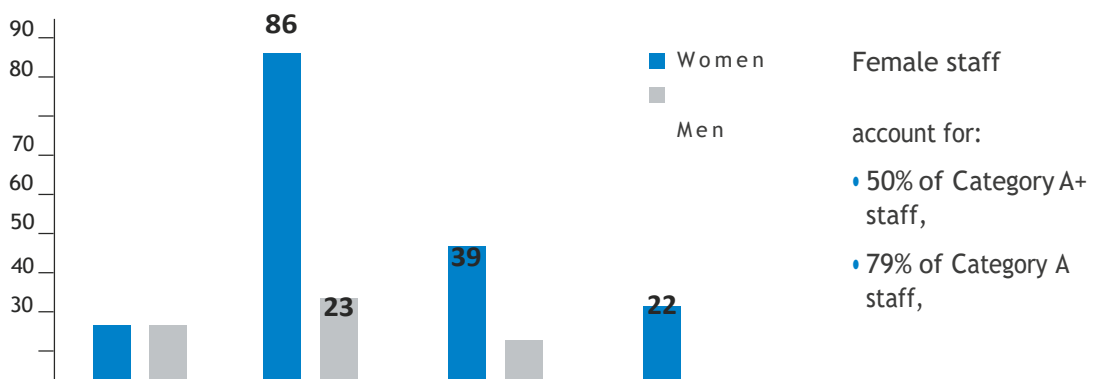
The Defender of Rights 239-strong workforce breaks down as follows:

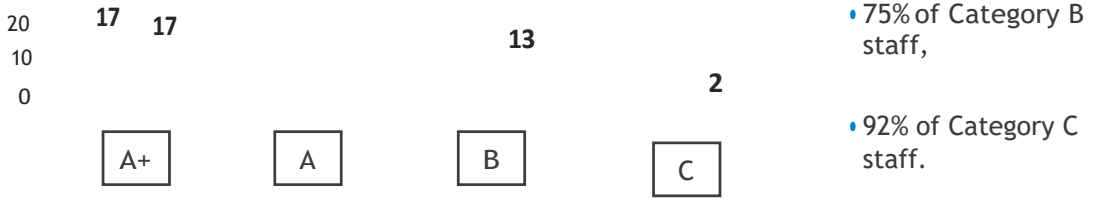


Breakdown between women and men at the Defender of Rights



Breakdown of women and men by category



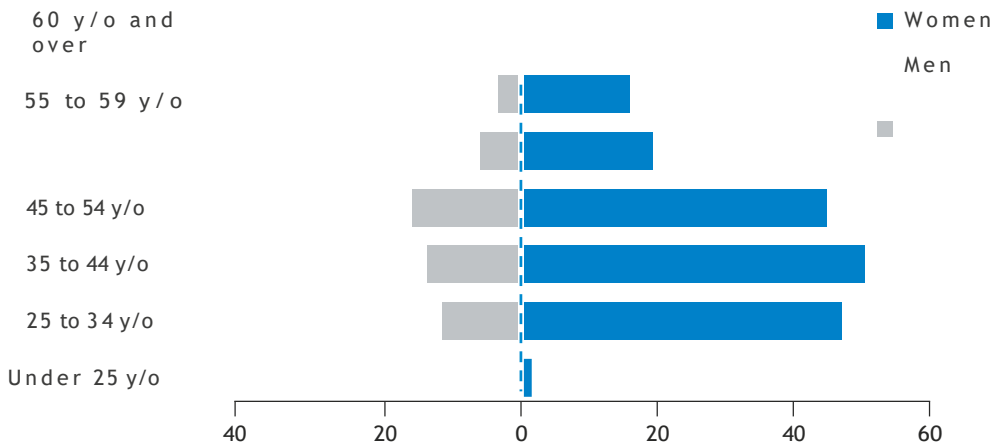


The high proportion of female staff and recruitments, mainly in the 25-35 y/o age bracket, has led to high numbers of maternity leaves over the past few years: 14 in 2014, 12 in 2015 and 10 in 2016. Systematic replacement of all maternity leaves involves sustained activity on the part of the Human Resources Department in order to keep full service capacities up and running.



### Average ages of staff

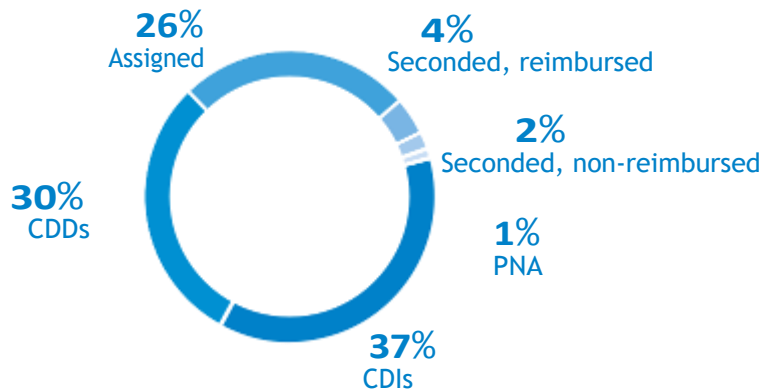
The average age of Defender of Rights staff was 43.3 y/o at 31 December 2015. On average, women under contract are the youngest (average age 39 y/o).



### Breakdown between civil servants and contract staff

33% of Defender of Rights staff are civil servants and 67% are under contract. There is the same proportion of women among civil servants and contract staff (75%).

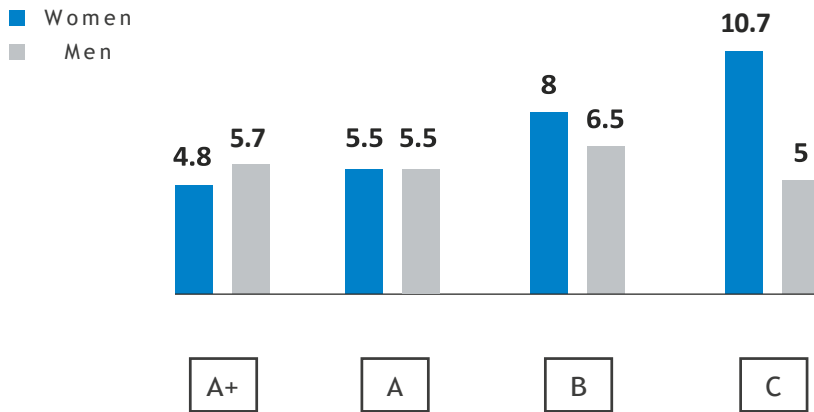
*Breakdown of workforce by administrative situation*





## Average seniority of staff

*Average seniority by sex and category (in years)*



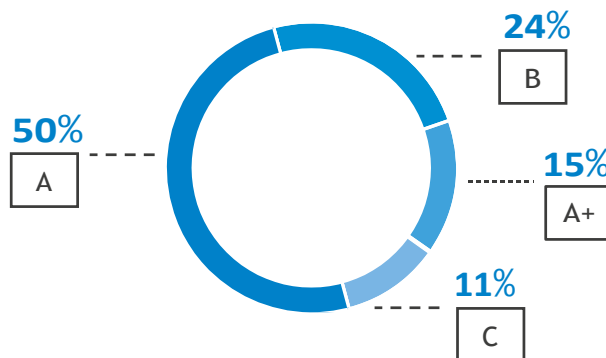
Average seniority of staff is 6.5 years: 5.8 years for men and 6.7 years for women. 50% of staff have less than 6 years' seniority. 32% of staff have less than 3 years' seniority. 20.5% of staff have over 10 years' seniority (12.7% of staff in 2013).



## Breakdown of staff by hierarchical category

65% of the Defender of Rights' staff belong to categories A+ and A.

*Breakdown of workforce by category*



## Number of staff with disabled worker recognition

A proactive policy has led to the integration of 16 individuals recognised as disabled workers into the institution's staff (14 in 2014) – 7% of its workforce. A first-rate occupational health physician and personalised accompaniment measures (work at home and adaptation of workstations) ensure that such staff are able to carry out their missions to the full.

## B. The proximity network of local delegates

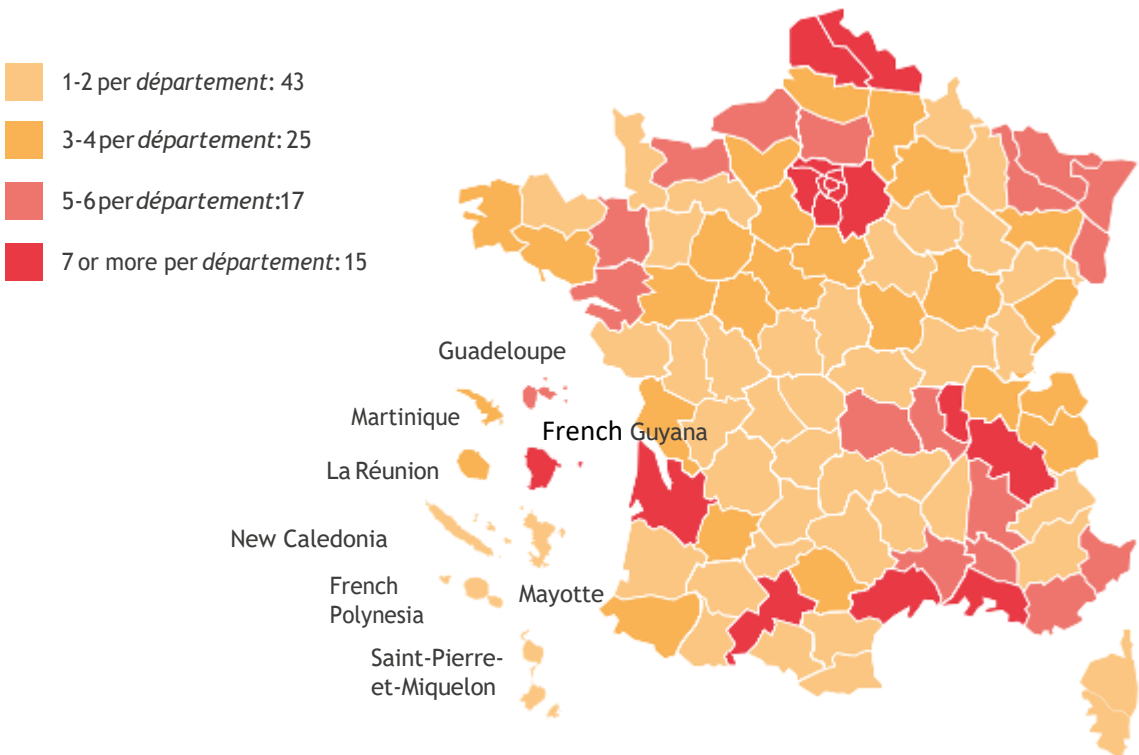
### Ongoing extension

Among comparable institutions abroad, the Defender of Rights is the only one with local representation ensured by a network of volunteers whose density provides it with all-round accessibility on the part of the public in Metropolitan and Overseas France alike.

In order to best ensure that access to law is within the reach of all citizens, Defender of Rights' delegates are appointed and carry out their missions at *départementale* level. Their competence is defined depending on complainant's or accused's place of residence or activity. They take action in close proximity to the situations referred to them, with a view to resolving them without delay.

2016 was an exceptional year as regards local action. At 31 December 2016, 77 new delegates had been appointed, bringing the territorial network up to 448 Defender of Rights' delegates active throughout the country. 48 new offices were set up taking account of the assessment of ascertained needs, in rural areas, and on City Policy and Overseas sites.

*Breakdown of Defender of Rights delegates by département in 2016*





## The issue of training

In order to keep in step with the significant increase in recruitment of delegates and diversify their skills, four initial six-day training courses were held in 2016, facilitated by staff from the head office.

The courses introduced new delegates to the institution, its organisation and its missions. Participants expressed their satisfaction with their quality and content, in particular with regard to admissibility, amicable settlements with public services, the fight against discrimination, and defence of the rights of the child. Following their initial training and once operational, the new delegates are ready and able to open their offices and receive complainants.

Delegates' contact details and office locations are available on the Defender of Rights' website.

Depending on delegates' individual requests and needs, specialised complementary courses may be delivered at a later date.

In this regard, 19 theme-based courses for delegates already on the job, in Metropolitan and Overseas France alike, were also held

over 2016. Topics included foreigners' rights, prisons, urban planning, justice and freedom, and disability.

A new course entitled "*Initiation aux contentieux*" (Introduction to litigation) was also introduced in 2016, facilitated by the *Direction du Réseau Territorial* (DRT - Territorial Network Directorate), in response to numerous requests on the part of delegates. It provides an overview of the legal proceedings most frequently encountered by complainants and aims to increase delegates' knowledge in this area so as to enable them to provide the best possible guidance to individuals who refer their cases to them.

To sum up, in 2016, the total number of training days dispensed stood at 740 (297 days of theme-based courses and 443 of initial training). 135 delegates attended at least one training day over the course of the year.

### FOCUS

## *The Defender of Rights Local Delegates' Convention, Paris, 28 and 29 November 2016*

The Defender of Rights Delegates' 3<sup>rd</sup> biennial convention was held on 28 and 29 November. It brought together over 400 delegates at UNESCO and then at the Ecole Militaire, and, among other things, provided an opportunity for exchanges during two workshops, one devoted to

delegates' various missions and the other to professional practices.

"Today, we have the feeling that our expertise serves to implement theoretical rights, previously existing only on paper, to the benefit of a good number of citizens." Jacques Toubon.

The convention aimed to bring together all the Defender of Rights' territorial delegates and teams in order to call to mind successes and goals accomplished as well as progress yet to be made. On 28 November, delegates met behind closed doors to share their practices, experiences and



observations with regard to the mission assigned to them. During the second day, on 29 November, Jacques Toubon recapped the institution's activities over the past five years in the presence of guests from the political, administrative, legal and academic worlds, who brought their external viewpoints to bear on the Defender of Rights' role. His four Deputies, Bernard Dreyfus, Geneviève Avenard, Claudine Angeli-Troccaz and Patrick Gohet presented assessments of their respective missions. Also present during the morning session were Jean-Jacques Urvoas, Minister of Justice, Philippe Bas, Chairman of the Senate's Law Committee, Jean Yves le Bouillonnet, Vice-Chairman of the National Assembly's Law

Committee, Catherine Champrenault, Public Prosecutor at the Paris Appeal Court, Xavier Libert, former President of Versailles Administrative Court, and Agnès Le Brun, Vice-President of the Office of the Association of French Mayors. In the opinion of all the above speakers, the Defender of Rights' observations and expertise are extremely useful, making it an essential partner, in particular with regard to judicial and administrative courts. The afternoon was devoted to administration and digital technology. The participants, Nicolas Conso, Deputy Director of the Interministerial Directorate for Accompanying Public Transformations (DIAT), and Jean Deydier, Managing

Director of Emmaüs Connect, posed the question of access to public services in the context of digitisation of administrative procedures. Finally, bringing the day to a close, Nathalie Bajos, the Defender of Rights' Director of Promotion of Equality and Access to Rights, Pierre Mazet, researcher at the Observatory on Non-Take-Up of Social Rights and Public Services (ODENORE) and Jean-Michel Thornary, Commissioner for Territorial Equality, tackled the question of non-take-up of rights. On this point, it appeared that ignorance of rights in France is one of the main reasons for their non-respect and non-effectiveness. Whence the need for the Defender of Rights to further increase its reputation in order to develop access to rights for all.



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# Glossary

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- AAI:** *Autorité Administrative Indépendante* (Independent Administrative Authority)
- ACAATA:** *Allocation de Cessation Anticipée des Travailleurs de l'Amiante* (Early Retirement Allowance for Asbestos Workers)
- ACS:** *Aide à l'Acquisition d'une Complémentaire Santé* (Complementary Health Insurance Acquisition Assistance)
- AFMD:** *Association Française des Managers de la Diversité* (French Association of Diversity Managers)
- ALF:** *Allocation de Logement Familiale* (Family Housing Allowance)
- AOM:** *Association des Ombudsmans de la Méditerranée* (Association of Mediterranean Ombudspersons)
- AOMF:** *Association des ombudsmans et médiateurs de la francophonie* (Association of Ombudspersons and Mediators of La Francophonie)
- ASF:** *Allocation de Soutien Familial* (Family Support Allowance)
- ASPA:** *Allocation de Solidarité aux Personnes Âgées* (State Pension for the Elderly)
- AVS:** *Auxiliaire de Vie Scolaire* (Classroom Assistant)
- BIEP:** *Bourse interministérielle à l'emploi public* (Interministerial Public Employment Exchange)
- BOFIP:** *Bulletin Officiel des Finances Publiques- Impôts* (Official Public Finance Gazette on Taxes)
- BPW:** Building and Public Works
- CAF:** *Caisse d'Allocations Familiales* (Family Allowance Fund)
- CAOMI:** *Centre d'accueil et d'orientation spécialement dédiés à l'accueil de ces mineurs* (Centre for Reception and Orientation of Unaccompanied Minors)
- CCMSA:** *Caisse Centrale de la Mutualité Sociale Agricole* (Central Fund for the Agricultural Mutual Insurance Scheme)
- CEDAW:** Committee on the Elimination of Discrimination against Women
- CERT:** *Centre d'Expertise et de Ressources des Titres* (Document Expertise and Resources Centre)
- CGET:** *Commissariat Général à l'Égalité des Territoires* (General Commission for Territorial Equality)
- CGI:** *Code Général des Impôts* (General Tax Code)
- CIPAV:** *Caisse interprofessionnelle de prévoyance et d'assurance vieillesse* (Interprofessional Fund for Pension Planning and Insurance)
- CIVI:** *Commission d'indemnisation des victimes d'infractions* (Standing Committee for the Compensation of Victims of Injury)
- CJEU:** Court of Justice of the European Union
- CMU:** *Couverture Maladie Universelle* (Universal Health Coverage)
- CNAF:** *Caisse Nationale des Allocations Familiales* (National Family Allowance Fund)
- CNAPE:** *Fédération des Associations de Protection de l'Enfant* (National Convention of Child Protection Associations)
- CNAPS:** *Centre National des Activités Privées de Sécurité* (National Centre for Private Security Activities)
- CNAREFE:** *Centre National des Retraités Français de l'Étranger* (National Centre for French Retirees Abroad)
- CNAV:** *Caisse nationale d'assurance vieillesse* (National Retirement Insurance Fund)
- CRDS:** *Contribution au Remboursement de la Dette Sociale* (Social Debt Repayment Contribution)

CNI: *Carte Nationale d'Identité* (National Identity card)

COICIPN: *Contrôle Interne de la Police* (Internal Monitoring of the Police)

COJ: *Code de l'organisation judiciaire* (Judicial Organisation Code)

CPAM: *Caisse Primaire d'Assurance Maladie* (Local Health Insurance Fund)

CRPA: *Code des Relations entre le Public et l'Administration* (Code of Relations between the Public and Administrations)

CSEP: *Conseil Supérieur de l'Égalité Professionnelle* (Higher Council for Professional Equality)

CSG: *Contribution Sociale Généralisée* (General Social Contribution)

CSR: Corporate Social Responsibility

DARES: *Direction de l'Animation de la Recherche, des Etudes et des Statistiques* (Directorate for Research, Studies and Statistics)

DDFIP: *Direction Départementale des Finances Publiques* (Départemental Directorate of Public Finances)

DOM-COM: *Départements et collectivités d'Outre-mer* (Overseas Départements and Local Authorities)

DRT: *Direction du Réseau Territorial* (Territorial Network Directorate)

DSAF: *Direction des Services Administratifs et Financiers du Premier Ministre* (Department of the Prime Minister's Administrative and Financial Services)

ECHR: European Court of Human Rights

EHPAD: *Établissement d'Hébergement pour Personnes Âgées Dépendants* (Care Centre for Dependent Senior Citizens)

ENOC: European Network of Ombudspersons for Children

EQUINET: European Network of Equality Bodies

ESENER: *École Supérieure de l'Éducation Nationale, de l'Enseignement Supérieur et de la Recherche* (National College for Education Management, Higher Education and Research)

EU: European Union

FGTI: *Fonds de Garantie des Victimes des Actes de Terrorisme et d'autres Infractions* (Guarantee Fund for the Victims of Acts of Terrorism and other Crimes)

FNPC: *Fichier National des Permis de Conduire* (National Driving License Registry)

FICOPA: *Fichier National des Comptes Bancaires et Assimilés* (National Bank and Assimilated Accounts File)

FTE: Full-Time Equivalent

GPSR: *Groupe de Protection et de Sécurisation des Réseaux* (Network Protection and Security Group)

HALDE: *Haute autorité de lutte contre les Discriminations* (Equal Opportunities and Anti-Discrimination Commission)

ICRC: International Convention on the Rights of the Child

ICRPD: International Convention on the Rights of Disabled Persons

ILO: International Labour Organisation

INC: *Institut National de la Consommation* (National Consumer Institute)

INSEE: *Institut National de la Statistique et des Etudes Economiques* (National Institute of Statistics and Economic Studies)

IPCAN: Independent Police Complaints' Authorities' Network

LFI: *Loi de Finances Initiale* (Initial Finance Law)

MSA: *Mutualité Sociale Agricole* (Agricultural Mutual Assistance Association)

MSaP: *Maison de Services au Public* (Public Service Centre)

O D E N O R E: *Observatoire des Non-recours aux Droits et Services* (Observatory on Non-Take-Up of Social Rights and Public Services)

O F I I: *Office Français de l'Immigration et de l'Intégration* (French Office for Immigration and Integration)

O N P E: *Observatoire National de la Protection de l'Enfance* (National Child Protection Observatory)

P A C E: Parliamentary Assembly of the Council of Europe

P A C S: *Pacte Civil de Solidarité* (Civil Solidarity Pact)

P P E: *Projet pour l'Enfant* (Project for the Child)

P P N G: *Plan Préfectures Nouvelle Génération* (New Generation Prefecture Plan)

R É A T E: *Réforme de l'Administration Territoriale de l'État* (State Territorial Administration Reform)

R I B: *Relevé d'Identité Bancaire* (Bank Account Identification)

R S A: *Revenu de Solidarité Active* (Earned Income Supplement)

R S I: *Régime social des indépendants* (Social Security Scheme for Self-employed Workers)

S D F E: *Service des Droits des Femmes et de l'Égalité entre les Femmes et les Hommes* (Women's Rights and Gender Equality Service)

S U G E: *Sureté Générale* (General Security)

T A J: *Traitement des Antécédents Judiciaires* (Criminal-Record Management)

U N: United Nations

U N H C R: United Nations High Commission for Refugees

U R S S A F: *Union de Recouvrement des Cotisations de Sécurité Sociale et d'Allocations Familiales* (Organisation for Payment of Social Security and Family Benefit contributions)

VAT: Value Added Tax

