



Annual activity report 2023

THE DEFENDER OF RIGHTS ENSURES THAT RIGHTS AND FREEDOMS ARE RESPECTED

Ensuring that the law forgets no one

Défenseur des droits
— RÉPUBLIQUE FRANÇAISE —

Annual activity report **2023**

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EDITORIAL

Through the individual situations referred to the Defender of Rights, but also through the opinions we have formulated on legislative reforms, the year 2023 has led me to look with concern at the state of rights and freedoms in our country.

A number of legislative or regulatory reforms have restricted certain rights, in the areas of housing, access to social benefits and immigration, upsetting balances that had in some cases existed for a long time. In addition, certain statements and actions have called into question or criticised court rulings. These developments are by no means anecdotal: they reflect an extremely worrying undermining of the authority of judges and, beyond that, of the rule of law.

Against this backdrop, the Defender of Rights has fulfilled the mission entrusted to him by the Constitution: we have put forward new recommendations, we have made significant progress on both individual and structural problems, we have brought new issues to the fore in the public debate, without forgetting to ensure that we transform ourselves to carry out all our missions to the best of our ability, in the service of claimants.

With a wealth of new recommendations in all our areas of expertise, 2023 was in many ways an intense year in our task of protecting and promoting rights and freedoms, both through individual situations and through reports or opinions addressed to Parliament, and for the first time to the European Parliament.

With an increasing number of observations made before the courts and through mediation, particularly in the field, the Defender of Rights has also made progress both individually and collectively.

This has been the case in highlighting the vital importance of combating human trafficking, the ultimate form of discrimination. I refer also to the suspension of an order banning food distribution in public places, ordered by the judge, to whom we had also submitted observations.

“This report bears witness to my commitment and that of the entire institution to ensuring that its mission contributes, through respect for rights and freedoms, to a more peaceful society within the framework guaranteed by the rule of law.”

We also wanted to reveal and bring to the forefront issues that had not yet received the necessary attention in public debate. For example, the study we supported on the discrimination suffered by people of Asian origin highlighted the myth of the “model minority”, which trivialises discrimination and makes it invisible. I am thinking of identity checks, the number of which, as revealed by the Court of Auditors following our referral, amounts to almost 47 million per year. This reality must force us all to think about a more effective framework and traceability of controls, to ensure that the rights of individuals are respected, without discrimination.



Throughout 2023, the Defender of Rights alerted and took action. With its 600 regional delegates and 250 employees, the institution has responded to the challenge, while taking care to enhance its claimant-focused approach and internal organisation.

Wherever public services fail to deliver on their promises, wherever discrimination persists, wherever the primacy of children's best interests is neglected, wherever those who wish to raise the alarm require protection, wherever the security forces need to be reminded of the ethics that underpin their legitimacy, the Defender of Rights works with perseverance and determination.

As we take stock of the year 2023 and face the challenges that await us in the years ahead, I am committed to ensuring that my institution is seen and heard for what it is: an independent authority whose recommendations and alerts contribute to social cohesion and the democratic vitality of our country.

This report bears witness to my commitment and that of the entire institution to ensuring that its mission contributes, through respect for rights and freedoms, to a more peaceful society within the framework guaranteed by the rule of law.

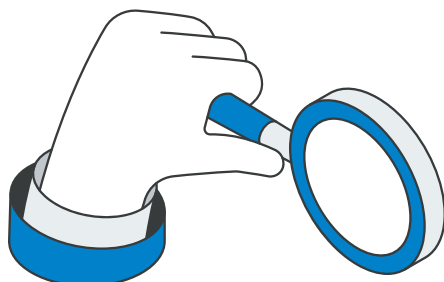
Claire Hédon
The Defender of Rights

A handwritten signature in black ink, reading 'C. Hédon'.

2023 IN FIGURES

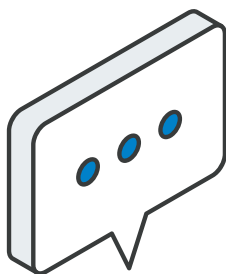


Nearly
257,000
requests



76%
of mediations resulted in an
amicable settlement

137,894
complaints, requests for information
and guidance
+10% between 2022 and 2023



118,813
calls to telephone lines:
09 69 39 00 0 / 31 41
Antidiscriminations.fr (39 28)
+18% between 2022 and 2023

320

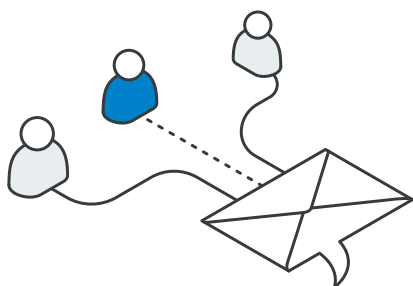
decisions, including:
150 with observations before the courts,
92 decisions with recommendations,
30 decisions on own-initiative referrals,
35 decisions issuing opinions on
whistleblower certification
(221 in 2022)

6

third-party interventions
before the UN Committee on the Rights of
the Child, the European Court of Human
Rights (ECHR), the Department for the
Execution of Judgments of the ECHR and
the Court of Justice of the European Union

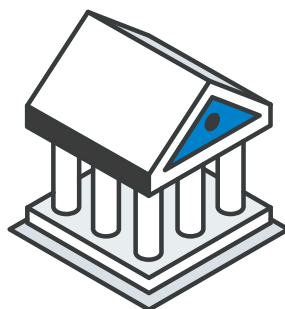
416

legal reminders issued to offenders
(302 in 2022)



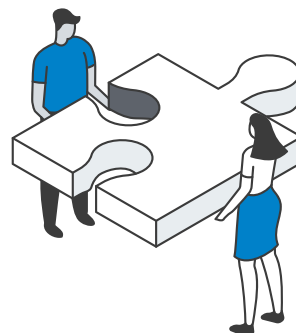
250

officers,
including **20** in the regions



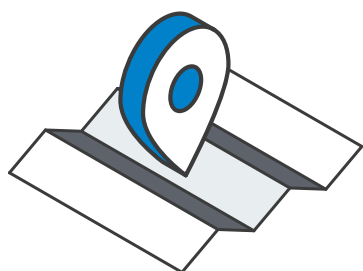
8

notices to Parliament,
including 1 notice to the
European Parliament for
the 1st time



8

joint committees,
including the creation of
a new one on issues related
to insecurity



600

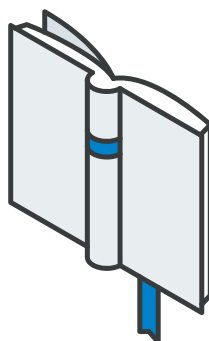
delegates
at nearly
1,000 contact points

9

reports and studies

3

advisory committees



2

Liaison Committees

118

JADE
Young Ambassadors for
the Rights of the Child and
Equality in Civic Service

1

practical guide

62

Partnership Agreements

HIGHLIGHTS OF THE YEAR

16/01 **23/01** **17/02** **20/03**

Follow-up report on the fundamental rights of elderly people in nursing homes.

Colloquium “50 years of mediation in the Republic”.

Opinion 23-01 on the bill to protect housing against illegal occupation.

Leaflet and factsheets on the rights of Travellers.

Report “Public services in the French West Indies: guaranteeing access to rights”.

Visit by the Defender of Rights to the French West Indies from 18 to 24 March.

06/07 **31/05** **20/04** **30/03**

Opinion 23-05 on the full employment bill.

Framework decision on the situation of pupils without a high school place at the start of the 2022 academic year.

Framework decision recommending the abolition of the fixed penalty notice.

Supplementary report on the 6th review of France on the effectiveness of the International Convention on the Rights of the Child by the UN Committee on the Rights of the Child.

Guide for whistleblowers.

29/09 **05/10** **19/10** **28/10**
30/09 **04/11**

“Place aux droits” event in Trappes.

Launch of a new website, complaint form and navigation tool.

Conference: “Insecurity and poverty: the challenge of access to rights”.

Visit by the Defender of Rights to Mayotte and Reunion Island.

14/12 **06/12** **24/11** **15/11**

Publication of the 16th Barometer on discrimination in employment, focusing on chronic illnesses.

Submission of a report on identity checks by the Court of Auditors to the Defender of Rights.

Opinion 23-07 on the bill to control immigration and improve integration.

Annual report on the rights of the child to leisure, sport and culture.

GENERAL STATISTICS

Change in the number of requests received by the Defender of Rights, 2021-2023

	2021	2022	2023	2022-2023
Complaints, requests for information and guidance	115,397	125,456	137,894	+10%
Head office	29,465	33,273	34,727	+4%
Complaints	26,805	31,164	31,861	+2%
Requests for information and guidance	2,660	2,109	2,866	+36%
Delegates	85,932	92,183	103,167	+12%
Complaints	52,587	58,495	68,116	+16%
Requests for information and guidance	33,345	33,688	35,051	+4%
Calls to telephone lines	84,599	100,416	118,813	+18%

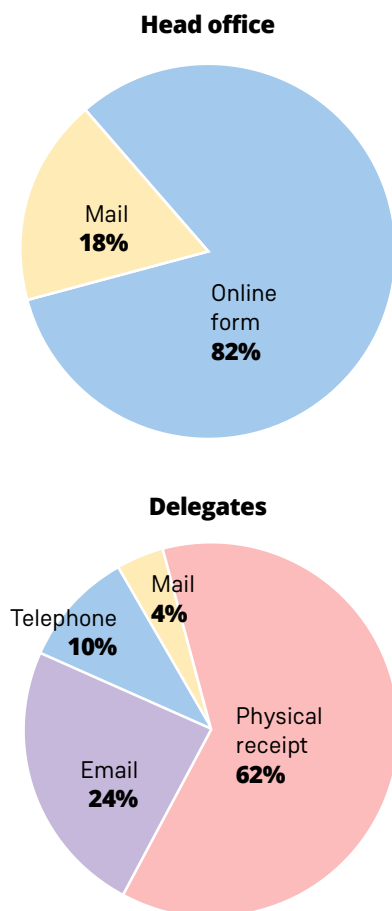
* Includes calls to the general telephone helpline (09 69 39 00 00), the anti-discrimination helpline (39 28) and the dedicated freephone line for prisoners (31 41). Calls with no direct link to the helplines (wrong numbers, internal calls, suppliers, etc.) are not included.

Breakdown of complaints received by the Defender of Rights by area of competence, 2021-2023

	2021	2022	2023	2022-2023
Relations with public services	72,304	82,202	92,400	+12%
Defence of the rights of the child	2,989	3,586	3,910	+9%
Combating discrimination	6,396	6,545	6,703	+2%
Security ethics	2,418	2,455	2,866	+17%
Guidance and protection for whistleblowers	89	134	306	+128%

Note: as a complaint can be multi-qualified, the sum of complaints per jurisdiction is greater than the total number of complaints received.

Scope: All complaints received by the Defender of Rights in 2021 (N = 79,392), 2022 (N = 89,659) and 2023 (N = 99,977).

Methods of approaching the institution, 2023

Scope: all complaints and information and guidance received at headquarters (N = 34,727) and by delegates (N = 103,167) in 2023, excluding calls to telephone lines.

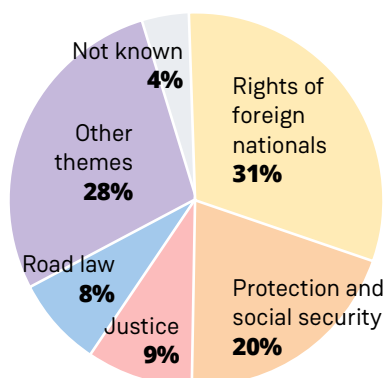
Breakdown of complaints received by the Defender of Rights by subject matter in 2023

Rights of foreign nationals	28%
Protection and social security	19%
Justice	8%
Public services	8%
Road law	8%
Civil service	3%
Security ethics	3%
Taxation	3%
National - Higher education	2%
Private employment	2%
Housing	2%
Private goods and services	2%
Child protection	2%
Environment and urban planning	2%
Health	1%
Network operators	1%
Privacy	1%
Public liberties	0.4%
Regulated profession	0.3%
Not known	4%
Total	100%

Scope: all complaints received by the Defender of Rights in 2023 (N = 99,977). This table breaks down the complaints by subject matter. Complaints relating to discrimination are broken down according to the area of discrimination (private employment, public service, housing, etc.).

PUBLIC SERVICES

Breakdown of complaints received in the area of public services by subject matter, 2023



Scope: all complaints received by the Defender of Rights regarding public services in 2023 (N = 92,400).

Breakdown of complaints received in the area of public services concerning the rights of foreign nationals by sub-theme, 2023

Residence permit	74%
Family reunification	5%
Naturalisation	4%
Civil status of foreign nationals	3%
Visa	2%
Work permit	1%
Other	4%
Not known	7%
Total	100%

Scope: all complaints concerning public services and the rights of foreign nationals received by the Defender of Rights in 2023 (N = 28,243).

Breakdown of complaints received in the area of public services concerning social protection and social security by sub-theme, 2023

Old-age pension	25%
Family benefits	16%
Health insurance	15%
Social assistance	12%
Disability	8%
Unemployment insurance	7%
Other	10%
Not known	7%
Total	100%

Scope: all public service complaints received by the Defender of Rights concerning social protection and social security in 2023 (N = 18,537).

Breakdown of complaints received in the field of public services concerning justice by sub-theme, 2023

Prisoners' rights	56%
Civil status	12%
Nationality	6%
Public justice service	5%
Public prosecutors	4%
Access to the law	3%
Other	9%
Not known	5%
Total	100%

Scope: all complaints concerning public services relating to justice received by the Defender of Rights in 2023 (N = 7,988).

COMBATING DISCRIMINATION

Breakdown of complaints received concerning discrimination by main criteria, 2023

Disability	21%
Origin	13%
Health status	9%
Nationality	5%
Gender	4%
Age	4%
Economic vulnerability	3%
Religious beliefs	3%
Pregnancy	3%
Marital status	3%
Trade union activity	2%
Physical appearance	2%
Gender identity	2%
Place of residence	2%
Political views	2%
Sexual orientation	1%
Other*	3%
Not known	18%
Total	100%

Breakdown of complaints received concerning discrimination by main areas, 2023

Private employment	23%
Public employment	19%
Education, training	13%
Private goods and services	12%
Public services	8%
Housing	5%
Other	14%
Not known	6%
Total	100%

Note: 23% of discrimination complaints received in 2023 concerned discrimination in private employment.

Scope: all complaints concerning discrimination received by the Defender of Rights in 2023 (N = 6,703).

* **Other:** bank account, whistleblower status, surname, sexual orientation, loss of autonomy, genetic characteristics.

Note: 21% of complaints received in 2023 concerning discrimination related to disability.

Scope: all complaints concerning discrimination received by the Defender of Rights in 2023 (N = 6,703).

Breakdown of complaints received concerning discrimination by main criteria and main areas, 2023

	Private employment	Public employment	Education, training	Private goods & services	Public services	Housing	Other or NS	Total
Disability	16%	21%	19%	15%	10%	7%	12%	100%
Origin	33%	15%	8%	14%	6%	7%	17%	100%
Health status	30%	40%	6%	7%	5%	2%	10%	100%
Nationality	20%	5%	5%	16%	7%	5%	42%	100%
Gender	39%	26%	4%	13%	4%	3%	11%	100%
Age	38%	18%	3%	16%	9%	6%	10%	100%
Economic vulnerability	15%	7%	3%	25%	8%	17%	25%	100%

Note: of the complaints received in 2023 concerning discrimination on the grounds of disability, 16% occurred in private employment and 21% in public employment.

RIGHTS OF THE CHILD

Breakdown of complaints received concerning the rights of the child by sub-theme, 2023

Education, early childhood, schooling, after-school care	27%
Protection of childhood and children	18%
Health and disability	15%
Parentage and family justice	8%
Foreign minors	6%
Criminal justice	2%
Adoption and collection of children	1%
Not known	23%
Total	100%

Scope: all complaints concerning the rights of the child received by the Defender of Rights in 2023 (N = 3,910).

SECURITY ETHICS

Breakdown of complaints concerning security ethics by sub-theme, 2023

Violence	22%
Refusal of a complaint	9%
Inappropriate comments	9%
Lack of impartiality	8%
Infringement of procedure	6%
Unlawful citation	4%
Refusal to intervene	2%
Lack of consideration of health status	2%
Other	7%
Not known	31%
Total	100%

Scope: all complaints concerning security ethics received by the Defender of Rights in 2023 (N = 2,866).

Breakdown of complaints received concerning security ethics, by security activity in question, 2023

National Police	47%
National Gendarmerie	20%
Prison Administration	14%
Municipal police	8%
Private security services	2%
Public transport monitoring services	1%
Customs services	1%
Other	1%
Not known	10%
Total	104%

Note: several security activities may be involved, which is why the total is greater than 100%.

Scope: all complaints concerning security ethics received by the Defender of Rights in 2023 (N = 2,866).

For information, staff numbers from the Ministry of the Interior: 151,000 (national police) and 98,000 (gendarmerie).

I• THE FUNDAMENTAL NEED TO GUARANTEE RESPECT FOR RIGHTS AND FREEDOMS IN A STATE GOVERNED BY THE RULE OF LAW

“The Defender of Rights ensures that rights and freedoms are respected by State administrations, local authorities, public establishments and any body entrusted with a public service mission, or in respect of which the *loi organique* [framework law] assigns it powers.”

Art. 71-1 of the Constitution

1• RULE OF LAW, RIGHTS AND FREEDOMS IN 2023

In a State governed by the rule of law, public authorities are subject to the law. The executive, the legislature and the judiciary are bound by rules governing their action and organising their separation¹. The submission of the State to binding rules is guaranteed in particular by the constant possibility of judicial review of public decisions.

These requirements of the rule of law have taken on particular significance in liberal democracies, where the rule of law is now “backed by fundamental rights”². The rule of law requires public authorities to comply with constitutional, European and international standards guaranteeing fundamental rights. Not only must the organs of the State respect the decisions of the courts sanctioning infringements of rights and freedoms, but they must also prevent such infringements by intervening “to detect and eliminate the risks of violations of the Constitution” or international conventions³.

The rule of law, long “unquestioned and indisputable”⁴, is now threatened by the erosion of respect for fundamental rights. The successive states of emergency implemented since 2015 and the adoption of repressive measures to safeguard liberal democracy, the principles of the Republic, national security or public order, have not only restricted rights and freedoms but also fuelled rhetoric openly hostile to the rule of law.

In 2023, fundamental rights were increasingly and wrongly pitted against democracy and the general will, in the erroneous belief that the latter are unduly constrained and silenced by the adherence to certain norms deemed illegitimate.

Criticism of the authority and role of the judge

In particular, this challenge has led to the exploitation of the Constitutional Council, which has been asked to sanction legislative provisions despite their clear unconstitutionality.



In a liberal democracy, this practice creates conflict between elected institutions and the checks and balances responsible for controlling them.

The undermining of the rule of law can also be seen in the increasing failure to comply with court rulings, including those issued by the highest courts, whether the Council of State or the European Court of Human Rights (ECHR). By disregarding the right to a judge and, in particular, the right to enforcement of court decisions, the public authorities are disregarding the rule of law and undermining the authority of the courts. Such a practice undermines the principles of the rule of law⁵ and the separation of powers⁶, and in the longer term serves to erode “the stability of the judicial system and public confidence in the justice system”⁷.

In two decisions handed down in 2022 and 2023 (*C.C. vs. France, M.K. and others vs. France*), in which the Defender of Rights intervened, the ECHR ruled on the refusal of the authorities to enforce court decisions ordering asylum seekers to have access to “an adequate standard of living that guarantees [their] subsistence and protects [their] physical and mental health”.

Similarly, for many years now, the widespread failure to enforce court rulings on enforceable

housing rights (Dalo) or access to prefectures for foreign nationals has become commonplace in certain regions. For the public authorities, this means disregarding court rulings banning illegal practices.

Lastly, in Mayotte, despite the case law of the Council of State, a ruling by the ECHR in 2020, *Moustahi vs. France*, and decisions by the Committee of Ministers of the Council of Europe, the practice of arbitrarily assigning children to third parties with a view to their placement in administrative detention and removal from the country continues, and the right to an effective remedy is still not guaranteed. Again regarding Mayotte, the Defender of Rights intervened in a procedure in which it emerged that the Prefect had decided to evacuate and partially or completely destroy residential buildings despite a court order suspending the measure (decision no. 2023-023).

Increasing restrictions on freedom of expression, demonstration and association

The risks for the rule of law also result from the weakening of the freedoms that allow the expression in the public space of the plurality of opinions that permeate society and, in particular, criticism of decisions taken by public authorities. These freedoms make it possible to challenge infringements of rights in the public space and call the State to renounce them. In other words, freedom of expression, assembly, demonstration and association are all part of a “mutual guarantee”⁸ of fundamental rights and the subjection of the State to such rights⁹. Consequently, any unjustified or discriminatory restriction on these freedoms of expression or demonstration contributes more broadly to the general weakening of rights and freedoms.

However, the critical role of civil society, guaranteed by these freedoms, has been challenged by public officials. For example, certain associations lodging appeals against decisions by the public authorities have been denounced as threatening the security of the State (declaration on freedom of association). Such statements, even if they are not actually followed by sanctions, can have the effect of intimidating the associations targeted. This practice cannot be separated from the adoption of the law reinforcing respect for the principles of the Republic, which made the award of subsidies conditional on an association’s signing a “contract of republican commitment”, which authorises very thorough State control over the actions of associations¹⁰ likely to result in severe sanctions. This possibility of sanctions, however hypothetical, may be enough to act as a deterrent to associations.

Such a dissuasive effect could also result from the introduction into the law, in 2023, of the offence of propaganda or advertising in favour of methods designed to facilitate or incite occupation without right or title (Opinion 23-01). Although the Constitutional

Council specified that this offence could not be used to punish “*an association providing [...] aid and assistance to people in situations of insecurity*” that disseminates a message that does not directly or indirectly encourage occupation without right or title¹¹, the existence of this offence may be enough to create fear within the voluntary sector by instilling doubt about the legality of the appeals they make in the public space to denounce, for example, public policies to combat illegal occupation of housing (decision no. 2023-157).

These threats also affect the freedom to demonstrate. Protected by the Constitution and by the Convention for the Protection of Human Rights and Fundamental Freedoms, the freedom to demonstrate is unique in that it is an occupation of public space and the street that temporarily subverts its use. For this reason, all national and European courts have accepted that it involves a form of disorder. The authorities must allow collective expression while maintaining public order.

However, since the demonstrations against the law on labour, the modernisation of labour relations and the securing of career paths (known as the “Labour Law”) in 2016 and again during the demonstrations against pension reform in the spring of 2023 (statement on demonstrations), it appears that while protecting the freedom to demonstrate is the primary objective of policing, the measures taken, particularly in the context of the national law enforcement scheme (SNMO), are often insufficient to ensure the physical safety of demonstrators. For example, the Defender of Rights received nearly 170 complaints questioning the ethical conduct of the security forces in maintaining order during the recent demonstrations against the pension reform bill. These repeated referrals, the investigation of which is limited by the difficulties in identifying police officers during public order operations (decision no. 2023-165), may dissuade people from attending demonstrations and thus restrict the possibility of using demonstrations as a means of challenging public decisions¹².

Challenges to the scope of fundamental rights guaranteeing dignified living conditions

Finally, the undermining of fundamental rights and freedoms also results from challenges to the scope of certain rights, particularly those guaranteeing dignified living conditions. In particular, in addition to the prohibition on inhuman or degrading treatment, which requires the State to prevent any situation of extreme material deprivation, paragraph 11 of the Preamble to the Constitution of 27 October 1946 recognises the right to obtain from the community suitable means of existence. This fundamental right (decision no. 2023-253), which is central to a social republic within the meaning of Article ¹ of the Constitution of 4 October 1958, requires the implementation of social assistance policies for those who, due to their age, physical or mental condition or economic situation, are unable to work.

While a fundamental right may in principle only be restricted in exceptional cases and only for legitimate and strictly proportionate reasons, these rights guaranteeing dignified living conditions are increasingly subject to conditions¹³. Neither acts of charity nor rewards for individual merit, these fundamental rights, which are rooted in European legal traditions, have recently been subject to restrictions that have prevented some people in situations of insecurity from accessing their rights and suffering the consequences in terms of housing, education, work, health and culture.

This was the case when, in October 2023, a prefectoral decree imposed an unprecedented one-month ban on all food distribution in a particular area of Paris, restricting access to essential food supplies for hundreds of people in vulnerable situations, particularly exiled persons. This order was suspended by the interim relief judge. The Defender of Rights intervened in the proceedings. Similarly, a mayor refused to provide access to water in a camp for exiled

persons, including by refusing to enforce an order of the Council of State, issued pursuant to observations made by the Defender of Rights (decision no. 2023-141). The situation could only be remedied by bringing the case before the courts again.

In addition to these administrative police measures, Parliament has passed several laws that considerably restrict the fundamental rights of people living in situations of insecurity. For example, the law to protect housing against illegal occupation has extended the limitations on the rights of occupiers without right or title. In the name of protecting property rights, these provisions could allow evictions that infringe the rights of occupants to privacy and freedom from inhuman or degrading treatment (Opinion 23-01).

Similarly, this time in the name of reintegrating the unemployed into society and the labour market, the legislator made entitlement to the earned income supplement (RSA) conditional on a minimum of fifteen hours' work per week, which could deprive the people concerned of the right to obtain a decent standard of living from the community (Opinion 23-05).

Finally, Parliament has questioned the unconditional nature of emergency accommodation by excluding from the scheme certain foreign nationals who are subject to an obligation to leave French territory or a deportation order. Legalising practices that have become commonplace in many areas due to the saturation of emergency accommodation facilities, this measure resulted in a blurring of the lines between, on the one hand, the exercise of a fundamental right to shelter and, on the other hand, the fight against illegal immigration. Censured for procedural reasons by the Constitutional Council¹⁴, such a provision could only amplify the phenomenon of encampments and squats and expose foreign nationals to undignified living conditions by depriving them of the protection afforded by the right not to be subjected to inhuman or degrading treatment (Opinion 23-07).

These measures cannot be separated from the persistent discrimination suffered by people in situations of insecurity. Although the study on the criterion of particular economic vulnerability (PVE), supported by the Defender of Rights and published in February 2023, highlighted the limited legal use of this criterion, complaints denouncing discrimination based on this criterion have been received by the institution. This was particularly the case in the area of access to healthcare, where major problems already exist, such as medical desertification, the critical state of public hospitals, and the abandonment of healthcare among low-income groups. The discriminatory denial of healthcare to people benefiting from supplementary health insurance continues to exist (decisions no. 2023-155 and no. 2023-168). This type of discrimination also exists in access to schooling, linked to the insecure living conditions of the child and his or her family (living in a welfare hostel - decision no. 2023-068).

A liberal democracy can only endure if it is based on the political freedom of its citizens, the submission of the State to the rule of law and the protection of fundamental rights. These three principles are inseparable, and any weakening of one will have an impact on the others. The institutions responsible for ensuring respect for rights and freedoms must therefore pay particular attention to these phenomena of non-enforcement of court rulings, restrictions on public freedoms or challenges to the value of certain fundamental rights. In this way, they ensure that the rule of law is protected against any risk of erosion.

2- PROTECTING THE RIGHTS OF VULNERABLE PEOPLE

The defence of rights calls for special attention to be paid to the most vulnerable people, who encounter greater difficulties in ensuring that their rights are respected.

Opinion of the Defender of Rights on the bill “for full employment”

In her Opinion 23-05 of 6 July 2023, the Defender of Rights gave her opinion on the bill “for full employment”. She made several observations.

The measures aimed at improving access to employment for people with disabilities by adapting ordinary law are positive. However, such advances will only be effective if they are accompanied by the human, technical and financial resources needed to provide efficient, high-quality support for disabled jobseekers.

Against a backdrop of constant change in occupations and the labour market, the Defender of Rights also found it regrettable that the bill did not contain any provisions designed to promote access to regular training programmes for people with disabilities.

The extension to workers with disabilities in establishments and services providing assistance through work (ESAT) of new individual and collective rights attached to the status of employee constitutes real progress. What is regrettable, however, is the absence of provisions designed to define objective criteria for determining the direct compensation paid to disabled workers.

With regard to the amendments to this text concerning the earned income supplement (RSA), the Defender of Rights reiterated that social and professional integration obligations should not be conditions for access to the RSA, but rather methods for implementing the right to support.

In addition, the risk of inadequate social and professional support for jobseekers or non-compliance with the “reste à vivre” (residual



income after payment of fixed monthly expenses) and procedural guarantees could lead to disproportionate or even discriminatory infringements of the rights and freedoms of RSA recipients.

For example, the automatic inclusion of people who are not jobseekers on the lists of jobseekers as provided for in the bill is likely to undermine the coordination of inclusion and employment policy by impairing the quality of the indicators used to monitor the employment situation in France.

With regard to the introduction of a system for suspending payment of the RSA, the Defender of Rights considered it essential that the legislator prohibit any measure that deprives beneficiaries of their residual income or causes a break in their reintegration process. She also called for the law to limit the duration and amount of the initial sanctions.

The Defender of Rights noted that, without sufficient resources for the services responsible for supporting people, the 15-hour activity requirement could have a harmful effect on the rights of jobseekers by subjecting them to standardised management of their individual circumstances.

The institution also submitted observations to the Constitutional Council.

Opinion of the Defender of Rights on the bill on "protecting housing against illegal occupation"

In her *Opinion 23-01* of 23 January 2023, the Defender of Rights expressed her position on the measures contained in the bill of 2 December 2022, *"aimed at increasing the penalties for occupancy without right or title and facilitating evictions while strengthening property rights"*.

Occupation without right or title remains a small-scale phenomenon that does not require an increase in penalties. These infringements of property rights can also be compensated under civil liability law. The bill of 2 December 2022 did not guarantee the necessary balance between the rights of illegal occupants and those of property owners. Eviction must be regulated in such a way as to limit infringements of the right to privacy and dignity of the occupants. The public authorities must be able to guarantee accommodation or housing for those evicted.

Any policy to combat illegal occupation must preserve the rights of occupants while reconciling them with the general interest and the rights of others.

Against a backdrop of housing and accommodation shortages, the institution found that the people concerned were for the most part eligible for housing or accommodation schemes for which the public authorities were responsible, but which were insufficiently implemented.

A question for...

RATIBA ABOUFARES

Legal Officer in the Public Services division

What was the background to the publication of the opinion on the bill to protect housing against illegal occupation?

During my nine years with the Defender of Rights, I have mainly worked on complaints relating to access to social housing and accommodation. This year, I contributed, alongside two colleagues, to the drafting of Opinion 23-01 of the Defender of Rights on the bill to protect housing against illegal occupation, and subsequently of decision no. 2023-157 on observations before the Constitutional Council. This work follows on from numerous publications by the Defender of Rights, to which I have contributed, warning of the infringements of the rights of occupants of squats and slums. We were determined to make useful contributions, even though the work involved analysing complex issues and had to be delivered to a very tight deadline. In particular, we had to take into account the variety of situations behind the term “squat” used in public debate. The many complaints we deal with every year show that these people very often fall within the scope of saturated housing or accommodation systems that the public authorities are responsible for guaranteeing. As for the widespread shortage in these sectors, which the Defender of Rights has been denouncing for some time, little has been said about it in the debates.

Now that the law has been passed, it is our duty to make sure that those who find themselves subject to these provisions are able to effectively assert their rights.

The Defender of Rights stresses the urgent need to guarantee access to rights to combat poverty in France

At a symposium organised on 19 October 2023, the Defender of Rights brought together government officials, heads of social welfare organisations, researchers, associations and people directly affected by poverty to discuss three themes: housing, health and social rights.

The Defender of Rights took the opportunity to reiterate the importance of access to rights in the fight against poverty, as well as the duty of solidarity towards people in situations of insecurity. The presentation of data from studies, personal accounts, referrals to the institution and the findings of civil society groups served to illustrate the practical difficulties encountered by people living in situations of insecurity in accessing their rights.

In France, around 10 million people were living below the poverty line in 2021. Beyond the financial dimension, poverty affects all aspects of a person's life, making it difficult for them to access their rights: the right to housing, work, healthcare, education and culture.

The Defender of Rights recalled the essential principle enshrined in the Preamble to the 1946 Constitution, according to which “*all people who, by virtue of their age, physical or mental condition, or economic situation, are incapable of working, shall have to the right to receive suitable means of existence*”. This right is the consequence of the duty of solidarity incumbent on the national community as a whole.

A question for...

JULIE VOLDOIRE

Policy Officer, Department for the Promotion of Equality and Access to Rights

Why an event dedicated to poverty and precarity?

Access to rights is a key factor in preventing and combating poverty. As well as sharing our observations, we felt it was important to bring together all the players involved - people living in poverty, the professionals and associations that support them, institutional leaders and researchers - to work together to identify levers for action and suggest avenues for improvement.

For the Defender of Rights, this involves reiterating an essential principle: concern for the effectiveness of the rights of the most vulnerable members of the French population means addressing issues that potentially affect the rights of everyone.

Focusing on the lack of access and the loss of rights of people living in poverty and insecurity enables us to identify difficulties and reveal shortcomings, but also to highlight solutions that we might not otherwise have identified so easily.

It was also an opportunity to show that there is value in talking about - and encouraging others to talk about - the obstacles created by poverty and insecurity in accessing rights, not in an abstract way, but in a way that is contextualised and given concrete expression by the people themselves: I believe that bringing these stories to life will have helped to raise awareness among those responsible for them of what is happening at service counters and in exchanges of letters and emails...

From this point of view, the event was a success.

Creation of the joint committee on insecurity

As an extension of the institution's actions relating to violations of the rights of people in situations of insecurity, the Defender of Rights has set up a new joint committee focusing on insecurity.

As a forum for consultation and discussion with representatives of civil society, the joint committees provide a means for the institution to identify emerging issues on specific topics within its areas of competence (disability, gender equality, LGBTI rights, etc.), to report on practices in the field, and to support and publicise its actions.

The new committee is made up of 12 associations working in the field on a daily basis (see attached list of committee members).

II• THE INSTITUTION'S MAIN RECOMMENDATIONS IN 2023

Every year, the Defender of Rights is contacted in situations where claimants have seen their rights ignored. When mediation fails to resolve the situation and the institution deems it appropriate to intervene by making recommendations or observations before the courts when the matter is referred to them, it submits its analysis to the adversarial debate. In addition to the recommendations made to resolve individual situations, the Defender of Rights issues more general recommendations in her decisions, reports and opinions, aimed at preventing or resolving equivalent situations that could affect the greatest number of people. The annual report highlights a selection of the main recommendations issued in 2023.

1• RAISING AWARENESS OF THE RULE OF LAW IN OVERSEAS FRANCE

Report on public services in the French West Indies: guaranteeing access to rights

A delegation from the institution, led by George Pau-Langevin and Daniel Agacinski, tasked with examining existing obstacles to access to rights in the overseas territories, undertook a mission to Guadeloupe and Martinique in autumn 2022. The aim was to meet with local stakeholders and gather their expertise on the long-term challenges facing the overseas regions, such as demographic decline, ecological transition, climate change, social unrest, increasing violence and crime.

The report resulting from these discussions and analyses, entitled “Public services in the French West Indies: guaranteeing access to rights” and dated March 2023, examines various aspects of the living conditions and challenges facing the population in these regions. In particular, it highlights the difficulties encountered in accessing rights.

It highlights numerous shortcomings in public services, with significant consequences for the daily lives of local residents. The report places particular emphasis on problems relating to access to drinking water, a healthy environment, property rights and the challenges faced in the field of education.

With regard to access to water, the report recommends urgent measures, such as speeding up the renewal of water meters, renovating water and sewerage networks, and waiving outstanding debts on bills issued before 2021.

It also highlights the problems in the education sector, pointing to the loss of school days, the inadequacy of school catering services, school drop-out rates, illiteracy and the difficulties encountered by pupils with disabilities.

At the same time, the report addresses crucial issues relating to mobility, work, access to healthcare, the defence of rights, and the challenges posed by an ageing population. It highlights shortcomings in public transport provision, limited regional continuity, difficulties in accessing training, and the exodus of young graduates. Health concerns include difficulties in accessing

healthcare, failure to seek treatment, and care for vulnerable or disabled individuals.

The report outlines the many difficulties faced by the inhabitants of the French West Indies, both in accessing public services and in their daily lives, and makes concrete recommendations to enhance the effectiveness of users' rights.

To meet the specific challenges faced by these communities, a fundamental change in the way public services are delivered is recommended. Otherwise, the persistent inequality in access to rights and public services, compared with the situation in mainland France, will inevitably exacerbate the already high level of mistrust in institutions in overseas France.

A question for...

MARIAM CHADLI

**Senior Project Advisor,
General Secretariat**

What is special about the report "Public services in the French West Indies: guaranteeing access to rights"?

Overall, the institution receives few referrals from the French West Indies. This report is based on these complaints and on meetings. Numerous difficulties were also brought to our attention via the regional network and the press. The Defender of Rights wanted to set up a mission to report on the infringements of rights suffered by local residents. During an initial visit, we met a large number of people, including administrative and association leaders, magistrates and members of civil society. We had worked in advance with the head of the regional division and the delegates in the French West Indies to identify the people we wanted to meet. It was after this trip that I worked on the report.

The aim was to report on the difficulties that the inhabitants of the French West Indies have to overcome on a daily basis, and to alert the public authorities to the many shortcomings in the operation of public services, including access to water, transport, schools and healthcare. This report reveals a clear breakdown in trust between users and the institutions that are supposed to defend their rights.

Stepping up action for fundamental rights in Mayotte

In view of the risks involved in the interministerial operation to combat illegal immigration, substandard housing and crime, the Defender of Rights recalled that the need to guarantee public order and security could not, under any circumstances, authorise infringements of people's fundamental rights and freedoms. In particular, legal observations were made regarding the evacuation and destruction of slums. The Defender of Rights was also concerned about the conditions under which foreign nationals in an irregular situation were deported and the restrictions on their fundamental rights. As a result, she announced that she would be stepping up her action in Mayotte to ensure that rights and freedoms are respected, and a delegation of legal experts from the institution visited the island in May 2023.

In the context of this complex situation, the Defender of Rights has called for the necessary balance to be maintained between security imperatives and the guarantees that must be provided to ensure respect for people's fundamental rights and freedoms.



A question for...

MARIE GESTER

Lawyer in the Basic Rights of Foreign Nationals division

Why a delegation of lawyers in Mayotte?

Alerted by the inter-ministerial operation organised by the Minister of the Interior with the aim of combating illegal immigration, substandard housing and crime in Mayotte, a delegation of lawyers from the institution visited Mayotte in May 2023. Our aim was to draw up reports on respect for people's rights and freedoms in a number of the institution's areas of responsibility, in conjunction with the head of the regional division and our network of delegates already on the ground. We visited slums, an accommodation centre and detention centres for foreign nationals. We met with the police and gendarmerie, the prefecture, the judicial and administrative courts, representatives from the Mayotte central hospital and Mamoudzou town council, as well as associations and representatives of civil society.

Numerous observations were made, leading to general directives that are currently being implemented. Visiting Mayotte was essential because, in addition to the alarming observations we were able to make about the people living there, it gave us a better understanding of the role and operation of the various local players. As a lawyer with the Defender of Rights, it was a particularly enriching and necessary experience, working with several of the institution's departments to gain a better understanding of the situation and, we hope, to be able to contribute to strengthening the effectiveness of rights in Mayotte.

Visit by the Defender of Rights to Mayotte and Reunion Island

In Mayotte, rights violations have been amplified by a new crisis, the water crisis. Accompanied by her deputy, the Children's Defender, the Secretary General and the Deputy Director of Public Affairs, the Defender of Rights met with all the government departments in Mamoudzou. Over the course of four days, the delegation was also able to meet with housing and healthcare professionals, associations

and citizens' groups. There are numerous persistent difficulties regarding effective access to rights. Access to public services is unequal, particularly in terms of health, social services and housing. In addition, the situation regarding the rights of the child is worrying, with many children not attending school. Despite various responses from the public authorities to tackle the water crisis, the population has continued to face unacceptable consequences in their daily lives due to the numerous water cuts. The institution has received complaints about the way in which the water shortage has been managed, and these are currently being investigated.

On Reunion Island, referrals to the institution relate in particular to difficulties associated with the remoteness of public services, the digitisation of administrative procedures and the existence of discrimination, particularly on the grounds of disability, state of health or origin. On site, the delegation met with government departments to discuss these difficulties, which are exacerbated by geographical isolation and the issue of housing. The Defender of Rights also had the opportunity to take part in the operational committee for the fight against racism, anti-Semitism and anti-LGBT hatred, and to speak on the fight against discrimination at a conference held at the University of Reunion on the theme "Defending rights: a public service mission".

Lastly, during the visit of Éric Deleamar, Deputy to the Defender of Rights and Children's Defender, to Reunion and Mayotte, two conferences were organised for students at the Regional Institute of Social Work (IRTS) and social workers on the subject of the rights of the child, the best interests of the child and the work of the Defender of Rights in this area. Over 300 people attended the conferences, which were held on 30 October in Mayotte and 2 November 2023 in Reunion. More broadly, this initiative reflects the desire of the Defender of Rights to be more widely known among professionals in the social sector, in order to get closer to the people who have the most difficulty in accessing their rights.

A question for...

DIDIER LEFÈVRE

Head of Regional Division Reunion - Mayotte

Which issues were on the agenda when the Defender of Rights travelled to Mayotte and Reunion?

Following the visit of an initial delegation of legal officers in May, the Defender of Rights travelled to Mayotte at the end of October 2023 at a time of water crisis and in the wake of the inter-ministerial operation to combat illegal immigration, substandard housing and crime. One of the challenges was to remind all the local players of our remit, the role of the delegates, the referral procedures, and so on. We met with government departments and associations, as well as families. It was important to address a range of issues - access to public services, discrimination, the rights of the child, especially schooling, and to draw attention to the serious and persistent difficulties in accessing rights.

In Reunion, the Defender of Rights took part in an operational committee to combat racism, anti-Semitism and anti-LGBT hatred (CORAH) under the aegis of the prefect, and attended a conference at the university attended by nearly 300 public officials, students and associations. Other meetings were held by her deputy, the Children's Defender. The visit raised the profile of the Defender of Rights locally, and helped to resolve certain ongoing situations with local players and partners. It was also a positive experience for the local network, and helped to mobilise the delegates who work alongside local residents every week in very challenging conditions.

Focus

A “HIKE FOR RIGHTS” ON REUNION ISLAND

On the initiative of Reunion’s departmental council for access to rights (CDAD), the “Randonnées du droit” (hike for rights) go and meet the inhabitants of the isolated villages of the Cirque of Mafate to inform them of their rights and help them with their administrative procedures.

As part of this initiative, staff from the family allowance fund (CAF), a magistrate, a police officer, a lawyer, a notary and the head of the regional branch of the Defender of Rights visited the village of Îlet aux Orangers for two days in November 2022 to talk to the people of Mafate about their rights.

Observations of the institution regarding administrative detention centres in Mayotte

The Defender of Rights has been contacted by several associations regarding the late publication of prefectural decrees creating administrative detention centres (LRA) for extremely short periods. For example, between 17 March and 19 April 2023, forty-four orders creating LRAs were recorded, forty of which were published after the LRA concerned had closed.

The associations making the complaint lodged an application for interim relief to challenge this practice. In this context, the Defender of Rights made observations emphasising that it constituted a serious and manifest breach of the right to an effective remedy. The publication of administrative acts allows the persons concerned to challenge them: acts creating LRAs published after their closure, on the other hand, cannot be subject to any judicial review. In addition, the late publication of the orders placed foreign nationals in detention at facilities that had no legal existence at the time they were set up. All of the administrative detention measures in these LRAs could therefore be analysed

as arbitrary deprivations of liberty. Following these observations, the interim relief judge ordered the Prefect to put an end to these practices.

Monitoring implementation of the judgment of the European Court of Human Rights on the detention and deportation of children in Mayotte

In the context of monitoring the implementation of the judgment of 25 June 2020 of the ECHR, *Moustahi vs. France*, by the French authorities, the Defender of Rights intervened a second time, in April 2023, with the Department for the Execution of Judgments of the Council of Europe ([decision no. 2023-055](#)).

In this judgment of 25 June 2020, the Strasbourg Court found a violation of several articles of the European Convention on Human Rights, due to the administrative detention of two children, aged 3 and 5, their expulsion from Mayotte to the Comoros and the conditions of their return, after their arbitrary attachment to a third adult.

In its decision no. 2023-055 - Additional Observations of the Defender of Rights on the implementation of the *Moustahi vs. France* judgment of 12 April 2023, the Defender of Rights noted once again that these events were not isolated and that they were persistent practices. This is particularly true of the arbitrary attachment of minors to third parties who have no ties with them and/or the modification of their date of birth for the purposes of administrative detention and deportation, as well as the lack of an effective remedy for all persons subject to deportation. During a visit to France, the Department for the Execution of Judgments met with the Defender of Rights to discuss several cases, including this one. Taking into account the observations of the Defender of Rights, on 7 June 2023, the Committee of Ministers of the Council of Europe [decided](#) to re-examine the *Moustahi* case in June 2024, due to the inadequacy of the measures taken to date by the authorities concerning the protection of unaccompanied minors, the aforementioned practices, which

are contrary to the case law of the Court and the Council of State, as well as the lack of an effective domestic remedy.

2• SAFEGUARDING THE BEST INTERESTS OF EVERY CHILD

The annual report on the rights of the child: “Children’s right to leisure, sport and culture”

To mark the publication of her annual report on the rights of the child, the Defender of Rights pointed out that the right to leisure, sport and culture is enshrined in the International Convention on the Rights of the Child and in domestic law. She emphasised the importance of this right for the physical and mental development of children, but also the many obstacles that can prevent its implementation.

The consultation of children carried out by the Defender of Rights, which drew on the participation of numerous partners and provided input for this report, revealed major obstacles to the effectiveness of this right, in particular for children in situations of insecurity, disability, child protection or in conflict with the law. The report warns of regional inequalities and recommends activities tailored to each child to safeguard his or her best interests. It highlights inequalities in access to rest and leisure, emphasising the crucial role of schools in providing all children with equal access to sport, art and culture, and calling for activities tailored to take account of the wide range of circumstances faced by children.

An event organised on 15 November 2023 presented the annual report on the rights of the child and the results of the national consultation of children carried out by the Defender of Rights.

It brought together children, political and administrative leaders, associations and professionals to discuss the obstacles to access to leisure, sport and culture, highlighting regional inequalities, gender stereotypes and the challenges facing children in situations of insecurity or institutional care.

The exhibition associated with the event presented the messages of the 3,800 children who took part in the consultation, using various forms of expression. The observations and proposals put forward by the children fuelled enriching debates aimed at advancing access to rights in public policies, as the right to leisure, sport and culture is essential for the development and well-being of children.

The right of children to sport, leisure and culture must be translated into concrete action in all regions, and local authorities have a key role to play in ensuring the effective application of this right. For this reason, the Defender of Rights made this a central theme of her speech at the Congress of the Association of French Mayors on 21 November 2023.

Subsequently, all regional offices of the Defender of Rights raised awareness of this issue with their stakeholders. This was particularly the case in the Provence-Alpes-Côte-d’Azur region: in November, the report was presented as part of a webinar organised by the Regional Olympic and Sports Committee, and on 6 December 2023, the Defender of Rights also visited the Air Bel residents’ centre in the eastern suburbs of Marseilles, in a new clinic dedicated to the rights of the child. Her visit was also an opportunity to raise awareness among dozens of children from this disadvantaged neighbourhood, which is particularly at risk of insecurity, of their rights, particularly the right to leisure and culture, through a number of artistic activities and an exhibition.



A question for...

ÉRIC DELEMAR Children's Defender

Why did you choose the right to leisure, sport and culture for the annual report on the rights of the child in 2023?

Our annual report entitled “Children’s right to leisure, sport and culture” reveals the global challenge of removing obstacles to enable children to develop their creativity and talent, as set out in Article 31 of the International Convention on the Rights of the Child: the right of every child to engage in play and recreational activities appropriate to his or her age and to participate freely in cultural life and the arts.

Although enshrined in law, the right to rest and leisure is little known and is often regarded as an ancillary aspect of children’s lives, even though it is a natural and spontaneous need rooted in childhood.

Rest and sleep, play and movement, discovery of the outside world and of oneself are all integral aspects of development.

From the very first moments of their lives, children learn through play because it gives them pleasure, and they use play as a means of exploration.

Based on consultation with 3,800 children, the expertise of the numerous stakeholders involved and knowledge of the institution through the complaints it receives, this report highlights all the restrictions that hinder effective access for all children to a variety of leisure activities that meet their needs and aspirations, under conditions of equality. Children not only provide input for our report, but also emphasise that their opinions and proposals are an integral part of the work carried out by the Defender of Rights. In this way, we are setting an example of effective participation by children in the development of public policies that affect them.

Our 30 recommendations are aimed at creating a better environment for children, so that they can take full ownership of this right.

Pupils without a high school place at the start of the 2022 academic year

At the start of the new academic year, the Defender of Rights took it upon herself to investigate the situation of a number of pupils who had encountered serious difficulties in continuing their high school education due to a lack of places, particularly in vocational and technological courses, even though they had been admitted to this level of education.

These students have either missed out on a place or had their placement delayed for varying lengths of time, and have been forced to adapt to issues relating to resources and organisation within the school system.

These recurring situations, which create a risk of pupils dropping out of school, undermine the best interests of the children concerned, their right to education and to continue their schooling in peace, as well as the principles of equality and adaptability of the public education service.

The investigation carried out by the institution revealed that 18,000 pupils were affected by this issue at the start of the 2022 academic year (the number was even higher the a year later, with 28,000 unassigned pupils on 30 August 2023).

The Defender of Rights recommended a series of measures, such as providing the necessary financial, material and human resources in advance for all courses of study, and adjusting the timetable for placements so that they are known by July at the latest. Other recommendations include setting up delegate clinics within education boards to respond quickly to urgent requests during the school holidays, and guaranteeing full-time reception and educational support for pupils without a place, while allowing them to catch up once they have been assigned.

Lastly, the Defender of Rights stressed the need to provide the necessary resources to enable students who have failed the baccalaureate to repeat the year at the high school at which they were initially enrolled.

A question for...

JEAN-PHILIPPE CRONTIRAS

Coordinating lawyer in the Public Services division (in 2023)

How did you work on the framework decision on the situation of pupils without a high school place at the start of the 2022 academic year?

Our institution regularly receives complaints from pupils who do not have a high school place at the start of the new school year. In September 2022, given the worsening situation, the Defender of Rights decided to issue a framework decision on this matter. When drafting the decision, we relied in particular on information that we had requested from the Ministry of National Education and Youth.

Our analyses revealed a growing number of pupils without a place, an increase of between 30% and 40% on the previous year. And yet, in accordance with the French Education Code, which makes education a top national priority, the public education service must be designed and organised around its users, the pupils. This decision therefore goes to the heart of how the public service operates and the best interests of the child. Together with the Defence of the Rights of the Child division, we have worked on a number of concrete recommendations. Since the publication of the report, we have been keeping a close eye on the measures implemented by the government, from the start of the 2023 academic year and with a view to the start of the 2024 academic year.

Breach of equality in the Affelnet placement system

The Defender of Rights examined the Affelnet placement system, which plays a major role in determining the educational paths taken by pupils at the end of middle school.

In particular, the institution was contacted regarding a situation in one education board, which had not provided any evidence to show that a pupil's allocation decision had not been entirely automated, in breach of the Code on the Relations between the Public and the Administration, the legal system applicable to the protection of personal data and the amended law of 6 January 1978 on data processing, data files and individual liberties. In this case, the pupil's academic results had in fact not been taken into account in the process, and this error had not been corrected despite the various warnings sent to the national education authorities.

In decision no. 2023-140 of 26 June 2023, the Defender of Rights therefore made recommendations to the Minister of National Education and Youth and to the education board concerned, in particular to provide for a mechanism to verify the accuracy of the data processed by Affelnet and to rectify errors brought to the attention of the national education authorities, and to clarify the responsibilities for processing personal data on Affelnet, between schools and education boards.

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

The assessment delivered by the Défenseure des droits and her deputy, the Children's Defender, on France's implementation of the International Convention on the Rights of the Child (CRC) is mixed. While public policy changes aimed at taking greater account of the rights of the child have led to real progress in many areas of the Convention, the report,

dated 15 December 2022, highlights the persistent difficulties in accessing rights faced by many children, particularly the most vulnerable: children in situations of insecurity, children with disabilities, migrant children, and so on. The report also looks at the consequences of the Covid-19 pandemic, which contributed in particular to reinforcing existing social and regional inequalities, discrimination and violence against children.

In her report, the Defender of Rights also drew the Committee's attention to the alarming state of child protection in France, inequalities in access to education, the situation of children living in slum areas, infringements of the rights of the child in Mayotte and child mental health.

The Committee's concluding observations, delivered on 3 June 2023, echo the concerns expressed by the Defender of Rights. Among its many recommendations, the Committee identifies six issues on which it urges France to adopt urgent measures:

- take adequate measures to protect children against all forms of violence;
- ensure that court rulings on child protection are applied immediately to avoid the irreversible impact of abuse on children;
- put an end to the detention of foreign children in waiting areas and administrative detention centres;
- eliminate child poverty. In this respect, the Committee is particularly concerned about the living conditions of children throughout France, especially in the overseas territories and Mayotte;
- adopt measures to promote and ensure the inclusion of children with disabilities in all areas of life and improving the accessibility of inclusive schools.

The Defender of Rights believes that much remains to be done to effectively guarantee all the fundamental rights enshrined in the International Convention on the Rights of the Child.

The State must take the necessary measures and make the best interests of the child a primary consideration in all public policies, so that children are truly considered as having rights and as being active members of society.

The rights of the child and climate change

The Association of Francophone Ombudsmen and Mediators (AOMF), for which the Defender of Rights acts as secretary general, has promoted General Comment 26 (GC 26) among its members. This general comment aims to demonstrate the link between the International Convention on the Rights of the Child, environmental protection and the fight against climate change. Current scientific knowledge confirms the impact of human activity on the environment, as well as its impact on the rights of the child.

The main rights affected are:

- the right to equality: some regions are harder hit by climate change;
- the right to life, survival and development, as well as the right to health: children's health is affected and new diseases are appearing;
- the right to be heard: children want their voices to be heard, and to express their point of view by taking action on climate change;
- the right to information: children need access to the information and documents they need to take action;
- the right to be protected against structural violence against children: poverty, economic and social inequalities, armed conflicts, and so on.

The UN Committee calls on States to take a wide range of preventive and remedial action, improve air quality, provide sufficient clean water, prevent pollution, and carry out impact assessments of policies and their consequences for the rights of the child.

In this context, the AOMF Committee for the Rights of the Child has implemented two initiatives: the organisation of a webinar for its members in which a member of the UN Committee presented General Comment 26 (GC 26), and the drafting of a template letter to enable members to disseminate and raise awareness of GC 26 among governments and national partners.

Ongoing concerns regarding the handling of situations of danger

The Defender of Rights has warned about the state of child protection for many years.

In its ruling in *Association Innocence en danger and Association Enfance et Partage vs. France* of 4 June 2020, the European Court of Human Rights (ECHR) concluded that there had been a violation of Article 3 of the Convention for the Protection of Human Rights, due to the failure of the child protection system to protect an 8-year-old child in 2009.

Following on from the report on the mission entrusted by the Defender of Rights to Mr Grevot in 2014, and although changes have been made since the dramatic events concerning this child, the Defender of Rights today notes shortcomings that led her to send observations (decision no. 2023-025) to the Committee of Ministers of the Council of Europe in charge of monitoring France's execution of the ECHR ruling. In particular, she criticised the inconsistent and unsatisfactory application of the legal framework, and even the gaps in it, expressing concern about:

- a lack of coordination and consultation between players at national and local level;
- delays in assessing situations of possible danger, a deterioration in the quality of these assessments, a lack of multi-disciplinary expertise, a lack of training for assessors;
- the often inappropriate gathering of the children's voices;
- shortcomings in the effectiveness of child protection measures and inadequate monitoring of child protection establishments.

Conditions for questioning minors in criminal proceedings

Drawing on its expertise in defending the rights of the child and monitoring the ethics of the security forces, the institution has regularly been called upon to deal with the conditions under which minors, whether victims or defendants, are heard in criminal proceedings.

In its decision no. 2023-242, it condemned the fact that two eight-year-old children had been questioned by the juvenile protection unit as witnesses – without the presence of their parents or a lawyer – and not as part of informal questioning, which would have better protected their rights, even though they had been named as suspects and the questions asked were aimed at obtaining their confessions. The conditions under which the children were questioned were also unsuitable: they were questioned in the office of the police sergeant for more than two hours, without a break and without taking into account the disability of one of the children.

The Defender of Rights asked the Ministry of Justice to invite attorneys-general and public prosecutors to retain the informal questioning framework for all minors against whom there are plausible reasons to suspect that they have committed or attempted to commit an offence, even if they are ultimately considered not criminally responsible. It also recommended that the Minister of Justice create the status of minor witness and that the Minister of the Interior reiterate the need to immediately inform juvenile prosecution services of the opening of investigations involving minors under the age of ten.

3- PROTECTING THE RIGHTS OF FOREIGN NATIONALS

The two opinions on the bill “to control immigration and improve integration”

In a first opinion to the Senate, the Defender of Rights emphasised the threat that the bill presented by the Government posed to the basic rights of foreign nationals, particularly in that it included several provisions that instrumentalised the right to residency.

The risk of undermining fundamental rights was all the greater in that several of the bill's provisions also contributed to a reduction in the right to a judge. In particular, the bill provided for the widespread relocation of hearings for foreign nationals held in administrative detention or in waiting zones, as well as recourse to a single judge in asylum cases. In addition, by authorising the use of coercion without prior review by a judge to take the fingerprints of foreign nationals whose right to enter or remain in France is being checked, the bill represented a disproportionate infringement of individual freedom.

After the bill was substantially amended by the Senate, the Defender of Rights issued a second opinion on this second version of the text for the attention of the National Assembly. She emphasised that the text, by combining a specific objective of effectively deporting foreign nationals who pose a threat to public order with a more general objective of improving the effectiveness of removal policy, increased the number of infringements of fundamental rights. While drastically reducing the procedural safeguards relating to deportation, it also increased the scope for coercive measures to be taken against foreign nationals, regardless of the degree of threat posed or vulnerability.

This reduction in rights with regard to deportation was all the more worrying as the text also proceeded to weaken the right to residency and access to nationality in an unprecedented way and excessively raised the requirements for integration, at the risk



of increasing the number of foreign nationals in an irregular situation.

In a first opinion, the Defender of Rights criticised the text for not taking sufficient account of certain vulnerable groups, namely minors, asylum seekers and undocumented workers. In a second opinion, she expressed her alarm at a text that targeted these groups in particular and was likely to exacerbate their insecurity.

Largely fuelled by unsubstantiated theories and conveying a deep-seated mistrust of foreigners, the text that emerged from the Senate represented a profound challenge to existing balances, to the detriment of fundamental legal principles, in particular the principles of equality and dignity. It also threatened the rights of the entire population, particularly with regard to access to health services. It risked fostering social divisions and certain forms of ostracisation, to the detriment of social cohesion and the general interest.

Following the vote by the National Assembly to reject the bill, the text subsequently produced by the joint committee and adopted by the two assemblies was very close to the version produced by the Senate. In January 2024, the Defender of Rights presented observations to the Constitutional Council to which the law had been referred.

CJEU ruling on internal border controls

In a ruling handed down on 21 September 2023, the Court of Justice of the European Union (CJEU) held that where internal border controls are re-established within the European Union, Member States may refuse entry on the basis of the Schengen Borders Code to third-country nationals staying illegally at their borders.

However, as the institution argued before the Court in its decision with observations, the Court ruled that the Member States had to apply the European Return Directive to these nationals in order to deport them, in particular the guarantees set out therein. This ruling therefore has important consequences for the rights of individuals subject to controls at the internal borders of the Schengen area, particularly in France, where controls were reinstated in 2015.

After receiving complaints from foreign nationals from third countries, including unaccompanied minors, stopped at the French-Italian border, the institution carried out an investigation in Menton, accompanied by an on-site inspection. The complaints cited breaches of the right to asylum, the right to liberty, the right to an effective remedy, breaches of security ethics and discriminatory identity checks. In the case of unaccompanied

minors, the referrals related in particular to situations in which people claiming to be unaccompanied minors were stopped, placed in shelters, assessed outside the provisions of the law and deported to Italy.

This investigation provided the basis for the observations presented by the Defender of Rights to the Council of State, whose decision was handed down on 2 February 2024.

In line with the observations of the Defender of Rights, the Council of State ruled that the disputed provision of the French Code of Entry and Residence of Foreign Nationals and of the Right to Asylum (CESEDA) should be annulled insofar as it did not limit the issuing of refusals of entry at internal borders to readmissions only (application of bilateral agreements) and specified the consequences of this annulment by recalling that the guarantees of the Return Directive should apply to people stopped at internal borders who are considered to be on the territory.

4· PROMOTING EQUAL ACCESS TO RIGHTS

In 2023, the institution made new recommendations on access to rights, both on general issues and through the resolution of individual situations.

Fixed penalty notice (AFD)

Since 2018, the Defender of Rights has regularly received complaints about difficulties encountered by people issued with a fixed penalty notice (AFD). The complaints refer to:

- recurring errors in the legal classification of the facts;
- the impossibility of challenging the AFD due to the amount of the deposit being too high or the mandatory use of the form;
- the impossibility of challenging only the amount of the increase;
- the non-receipt of the AFD notice for the offence of illegal installation on another person's land, which is now sent by regular mail;
- problems with the receipt of digital transmissions of AFD procedures from the Rennes public prosecutor's office to local public prosecutor's offices.

These difficulties undermine users' rights to challenge fines. In framework decision no. 2023-030 of 30 May 2023, the Defender of Rights recommended, primarily, discontinuing the AFD procedure and reverting to a traditional judicial procedure for all offences in order to respect the rights and equality of all users. Alternatively, she proposed various improvements to the procedure in order to better respect the rights of users, including loosening the conditions for admissibility of a challenge to an AFD, in particular by abolishing the deposit, and clarifying the framework for use of the AFD for agents in the field.

A question for...

LINDA TOURI

Lawyer at the Justice and Freedoms division

How did the framework decision recommending the abolition of the fixed penalty notice come about?

This framework decision is the result of a long process of examining complaints. In 2018, we began receiving complaints from people who, for offences such as driving without a licence, wanted to dispute the fine they had received but did not have the means to pay the deposit required for the dispute to be admissible. The use of criminal fixed-penalty fines (AFD) was then extended to other offences, up to a hundred or so offences by the beginning of 2023.

Prior to this, we had started preparatory work to identify any shortcomings in our complaints. We were then able to observe the difficulties in implementing the AFD, which undermines respect for users' rights, such as the right to challenge a fine. We met with representatives from the Directorate General of the National Gendarmerie, the National Agency for Automated Processing of Offences and the Rennes Public Prosecutor's Office, among others. The framework decision was prepared with the help of my colleague Arianne Ajavon, a legal expert in the same division. Throughout the project, we sought to gain a better understanding of how the procedure worked, in order to make the most detailed and appropriate recommendations possible. We thought of them as a "turnkey" tool for improving the procedure, to ensure greater respect for users' rights. Since its publication, we have been awaiting a response to these recommendations from the Ministries of Justice and the Interior.

The opinion of the Defender of Rights on the Ministry of the Interior's draft framework and planning law 2023-2027

In her Opinion 23-04 of 9 June 2023 on the Ministry of the Interior's draft framework and planning law 2023-2027, the Defender of Rights points out that several provisions of the text are likely to impact the quality of justice. First of all, the text does not solve the problem of prison overcrowding and introduces new measures such as night-time searches and remote activation of connected devices, which must be accompanied by effective guarantees. On the provisions relating to civil law matters and professional regulations, the Defender of Rights warns of the transfer of the powers of the custodial judge (JLD) to a non-specialist magistrate due to an overload of cases. She also warns of the diversion of the procedure for seizure of compensation, which deprives the user of an amicable conciliation phase before the judge. On the provisions relating to judicial officers, the Human Rights Defender calls for particular attention to be paid to the recruitment and training of contractual staff, despite the urgent need to respond to the shortage of magistrates and judicial officers. On the provisions relating to the simplification and modernisation of criminal proceedings, the Defender of Rights considers that the more flexible use of audiovisual means of communication for interpreters hinders the understanding of their rights by individuals in police custody. Furthermore, the less stringent requirements regarding medical examinations for the extension of police custody are not sufficient to guarantee the rights of persons in police custody. Lastly, while the Defender of Rights considers that it would be useful to harmonise the time limits for referral to immediate hearing, she is concerned about the lengthening of pre-trial detention periods and the increase in the prison population.

The Defender of Rights nonetheless welcomes a number of advances in the victims bill, such as limiting pre-trial detention by promoting the use of electronically monitored house arrest and the wearing of body cameras by prison staff.

Five points of concern about the rights of residents in nursing homes

In a follow-up report dated 16 January 2023, the Defender of Rights highlighted five points of concern regarding the situation of residents in nursing homes (Ehpad). Since May 2021, numerous complaints have confirmed the systemic nature of the issue of mistreatment of residents in nursing homes, and the response of the public authorities has not been commensurate with the rights infringements reported. The Defender of Rights considered that there was an urgent need to introduce a minimum staffing *ratio* (8:10) in order to respect the right to individualised and appropriate support. The Defender of Rights also drew attention to situations of arbitrary isolation of residents in their rooms at the unilateral decision of the establishment, and restrictions on visiting, and warned of violations of the freedom to move freely. She spoke out in favour of setting up a “medico-social vigilance” system to strengthen the identification, reporting and analysis of situations of abuse. She called for clarification and strengthening of the national control policy and for an effective mediation system to prevent conflicts.

Focus

FRANCE SERVICES, A KEY POINT OF CONTACT IN EVERY DEPARTMENT

Access to rights is sometimes undermined by the absence, geographical remoteness or shortcomings of public services, but also by digitisation, which excludes some ten million people. The presence of public services, whether in person or by telephone, providing information and the ability to take full responsibility for a case, is essential.

The France Services programme plays an important role in providing access to rights and public services. The Defender of Rights welcomed the launch of this programme, which aims to respond in part to the recommendations published in the first report on the digitisation of public services in 2019. However, she also recalled that the services offered to users at these facilities should not be the only response to the difficulties that any person may encounter with the entities responsible for public service missions.

The quality of the second-level response provided by partner organisations (such as social security funds or the Ministry of the Interior), when contacted by France Services advisors, is essential, especially since the institution’s recommendations were to ensure the presence of these public services within France Services spaces, which is rarely the case.

In the field, the Defender of Rights’ teams and delegates are heavily involved alongside the France Services network. Around a hundred delegate clinics have been set up in these areas (including, for example, 8 of the 14 new clinics opened in Occitanie and 3 new reception areas in Pas-de-Calais, and others in Somme, Aisne, etc.). Elsewhere, regular information meetings are organised.

In Bouches-du-Rhône, the regional division, accompanied by several delegates, met with the agents of all the France Services centres in Bouches-du-Rhône and explained the missions of the Defender of Rights. In Meurthe-et-Moselle, delegates were appointed in 2023 as “points of contact”

to monitor relations with the France Services teams in each area of the department, to raise awareness of the Defender of Rights among France Services advisors, who will then be able to call on the institution when their users need it, but also to go directly to meet the public at events organised with the France Services teams. In Vendée, the delegates play an active role in the ongoing training of the France Services teams.

Thanks to exchanges at national level between the Defender of Rights and the National Agency for Territorial Cohesion (ANCT), which runs this programme, as well as links with the new sub-prefects for public services, these relations are set to deepen in the coming years so that, each in its own role and respecting the independence of the Defender of Rights, all the institutions can work to improve access to public services throughout the country.

Focus

PARTICIPATION OF THE DEFENDER OF RIGHTS IN MEASURES TO COMBAT NON-TAKE-UP

The Defender of Rights works to combat non-take-up, in particular by bringing to the attention of the public authorities the findings of its referrals concerning the difficulties users face in re-establishing their rights and the obstacles they encounter that cause them to abandon them. The institution lends its expertise to the Coordination Committee for Access to Rights, set up in January 2023 by the Ministry of Solidarity, to ensure that social policies reach all those concerned. It also participates in the evaluation committee for the “Territoires zéro non-recours” (Zero Non-Take-up Territories) experiment, which aims to combat non-take-up of social rights and identify situations where people are eligible for social benefits but do not apply for them. The Defender of Rights was also interviewed as part of the Council of State’s 2023 annual study on *“L’usager, du premier au dernier kilomètre de l’action publique”* (The user, from the first to the last mile of public action),

which focuses specifically on the ability of public action to reach those for whom it is intended.

Payment of death benefits

The Defender of Rights has taken a position in a case challenging the refusal to pay death benefits by the Primary Health Insurance Fund (CPAM). The claimant’s spouse died in December 2019. The CPAM argued that the deceased was on medical leave at the time of her death and was therefore covered by the health insurance scheme.

She had worked in a variety of occupations, including one as a self-employed person, and had also been receiving Pôle emploi (government employment agency) benefits since 2017. The CPAM considered that her self-employed status meant that she was excluded from the general scheme, thereby justifying the refusal to pay the death benefit.

The claimant first appealed to the CPAM’s amicable appeals commission (CRA) in March 2020, but received no response within the time limit set. He then took the case to the judicial court in May 2020.

At the end of an adversarial investigation, the Defender of Rights presented its observations to the judicial court. It emphasised that, in accordance with legal provisions, the deceased, as an unemployed person receiving compensation three months prior to her death, should have been eligible to maintain her rights to death benefits under the general social security scheme. In its judgment of 16 June 2023, the judicial court held that the CPAM had wrongly refused to grant the claimant’s request to be paid the death benefit under the general social security scheme in his capacity as entitled beneficiary. It ruled that as the claimant’s spouse was self-employed and did not receive any compensation, she was therefore entitled to the capital sum payable on her death under the general scheme until the date of her death, on the basis of Articles L. 311-5 and L. 161-8 of the French Social Security Code. In so doing, the court ruled in line with the arguments of the Defender of

Rights presented in decision no. 2023-021 of 15 March 2023.

Death benefit for a posthumously married CRS officer

A senior officer in the general reserve of the French National Police (CRS), suffering from Charcot's disease, was cared for and accompanied by his ex-wife and son for eight years, after which he died. The former spouses had taken all the necessary steps at the town hall to remarry, but the man's state of health prevented the ceremony from taking place.

Following his death in 2015, his ex-wife wished to respect their wishes and applied for a posthumous marriage, which was granted by decree in 2019 and registered in 2020. When she applied to receive the death benefit taken out by her deceased husband, the claimant was refused by the administration, on the grounds that the four-year limitation period applied to the payment of this benefit from the date of death.

The delegate of the Defender of Rights to whom the claimant had appealed argued that she had not been able to take the steps that would have interrupted the limitation period because she had been prevented from fulfilling her own obligation due to exceptional circumstances beyond her control.

In response, the regional directorate of public finance that had been approached took the view that the starting point for the limitation period was the first day of the year following the legal act giving rise to the receivable, in this case the posthumous marriage decree in 2019. As a result, the claimant's request was ultimately granted and she was paid the sum in question.

Supplementary health insurance

The Defender of Rights was contacted by a young woman about the difficulties she encountered as a beneficiary of supplementary health insurance without financial contribution (CSS) during an appointment with a "Sector 2" gynaecologist. She said that, at the end of the consultation, the health professional had told her that she was not covered by the CSS and had asked her to pay the consultation fee of €110 at the agreed sector 2 rate. She specified that payment had to be made in cash.

In a decision dated 8 September 2023, the Defender of Rights concluded that there had been discrimination on the grounds of particular vulnerability resulting from the claimant's economic situation. She recommended that the departmental council of the French College of Physicians initiate disciplinary proceedings against the doctor and bring the decision to the attention of the profession in order to prevent any hindrance to access to healthcare for patients benefiting from the CSS.

Lastly, the Defender of Rights recommended that the Primary Health Insurance Fund (CPAM) monitor the activity of the doctor and asked it to report on changes in the proportion of patients receiving CSS with and without financial contribution and State medical aid (AME) received by this doctor for the six months following the date of notification of the decision.

Denial of care to beneficiaries of supplementary health insurance (CSS) and state medical aid (AME)

Discriminatory denial of care occurs when healthcare professionals refuse to see a patient or provide inferior treatment on the basis of criteria prohibited by law, such as health status, origin, age, sexual orientation, disability, etc., or because the patient is in receipt of benefits such as supplementary health insurance (CSS) or state medical aid (AME). In May 2023, a study carried out by the Institute of Public Policies, with the support of the Defender of Rights and the Ministry of Health and Prevention, attempted to quantify the level of discriminatory denial of care on the basis of very large-scale telephone testing (34,000 calls) of firms specialising in three medical specialities (general medicine, ophthalmology and paediatrics).

The study sought to measure whether the rates and times taken to obtain appointments varied according to the profile of patients, whether they were CSS or AME beneficiaries or so-called “standard patients”, and also according to gender.

The study reveals several points of concern. While CSS beneficiaries obtain an appointment in comparable proportions to standard patients, they are nonetheless faced with explicit discriminatory denial in 1 to 1.5% of cases. In the three medical specialities considered, AME beneficiaries were found to be discriminated against, with a much lower probability of obtaining an appointment than the standard patients, regardless of the practitioner’s gender or sector of practice.

The study also notes that patients who consider themselves to be victims of discrimination have been able to report their case to the national health insurance scheme or the professional body since January 2021, but few do so, probably due to a lack of awareness of this mechanism. These results highlight persistent discrimination in access to healthcare, underlining the need to raise awareness of patients’ rights and to take measures to counter these discriminatory practices.

The emergency rehousing fund for weather-related disasters

A claimant’s home was affected by heavy flooding on 14 and 15 October 2018 and the claimant, who was 90 years of age at the time, was evacuated in the middle of the night. However, the company responsible for the emergency temporary rehousing of the affected households was unable to offer her a solution because the supply of available housing was far lower than the demand.

The claimant therefore applied for funding from the emergency rehousing fund (Faru) to cover the cost of her accommodation in a nursing home for a period of six months.

The departmental directorate for employment, work, solidarity and the protection of populations in the department concerned gave a favourable response, stating that it had obtained the State’s agreement. However, the prefecture subsequently refused to cover the cost of the accommodation that the claimant had provided in a nursing home, firstly on the grounds that such rehousing was excluded from the Faru scheme, and then on the grounds that the cost of rehousing the claimant could not be covered as her stay was intended to be permanent.

Noting, on the one hand, that the claimant’s request concerned the assumption of responsibility for her accommodation in a nursing home for a limited period of six months, as provided for by Article L. 2335-15 of the General Code of Local Authorities (CGCT) and, secondly, that the agreement to cover the costs given to her was unambiguous, the Defender of Rights recommended that the Prefect respond favourably to the claimant’s request, by allowing her to benefit from the coverage, under the Faru scheme, of the costs incurred by her accommodation in a nursing home for the six-month period in question (decision No. 2022-039). The prefect ultimately granted this request.



Increased night-time surveillance of high-risk prisoners

The Defender of Rights received a complaint from a prisoner who disputed the methods of night surveillance to which he had been subjected since 2013, due to his inclusion on the register of high-risk prisoners (DPS). He referred the matter to the prison administration, which confirmed the existence of enhanced night-time surveillance, involving additional nightly rounds with eyepiece checks and cell lighting. It indicated that a new management memorandum had been adopted in 2018 to harmonise the conditions for organising these rounds.

In decision no. 2022-036 of 9 February 2023, the Defender of Rights found that placing the claimant under enhanced night-time surveillance solely on the grounds that he was on the DPS register, without any formalised decision or notification, constituted an unjustified infringement of his rights. She also noted that the 2018 memorandum contained no details on the maximum number or frequency of rounds applicable to individuals placed under enhanced night-time surveillance, and that the systematic application of this regime to individuals on the DPS register was not accompanied by sufficient guarantees. In this decision,

the Defender of Rights recommended in particular that the applicable judicial framework be reformed, so that enhanced night-time surveillance measures are ordered in strict compliance with the rights of the individuals concerned.

Focus

CHANGING BEHAVIOUR REQUIRES EVERYONE TO BE AWARE OF THEIR RIGHTS

At a conference organised in La Rochefoucauld by the Charente departmental council on the freedom of movement, emotional life and sexuality of people in medico-social establishments (elderly people and people with disabilities), the New Aquitaine regional centre reiterated the need to guarantee the effectiveness of the rights and freedoms of people in establishments, particularly with regard to the trade-offs between freedoms and security, which are often at the heart of disputes in this area. In a similar vein, the Burgundy-Franche-Comté regional centre took part in a multi-disciplinary day organised at the Regional Institute of Social Work (IRTS), on the theme of autonomy: “a key concept in support or a questionable notion?”.

5- SUPPORTING THE FIGHT AGAINST DISCRIMINATION

In 2023, the institution was active in a wide range of areas to support the fight against discrimination.

Necessary progress for group action

Group action, as defined by the Council of State in its Opinion 406517, is a legal action brought by an association or similar body on behalf of a group of victims of damage of the same kind caused by the same perpetrator as a result of the latter's failure to fulfil its legal or contractual obligations.

The procedure, created in 2016 in the area of discrimination in the wake of recommendations by the institution, is so complex in France that it has led to only a small number of appeals and no convictions to date. In her Opinion 23-03 of 23 February 2023 on the proposed law on the legal framework for group actions, the Defender of Rights highlighted the advances and possible areas for development in this proposal.

The Defender of Rights welcomed the harmonisation of the legal framework for group actions, making the law clearer and more accessible. Expanding the eligibility to initiate legal action to associations also follows the recommendations of the Defender of Rights. She also noted the acceleration of proceedings with the elimination of the prior formal notice stage, as well as the full compensation of damages, eliminating the time limitation. In addition, the Defender of Rights was satisfied with the strengthening of the role of the public prosecutor in proceedings.

However, the Defender of Rights noted that certain provisions of the bill needed to be improved. For example, she lamented the fact that associations and trade unions are not authorised to publicise the group action as soon as the procedure is initiated.

She also criticised the restrictive wording of the article on the civil penalty and the fact that the bill does not take into account all the costs actually incurred by the successful party.

The opinion of the Defender of Rights on the bill "to combat discrimination through individual and statistical testing"

The Defender of Rights appeared before the National Assembly to give her opinion on the bill to combat discrimination through individual and statistical testing (Opinion 23-06 of 13 November 2023). Although she welcomed the bill, whose aims were laudable, she expressed strong reservations about one part of the text. The bill provides for the development of statistical tests to measure discrimination within companies, requiring agreements or action plans. In the event of non-compliance, it provides for the publication of results and fines. This approach, supported by the institution, is a positive step towards correcting structural discrimination. However, to ensure its effectiveness, it is essential to establish a transparent follow-up procedure guaranteeing meaningful corrective measures. The Defender of Rights also recommended the creation of a National Discrimination Observatory, which was not envisaged in the draft text.

On the other hand, the Defender of Rights stressed her opposition to the possibility for a State administration, the Interministerial Delegation for Combating Racism, Anti-Semitism and Anti-LGBT Hatred (Dilcrah), to carry out individual tests for the purpose of litigation. In addition to complicating the process for victims of discrimination by making it unclear how they could re-establish their rights, she emphasised the need for independence on the part of the institution in charge of dealing with individual situations and individual testing, all the more so for situations involving public employers or public services. The Defender of Rights considered that organising such tests and informing victims should remain within her remit, thereby ensuring institutional clarity and avoiding competition with a structure placed under the authority of the Government. She pointed out



that the Defender of Rights was the competent authority for dealing with complaints in the area of discrimination, and that its visibility would be strengthened in particular through the platform antidiscriminations.fr and the dedicated number for victims (3928).

Focus

REACHING OUT TO A WIDER AUDIENCE THROUGH THE ANTIDISCRIMINATION.FR PLATFORM

The aim of the [Antidiscriminations.fr](https://antidiscriminations.fr) platform is to help the victims of discrimination. It offers a telephone number, 3928, answered by a dedicated team of legal advisers, a website with a chat facility and a directory listing more than 1,200 organisations working in the field throughout France. The mobilisation of sufficiently structured local relays with links to the individuals concerned is essential. The Defender of Rights' local network has been gradually strengthened with the arrival of discrimination officers and the training of delegates. To reach people with limited access

to their rights, these delegates hold drop-in sessions in disadvantaged neighbourhoods, in legal centres and within associations and local missions.

Employee associations and trade unions also play a key role as intermediaries between the people they support and the institution. Throughout the year, the institution organised meetings and webinars that benefited numerous partner entities throughout the country, in order to provide them with the information they need to build appeals and utilise the institution's resources in their work. An *Antidiscr*i newsletter was also launched in September 2023, in order to centralise and disseminate the various activities and tools of the institution that are useful to those involved in the fight against discrimination.

However, while this network illustrates the importance of the commitment of all players in the fight against discrimination, civil society players are still faced with various limitations (resources to carry out their actions, feeling powerless in the face of certain systemic situations, fear of reprisals, risk of restrictions on freedom of association).

The need to combat discriminatory identity checks

On 11 October 2023, the Council of State handed down a decision in the group action concerning discriminatory identity checks. The Defender of Rights had submitted observations at the request of the Council of State. She presented her findings, her legal analysis and the measures likely to put an end to this behaviour (decision no. 2021-195).

Although the Council of State dismissed the appeal, it recognised the existence of discriminatory identity check practices that cannot be considered isolated cases, as well as their harmful impact on those exposed to them.

A number of recommendations were reiterated in decisions taken in response to individual complaints. One of these concerned a discriminatory preventive identity check carried out on an individual moving around a train station. This decision recommends, in particular, that a written statement setting out the specific circumstances required by law and case law be systematically drawn up prior to any administrative identity check, specifying the authority responsible for the operation and the instructions given to the officers in charge of carrying it out. It also recommends that this document be given to the officers so that they are able to explain to the persons subject to the checks the framework under which they are acting and that it be attached to any proceedings following the checks carried out (decision no. 2023-056).

In May 2022, the Defender of Rights asked the Court of Auditors to assess the number of identity checks and their effectiveness. The Court produced a report entitled “Identity checks: a widespread practice with undefined purposes”, which revealed that the number of identity checks carried out in France in 2021 was estimated at almost 47 million, including 15 million roadside checks.

As with the work carried out by the Defender of Rights, the Court of Auditors’ report reveals a complex and imprecise legal framework, a practice that is not measured or is poorly measured, poorly defined objectives and conditions for implementation, a lack of supervision by the local hierarchy, a lack of overall assessment by the general inspectorates, highly inadequate monitoring by the public prosecutor’s office, and finally, insufficient initial and ongoing training for officers.

Already in 2017, the Defender of Rights’ “Access to Rights” survey noted that *“Compared to the population as a whole and all other things being equal, young men who are perceived as Arab/Maghrebi or black are 20 times more likely to be subject to checks than others”*.

Given the scale of the problem, it is imperative that the Government put in place a public policy that provides the necessary guarantees to control the widespread practice of identity checks, particularly with regard to the over-representation of a section of the population in these checks. The Defender of Rights has reiterated the urgency of the situation at a time when relations between the police and the public are being undermined, even though they are an essential factor in social cohesion.



A question for...

CÉLINE ROUX

Deputy responsible for security ethics

You succeed Pauline Caby. In your opinion, what progress was made in 2023 with regard to identity checks?

The year 2023 was marked by the substantiation, by external institutions, of observations long made by the Defender of Rights on one of its major areas of concern: identity checks.

In May 2022, the Defender of Rights, using the powers conferred on her by the *loi organique* [framework law], referred the matter to the First President of the Court of Auditors for a qualitative and quantitative analysis of identity checks carried out by the internal security forces in 2020 and 2021.

The conclusions of the Court's report, published in December 2023, support those of the Defender of Rights. Firstly, the Court estimates that 47 million checks were carried out in 2021, representing an average of nine checks per patrol per day.

Secondly, it noted numerous shortcomings in the supervision of these checks, due to the complexity of the texts governing them, their lack of traceability and the inadequate control by the hierarchy of those carrying them out, the inspection bodies and the judicial authority.

In addition, in a decision of 11 October 2023 handed down in the context of a group action on which the Defender of Rights submitted observations, the Council of State noted the existence of discriminatory identity checks that could not be considered isolated cases.

These various elements therefore lead to the conclusion that identity checks are carried out on a massive scale and are likely to be discriminatory to a large extent.

In 2024, the Defender of Rights will maintain a high level of commitment and vigilance on this issue, calling for an urgent reform of legislation and practices, essential to guaranteeing rights and restoring mutual trust between the security forces and the population.

Recommendations on artificial intelligence

In recent years, the Defender of Rights has continued its work on the discriminatory bias of algorithms and the risks posed by biometric systems. For example, the institution has followed the development of the debates surrounding the draft European Regulation on artificial intelligence (AI) since it was presented by the European Commission in 2021, and reiterated the central place that the principle of non-discrimination must occupy within it.

In 2023, the Defender of Rights submitted several recommendations to the European co-legislators, on the one hand with her European counterparts grouped within the Equinet network, and on the other with the National Consultative Commission on Human Rights (CNCDH) and the European Network of National Institutions for the Protection of Human Rights (ENNRHI). These recommendations were aimed in particular at facilitating redress for victims of discrimination or other breaches of fundamental rights linked to an AI system, in particular *via* national equality bodies such as the Defender of Rights. They also called for an objective classification of AI systems considered to be “high-risk”, to ensure the consistency of the new AI governance framework and the effectiveness of assessments of the impact of AI systems on fundamental rights, and, in particular, to ban remote biometric recognition in public spaces and predictive policing. This future regulation represents a major challenge, not only because it will be directly applicable in France, but also because it aims to provide a horizontal and transversal framework for the various applications of artificial intelligence, which now impact almost every area of daily life.

Chronic illness and work: overexposure to discrimination

Having a long-term chronic illness or disability increases the risk of being exposed to discrimination in employment. At a time when chronic illnesses are on the increase, the Defender of Rights and the International

Labour Organisation (ILO) dedicated the 16th edition of their *barometer* to the criterion of state of health at work, and more specifically to discrimination against people with chronic illnesses, published on 14 December.

Nearly one in six chronically ill people say they have experienced discrimination in employment. Among them, people with a visible chronic illness are three times more exposed to this risk. These situations sometimes lead to redundancy: a third of people with cancer lose their job within two years of declaring their illness.

All too often, chronic illness results in people being sidelined or excluded from the labour market, with career paths marked by adjustments, changes of direction and/or career breaks. It is more difficult for people with health problems or disabilities to find a job and keep it over the long term.

However, people with chronic illnesses benefit from the legal protection offered to people with disabilities against all forms of discrimination. In particular, employers must comply with the recommendations of the occupational physician. Nevertheless, a third of employers have not followed these recommendations, or have done so only partially, mainly by refusing to adapt workstations, thereby infringing their safety obligation.

Employees' lack of awareness of measures to prevent ill-health and reduce risks in the workplace continues to be a major trend. This reflects the fact that access to prevention and occupational health services is still very inadequate, and sometimes even feared. In fact, almost half (47%) of those in work who are ill said they were reluctant to give information to their occupational physician.

The publication of this study is also an opportunity for the institution to remind employers and those involved in occupational health of its recommendations for compliance with the right to non-discrimination.



A question for...

GEORGE PAU-LANGEVIN

Deputy responsible for combating discrimination and promoting equality

What solutions must be put in place to combat discrimination against people suffering from chronic illnesses in the workplace?

The public authorities and all organisations are faced with a major occupational health challenge: that of taking account of chronic illnesses, which are on the increase, and preventing the discrimination linked to the state of health or disability that may be associated with them. The observations made and the initiatives presented in the survey argue in favour of a commitment on the part of all those involved. Given the persistence of the discrimination revealed by this study, the principle of non-discrimination in access to employment for people with chronic diseases must be consolidated. In addition, employers' obligation to provide reasonable accommodation is a decisive factor in guaranteeing equal treatment in employment.

In the workplace, the inclusion of people with illnesses or disabilities means giving priority to collective and practical management of difficulties, respecting the employee's personal choice of whether or not to disclose his or her illness. It means taking into account work situations in order to implement and embed best practices and appropriate procedures. Good team organisation and the fair distribution of workloads among colleagues when a person is off work are also central.

The issues raised by this survey are in line with other problems dealt with on a daily basis by the institution, such as advancing age. It is important to show that those concerned, whether disabled, chronically ill or elderly, remain active and should not be sidelined. A number of our decisions and recommendations are along these lines, reminding us that health issues should not be an obstacle to employment or to general participation in civic life.

Reminding employers of their obligations with regard to discriminatory harassment

In decision no. 2023-020 of 5 May 2023, the Defender of Rights concluded at the end of the investigation that a prison guard had been the victim of discriminatory moral harassment on the grounds of his origin by a colleague, in the form of repeated racist remarks by the latter, without the administration having provided him with sufficient protection.

The main argument put forward by the administration to justify its inaction was that the National Disciplinary Council (CDN) would only rule on the facts alleged against the claimant's colleague once the legal proceedings had been completed, the practice being to wait for the judicial authority to rule before summoning an agent before the CDN and penalising them.

Recalling the principle of the independence of criminal and disciplinary proceedings, which means that the employer must decide on disciplinary action without waiting for the outcome of ongoing criminal proceedings, the Defender of Rights recommended that the Minister of Justice remind the director of the penitentiary centre and the inter-regional director of their ethical obligations to ensure that the discriminatory behaviour revealed in this case is not repeated. She also recommended that he convene the national disciplinary board without waiting for the outcome of the legal proceedings. Compensation was also requested for the harm suffered by the claimant.

Focus

WORKING ALONGSIDE THOSE SEEKING TO MEASURE DISCRIMINATION

The question of the tools available to measure discrimination also arises for many local and regional players. With this in mind, the Auvergne-Rhône-Alpes Regional Centre has worked with the 'equal rights' mission of the city of Clermont-Ferrand, which drew inspiration from the barometer questionnaire produced by the Defender of Rights and the International Labour Organisation (ILO) on

perceptions of discrimination in employment, to produce a questionnaire on discrimination for the city's residents. Following these discussions, a Defender of Rights clinic will be set up in the new Maison des Femmes Gisèle Halimi, which will be inaugurated in Clermont-Ferrand in November 2023 and will host the first clinics in 2024.

6- PROMOTING A RELATIONSHIP OF TRUST BETWEEN THE SECURITY FORCES AND THE PUBLIC

As part of her work on the ethics of the security forces, the Defender of Rights has issued a number of rulings setting out the key elements for ensuring compliance with the rules of ethics and, ultimately, establishing positive relations between the police and the public.

The recommendations of the Defender of Rights with regard to demonstrations

While numerous demonstrations took place at the beginning of 2023, in connection with the pension reform, particularly in view of the videos circulating on social networks, the numerous press articles and the testimonies and referrals received by the institution, the Defender of Rights reiterated her recommendations on the maintenance of order with regard to compliance with the rules of security ethics.

The Defender of Rights points out that the primary objective of policing is to guarantee the freedom to demonstrate. In particular, she recommends that identity checks, searches and filtering be supervised to ensure that these measures are justified and carried out with respect for individual freedoms and in accordance with the rules of professional ethics. She also recommends ensuring that containment is used in a proportionate and necessary manner under the conditions set out in the Council of State's decision of 10 June 2021, by providing an exit route.

The aim is also to refocus policing on the administrative police mission of preventing and supervising the exercise of the freedom to demonstrate, with a view to appeasement and the protection of individual freedoms. In this respect, she reiterates that compliance with the rules of professional conduct is essential to ease tensions and foster trust between the police and the public.

Focus

THE INSTITUTION'S TRAINING ACTIVITIES FOR POLICE OFFICERS

Training has a dual objective: to present the role of the Defender of Rights when it comes to monitoring police practices in the fields of ethics and discrimination and, in so doing, to encourage them to reflect on these practices in order to change them. In 2023, it involved nearly 3,500 student peacekeepers and 400 national police officer cadets.

The trainer begins by explaining how the institution investigates the complaints it receives from people who claim to have been the victims of inappropriate or abusive behaviour on the part of the police force: how the investigation and hearings are conducted, how the respondents are sent a notice subject to adversarial proceedings, to which they are invited to respond if there is a suspicion of ethical misconduct, and finally the type of decision that may be taken. This is followed by discussions based on concrete situations referred to the Defender of Rights: It is an opportunity to emphasise the duty of exemplarity of those in positions of public authority in their day-to-day dealings with the public and, with regard to the use of force and weapons, to question compliance with the principles of necessity and proportionality.

In addition, the training courses always begin by taking time to define discrimination as a group.

Focus

TRAINING OF SECURITY PERSONNEL IN FIGURES

In 2023, 3,481 student peacekeepers were trained by the Defender of Rights in 22 sessions at 10 schools in metropolitan France, as well as 400 officer cadets at the Cannes-Écluse school. In addition, 185 officer cadets or external auditors from the national gendarmerie officers' school in Melun were trained using the same educational model as police officers. A seven-hour train-the-trainer course was also given to 27 managers and trainers from the SNCF's safety university (SUGE). Lastly, 22 municipal police managers took a seven-hour "ethics and discrimination" course as part of their induction training.

An enlightening study of external police oversight agencies

Once the preserve of a small group of countries, external police monitoring agencies have now become a global phenomenon, established in a wide range of democratic regimes and in almost all European countries. In the wake of repeated police misconduct (violence, discrimination, corruption), a new consensus has emerged in democracies in terms of the need to regulate and control officers.

In January 2023, as part of the activities of the IPCAN network (Independent Police Complaints Authorities' Network), the Defender of Rights published a POLDEM study, conducted by an independent team of researchers, to describe the variety of Police Oversight Agencies (POA) in Europe.

These external agencies have been in existence since the 1990s, with a view to ensuring greater impartiality in the effective protection of rights. The study revealed differences in the types of POAs.



These were public agencies that were not run by elected representatives and enjoyed relative independence. All dealt with complaints and could make recommendations to the government, but few had decision-making powers. Above all, their ability to take action was determined by their independence and their resources. The study showed that the number of complaints received was proportional to the resources available to the POAs.

The study revealed that governments that guaranteed the independence of POAs provided them with fewer and fewer resources to carry out their mission. This was notably the case in France, which had the lowest allocation in Europe per police officer monitored. Conversely, the Police Ombudsman for Northern Ireland had the most resources per officer but less formal independence. The POAs with the most resources were found in wealthier countries, but also in institutional systems in which the justice system was in fact the most independent.

The survey concluded that in order to compare the performance of POAs, standardised information on the misconduct of officers in Europe should be collected and made

public. Without sufficient police transparency, rigorous evaluation of the effect of the actions of rights protection bodies, both jurisdictional and non-jurisdictional, would not have been possible.

Police and the use of force in the European context

On 24 and 25 May 2023, the Council of Europe's Police Network met for a conference entitled "Police activities, contextualised situations of violence and use of force".

The purpose of this newly-created network is to encourage the sharing of experience and exchange between the police authorities of the Member States with regard to the fundamental values of the Council of Europe - human rights, democracy and the rule of law. It brings together representatives of Member States' interior ministries and national police services, academics and representatives of the European Council of Police Unions. The IPCAN network is an observer member.

Participants were able to exchange views on the practical implementation of human rights standards in law enforcement agencies.

In particular, the principle of non-excessive, justified and proportionate use of force was examined in relation to the standards of the ECHR and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

The Defender of Rights and her deputy responsible for ethics in 2023, Pauline Caby, took part along with a number of their counterparts to present the cases received on the issue of disproportionate use of force by the police. The IPCAN members met in advance of the conference at a dedicated internal seminar and published the Strasbourg Declaration, containing 21 recommendations on the management of public demonstrations by law enforcement agencies and police operations as a whole.

A question for...

THE SECURITY ETHICS DIVISION

Decision no. 2023-046 concerning the death of Adama Traoré was published in June 2023. How did you approach this decision?

The death of Adama Traoré was referred to us a few days after the event. Our investigation had to determine whether the members of the gendarmerie involved had breached their professional ethics. We carried out investigations (interviews, requests for documents, etc.), with the agreement of the judicial authorities who were also involved in the case. We also studied the thousands of pages of criminal proceedings taking place at the same time. This analysis and investigation was a long process, and we endeavoured to be as rigorous as possible. We knew that the institution's conclusions were eagerly awaited. The drafting of the decision began when we felt we had all the necessary elements to determine whether or not there had been any breaches.

In this case, at the end of the investigation, the Defender of Rights considered that four gendarmes had failed, on various occasions, in their duty to protect and respect people deprived of their liberty and recommended that disciplinary proceedings be taken against them. Our role was not to rule on the causal link between the actions of the gendarmes and the death of Adama Traoré: that is for the judge to establish.

Focus

SELF-REFERRAL BY THE INSTITUTION

The *loi organique* [framework law] allows any natural or legal person to refer a matter to the Defender of Rights. However, if the situation so requires, the institution may act proactively by referring the matter to itself, i.e. by taking the initiative to refer the matter to itself without waiting for an individual complaint. This power is granted by Article 5 of *loi organique* [framework law] 2011-333 of 29 March 2011, which authorises the Defender of Rights to intervene on its own initiative in situations falling within its remit.

For example, in June 2023, the Defender of Rights initiated a self-referral following the death of young Nahel, a minor, during a police operation. This self-referral enables the institution to conduct an in-depth investigation, examining the facts in the light of the rules of ethics in security matters and the rights of the child. By opening this investigation, the Defender of Rights may request authorisation from the judicial authority to access specific documents, videos and conduct hearings.

III· MAJOR ADVANCES IN 2023

The year 2023 saw many of the institution's interventions produce results, both in terms of settling individual situations, through mediation or through recommendations and observations in court, a few examples of which are given below, and more general recommendations.

1· INDIVIDUAL SITUATIONS RESOLVED

Becoming a female professional footballer

The Defender of Rights received a complaint from a young girl, a minor at the time of the events, who, having been selected by the training centre of a football club, was informed at the end of the season that she had been dismissed from the centre. The young girl complained that her training could have been terminated without any notice or formality, as the club had not signed a training agreement with her, unlike the one offered to boys. When questioned by the Defender of Rights, the club confirmed that it only signed a training agreement with boys, while girls benefited from a "*moral commitment*". To justify this difference in treatment, the club explained that the Sports Code and the regulatory provisions set up by the French Football Federation (FFF) and the Professional Football League did not allow it to sign such an agreement with girls, as they did not play in the professional league.

The Defender of Rights considered that national and international texts prohibiting discrimination on the grounds of gender, at a higher level than the texts invoked by the club, should apply and therefore concluded that the club's practice was discriminatory. It stressed that this practice, which

placed young girls in a vulnerable position, was contrary to the best interests of the child.

On 29 November 2023, the court before which the Defender of Rights presented its observations (decision no. 2022-015) ruled that, in the absence of proof from the club that the difference in treatment between girls and boys entering the training centre was justified by objective factors unrelated to any discrimination, the alleged discrimination was established. The court ordered the club to compensate the girl for the damage caused by the discrimination. Furthermore, club training centres now sign agreements with young female players.

Being a soldier with a chronic illness

The Defender of Rights receives numerous complaints from candidates for public positions within the security forces whose applications are rejected by the administration, in application of the SIGYCOP¹⁵ aptitude system, on the sole grounds of the chronic illness from which they suffer, without taking into account their actual capacity to carry out the missions for which they have applied. Complaints are also received from staff already in post who are declared unfit to carry out certain tasks solely because of their chronic illness.

In this case, however, the claimant's fitness to serve as a member of the French Navy was demonstrated, in particular by passing the physical fitness and sports tests and by

medical certificates attesting to his very good physical condition.

Following the intervention of the Defender of Rights, the claimant was declared fit to serve at sea. In addition, following the example of the Defender of Rights, the administrative court recognised the discrimination (ruling no. 1809717 of the administrative court of Melun of 6 July 2023), considering that the Minister of the Armed Forces had not taken into account the treatment making it possible to block the progression of the disease from which the claimant is suffering, without any side effects.

In addition, as part of an appeal lodged by several associations seeking the repeal of the SIGYCOP reference framework, the Defender of Rights submitted observations to the Council of State recognising the discriminatory nature of SIGYCOP towards people with HIV. On 21 November 2023, the Council of State dismissed this request. It took note of the repeal of the reference system by the Ministry of the Interior and its modifications by the Ministry of the Armed Forces (decree of 9 May 2023), with the effect of opening most military jobs to asymptomatic HIV sufferers under treatment and certain job categories to symptomatic HIV sufferers.

The Defender of Rights welcomes these changes, which no longer discriminate in principle against people with HIV in access to the professions concerned. However, it notes that there is still a difference in treatment between HIV-negative individuals and untreated asymptomatic HIV-positive individuals with satisfactory cellular immunity and an undetectable viral load, as well as between HIV-negative individuals and symptomatic HIV-positive individuals.

Allowing a complaint to be registered after a bank card scam

A claimant contacted the institution after being refused a complaint about a bank card scam. The woman had received a call from an individual posing as a technician from her bank. Claiming to need to check certain transactions on her account, the technician managed to obtain the victim's bank card number and security code. Shortly after this conversation, the claimant noticed several abnormal debits when she consulted her account statement. She then went to the nearest sub-prefecture police station to file a complaint. However, the officer at reception refused, arguing that the amounts involved in the scam were not large enough to justify a complaint. He then referred her to the "Perceval" online reporting system, available on the service-public.fr website, citing instructions from the public prosecutor's office to stop accepting complaints on such grounds.

Faced with this situation, the claimant decided to consult the delegate of the Defender of Rights responsible for security ethics. The delegate confirmed that the user had the choice between reporting on "Perceval" and filing a complaint, and considered that the police station's refusal was unfounded. It then contacted the departmental director of public security to inform him of the inconvenience suffered by the complainant and the breach of duty by the officer at the front desk.

Following this intervention, a police officer took it upon himself to call the claimant back. He offered her an appointment to help her with her complaint and to formally register it.

Enabling the transition from parental leave to maternity leave

An employee on parental leave asked her employer to allow her to interrupt her leave early so that she could be placed on maternity leave. The employer refused. Although Article L. 1225-52 of the Labour Code provides for only two reasons for interrupting parental leave, which do not include a new pregnancy, the Labour Code does not, however, exclude the possibility of interrupting parental leave for a reason other than these two. The Defender of Rights has already indicated in a [decision](#) of 24 October 2019 recalling in particular the case law of the Court of Justice of the European Union, that an employer's refusal to interrupt parental leave in favour of maternity leave was discriminatory on grounds of gender. On the basis of this decision, the Defender of Rights, with the employee's agreement, approached the employer to try to resolve the dispute amicably. After several exchanges, including the transmission of the above-mentioned decision, the employer agreed to grant the employee's request.

Entitlement to holiday vouchers, even when ill

A claimant who had been employed for over thirty years as a care assistant in a company providing home care and nursing services was placed on long-term sick leave for over a year. She discovered that the company's Social and Economic Committee (CSE) was refusing to grant her holiday vouchers and other benefits because she was off work. The documentation relating to the CSE specified the conditions to be met in order to be entitled to the benefits, in particular "not to be absent from the company for more than six months of the year".

When the complaint was referred by the claimant, the Defender of Rights delegate addressed the Chair of the CSE directly, citing [decision no. 2020-093](#) in which the Defender of Rights had considered that this type of provision resulted in a particular disadvantage for employees on parental leave or long-term illness, and could therefore constitute indirect

discrimination on the grounds of family status or state of health. The Chair responded very quickly to the delegate's request: the holiday vouchers were indeed granted to the claimant. This mediation made it possible to put an end to a situation of discrimination.

Preventing age-based discrimination

A job applicant sent her anonymised curriculum vitae to an employer. She was invited to attend a day of pre-selection tests. However, she indicated that she was unavailable. The employer offered to call her again and asked her to provide her date of birth, which she refused to do. The employer replied that she would therefore not be called to take the tests.

The Defender of Rights carried out an investigation at the end of which it noted that the company in question did not justify how the date of birth constituted information that the Labour Code authorised it to request from the candidate. It also observed that the practice of requiring the candidate to provide her date of birth was not, in this case, justified by a legitimate aim, nor that the means of achieving this aim were appropriate and necessary. The Defender of Rights therefore considered that the candidate had been the victim of indirect discrimination on the grounds of her age. Observations were submitted to the industrial tribunal and then to the court of appeal, both of which concluded that there had been no discrimination. The Defender of Rights then presented her analysis to the Court of Cassation ([decision no. 2023-051](#)).

In a ruling dated 6 September 2023 (no. 22- 15.514), the Court of Cassation held that the Court of Appeal had indeed found that there was evidence of differential treatment on the grounds of age, but had not established that knowledge of the candidate's date of birth was objectively and reasonably justified by a legitimate aim and that the refusal to re-invite her was necessary and appropriate. The Court of Cassation therefore overturned the decision of the Court of Appeal.

Promoting access to healthcare and care for a detainee

A detainee complained to the Defender of Rights about the difficulties he was experiencing in obtaining surgery, despite the orthopaedic surgeon's eighteen-month-old indication to this effect. He complained that he was unable to receive treatment because the health unit could not set a date for the operation.

The Defender of Rights contacted the secure inter-regional hospital unit (UHSI) of the university hospital in question in order to find out the reasons for this waiting time and what steps had been taken to allow the patient to undergo the required surgery. The orthopaedic surgeon explained that the patient had received a consultation confirming the need for surgery eleven months previously. However, he acknowledged that the difficulties associated with the health crisis and the scheduling of patients in the operating theatre had made the operation difficult to schedule. However, the UHSI told the Defender of Rights that it had now agreed a date for the operation with the prison centre.

The patient was informed that the operation had been scheduled and that, for safety reasons, he would be kept informed in good time of the precise date of the operation he would undergo (RA 2023-015).

Focus

A NEW PROTOCOL FOR ENHANCED COOPERATION

In June 2023, the Defender of Rights signed a new protocol for enhanced cooperation with the inter-regional directorates of penitentiary services of Dijon and Lille, continuing the partnership work begun in 2022 with the DISPs of Marseille and Paris. This agreement provides for the implementation of specific actions to ensure that prison officers are aware of the institution of the Defender of Rights and the missions of the delegates working in the field of detention, as well as specific actions aimed at incarcerated minors.

Focus

THE SHORT NUMBER 31 41 TO ENABLE DETAINEES TO BETTER ASSERT THEIR RIGHTS

With the widespread introduction of telephones in almost all prison cells, in March 2023 the Defender of Rights made a separate telephone service available free of charge to all detainees, adults and minors, remand prisoners and convicted prisoners, from Monday to Friday from 9am to 5pm: 31 41.

This telephone line reflects the Defender of Rights' priority of reaching out to the most vulnerable. The 31 41 line rounds off the three-part approach to the institution's work in prisons and the objective of enabling detainees to assert their rights: by telephone, by meeting a delegate in each prison, or by post to have their case examined by the head office departments.

The 31 41 number is included in the list of so-called social telephony calls, which are neither listened to nor recorded. In a memo dated 24 March 2023, the Director of the Prison Service issued instructions for the dissemination of the number. Awareness of this number, among prison staff, outside workers and the more than 75,000 inmates,

has grown over the weeks, and it receives around 200 calls every day.

The team listens, informs, guides and enables detainees to contact a delegate, thereby overcoming the barrier of having to submit their request in writing via the prison's internal mail system, to find out what action has been taken on their complaint with the head office departments, to ask a question or to raise an alert about a situation.

Resolving the consequences of mistaken identity

A claimant, living in a department of eastern France, received a letter at home from the National Office of Driving Rights, referring to an offence he had allegedly committed six months earlier in a department of the Paris region. He was certain, however, that he had not been in the region at that time. To find out more, he sent a registered letter to the public prosecutor (OMP) in Rennes. In response, the OMP asked for a copy of the original fine and the amount paid, but the claimant had never received the original fine.

He went to his nearest police station, anxious to find out where the fine had come from. When he consulted the driving rights file, an officer informed him that he had been fined 14 times for speeding in the Paris region and that he had no points left on his licence. On the file, it was his name and licence, only the address was different. He then lodged a complaint for identity theft, but the police nonetheless took away his licence.

Despite several letters, he was unable to rectify the situation and get his licence back. The delegate sent a new letter to the OMP in Rennes and contacted the fines department to request a record of the offences. After two months, the public prosecutor informed the delegate that the claimant was the victim of mistaken identity and that he had been able to remedy the situation: the individual concerned was no longer being prosecuted for any offence, and his points were restored to his licence, which he was able to recover.

Transgender woman's request to change her gender in her civil status

The Defender of Rights received a complaint from a transgender woman regarding her request to change her gender on her civil status record. Before applying to the judicial court, she had obtained a change of her first names. In this case, the public prosecutor expressed two reservations. The Defender of Rights presented her observations in decision no. 2023-028 of 25 April 2023. She considered that the first reservation made by the public prosecutor (relating to the lack of consistency between the application for a change of gender in the civil status register and the applicant's decision to keep one of her former male forenames among her new forenames) infringed the freedom to choose forenames, and that the second reservation (concerning the applicant's refusal to produce photographs of herself) infringed the freedom to choose physical appearance.

The institution recalled that, in its framework decision no. 2020-136 of 18 June 2020 on gender identity, it had recommended that the Ministry of Justice set up procedures for changing first name(s) and gender in civil status records that would be based on a declaration to be filed with civil registrars by means of a detailed affidavit. She concluded that, based solely on the right to self-determination, the applicant's claim appeared to be well-founded. In a ruling dated 5 July 2023, the court ordered that the claimant's gender be changed and that she be designated as female in her civil status records.

Putting an end to a typographical error with serious consequences

A claimant from Mauritius, with a poor command of French, entered France in 1990 with his first residence permits, which mistakenly included a letter changed in his name, without his being aware of it. Logically, his first employers issued his pay slips in the name shown on the residence permit.

When he reached the age of 62, in 2020, the claimant requested the settlement of his pension, and he then noted on his employment record that, although he had sent the corresponding pay slips, certain years had not been taken into account, which was all the more harmful as he was far from having contributed the sufficient number of quarters to have a full-rate pension. He lodged a complaint within the required timeframe but, despite several reminders, failed to obtain a satisfactory response. It was against this backdrop that he decided to appeal to the Defender of Rights.

The delegate intervened with the pension organisation concerned, pointing out the initial error made on the claimant's first residence permits, which was probably the reason why the pay slips for his first years of employment were not taken into account. The delegate also pointed out that the national health insurance scheme had, for its part, resolved the claimant's situation by issuing him with a new health insurance card (Carte Vitale).

On this basis, the pension fund re-examined the claimant's situation by completing his employment record. The claimant was thus able to have the amount of his retirement pension revised.

Reviewing an employment record

A claimant wanted to claim his pension rights. With this in mind, he began the process of putting together his employment history, but seven years during which he had worked at the town hall were not taken into account by Carsat. Despite his requests, he was unable to obtain proof of his years of employment from the town hall concerned. It was against this backdrop that he decided to contact the Defender of Rights.

The delegate referred the matter to the town's human resources office, stressing the importance for the claimant to have a complete file so that his entire career would be taken into account when calculating his future retirement pension.

Following the delegate's intervention, the town hall rectified the claimant's employment record and sent his file to the various pension bodies.

Enforcing a court decision

Following legal proceedings in which the State was ordered to pay him €1,000, a claimant did not receive this sum. However, it was under Article 700 of the French Code of Civil Procedure, which allows the judge to order the losing party, for the benefit of the other party, to pay compensation to cover all expenses not included in the costs, that the Court of Appeal ordered the State to pay this amount.

Faced with the non-enforcement of this court decision, the claimant contacted the delegate of the Defender of Rights, who initially directed him to the budgetary and accounting controller of the Ministry of Justice (CBCM). When this was unsuccessful, he turned to the regional directorate of public finances, which initially refused to address the situation. The delegate persevered and insisted with the directorate, reminding it of a 2009 directive which states that "if it transpires that the accountant handling the request is not the one responsible for the expense, they must inform the creditor that the request will be transferred to the accountant responsible for the expense"; he thus obtained the

involvement of the corresponding accountant and the enforcement of the court decision.

Restitution of an inheritance held by the State

A claimant, one of five siblings born in Cambodia and who lived there until the Khmer Rouge seized power in April 1975, came to France, where their father lived, accompanied by her brother and sister. The father, who died on 3 May 1974, had funds at the Banque de l'Indochine et de Suez.

The three claimants received their share of the estate from these funds, while those of their brother and sister, who remained in Cambodia, were retained by the bank.

Despite tireless research, the claimant only learned in 2010, during a trip to Cambodia, that they had both been executed by the Khmer Rouge in 1975. She then approached the bank and then the Caisse des dépôts et consignations, where the funds had been transferred, to assert her rights to her deceased brother's and sister's share of the inheritance. The Caisse des dépôts et consignations, invoking the thirty-year statute of limitations, replied that the funds had been definitively acquired by the State.

The Defender of Rights, considering that the statute of limitations had not expired, recommended that the Minister of Economy and Finance grant the claimant's request by returning the sum of €6,044 (equivalent to 39,646.99 francs), belonging to her brother and sister. Failing that, it recommended that the claimant's request be granted in consideration of the principle of fairness (decision no. 2019-187).

In a letter dated 25 May 2020, the Minister indicated that he was willing to consider a possible restitution of the sums claimed by the claimant on the principle of fairness. However, having failed to obtain satisfaction, a letter of injunction was sent to the Minister on 8 September 2023.

The Minister then indicated that he had decided to respond favourably to the request for the restitution of the assets affected by

the thirty-year statute of limitations, to be distributed among the beneficiaries who were still alive.

Social protection for foreign nationals: reimbursements obtained through mediation

In order to receive certain benefits, foreign nationals are sometimes required to provide proof of specific conditions, which can be a source of particular difficulties. For example, to receive the adult disability allowance (AAH), the repeal of the article specifying the documents required to prove legal residence has led to divergent practices on the part of the CAF. Arguing that it was appropriate, in such a context, to assess the condition of legal residence in the light of a decree of 10 May 2017, the Defender of Rights obtained a review of several situations (RA-2023-033 and RA-2023-059).

Secondly, with regard to family benefits, the Court of Cassation ruled that the legal provisions requiring foreign nationals to prove, in addition to the legality of their residence, the entry into France of their children by way of family reunification, are contrary to the equal treatment clauses in terms of social security contained in several international texts, and in particular the Franco-Yugoslav social security agreement of 5 January 1950. Recalling this rule of law, the Defender of Rights was able to obtain, through mediation, the reimbursement of more than €30,000 in benefits (RA-2023-058). Since then, the Caisse Nationale des Allocations Familiales has modified its guidelines.

Enforcing the right to social protection, even outside France

A French citizen lived and worked in a South American capital. She gave birth there, thinking that her hospitalisation costs would be covered by the CFE (Caisse des Français de l'étranger), to which she contributed. Despite her requests and a complete file sent to the fund, the latter refused to reimburse the expenses to which she believed she was entitled.

As soon as the complaint was received, one of the four delegates responsible for French nationals living outside France contacted the fund to have the situation re-examined. The error was quickly identified, and the CFE issued an additional reimbursement of more than €1,000, at the same time sending out a "new, corrected settlement notice".

Reconnecting the CAF and the MDPH

The claimant received a notice from the family allowance fund (CAF) requesting repayment of an overpayment of €2,800 from the AAH of which he had been the beneficiary. He did not understand why he was being charged this amount when he was no longer receiving the benefit, and contacted the Defender of Rights to help him resolve the problem.

The delegate contacted the Departmental Centre for the Disabled (MDPH) and the CAF, explaining the claimant's situation, as he was unable to pay the debt and, above all, believed that he was not liable for it.

After studying the case and discussions between the organisations involved, it became apparent that the MDPH had failed to notify the CAF that the claimant's AAH benefit had been stopped. The delegate's intervention made it possible to identify this irregularity and the claimant obtained the cancellation of this debt, which was the result of a breakdown in communication between the two organisations.

Avoiding incorrect calculation of the AAH

Several claimants have contacted delegates of the Defender of Rights as a result of (modest) financial investments, recommended by ill-informed bank advisors, resulting in income of €2 or €4, sufficient to trigger a review of their AAH benefits.

For example, one claimant, who receives AAH, invested €20 in shares on the advice of her bank advisor. This investment generated income of €4. When she filed her income tax return, this "income from assets" was taken into account and led to a (very slight) reduction in the amount of her AAH. However, as she was no longer receiving the full rate of AAH, she could no longer benefit from the "independent living supplement" and saw her benefits reduced by around €100 per month. She decided to complain to the Defender of Rights.

A delegate from the Defender of Rights intervened with the CAF and obtained a recalculation of the claimant's rights, which resulted in a repayment of almost €1,000.

Resolving misunderstandings

A claimant born in 1958 had been receiving the adult disability allowance (AAH) for many years. In 2023, he received two letters from the provider, one stating that he had wrongly received the AAH beyond his 62nd birthday, because his degree of disability was less than 80%, and the other stating that he was required to repay the AAH wrongly received since 2021, to the tune of more than €20,000. In the absence of repayment, the organisation began deducting housing benefit from the recipient, who then complained to the Defender of Rights.

The delegate approached the fund, arguing that the user had not been informed that he was no longer entitled to receive the AAH when he reached the age of 62, that the fund had continued to pay him the AAH between 2021 and 2023, i.e. for 2 years, that he had not yet applied for his retirement pension and that he could not repay this sum in the total

absence of income (withdrawal of the AAH and retirement pension not yet received).

On the basis of these arguments, the delegate invited the claimant to lodge an appeal with the fund's Amicable Appeals Commission (CRA). To his great satisfaction, and thanks to the efforts of the delegate in support of him, he obtained the cancellation of the entire debt and reimbursement of the deductions wrongly applied.

In another situation, the claimant, the mother of a sick child requiring her presence, was receiving the daily allowance for parental presence (AJPP). This aid was suddenly suspended by the fund, which justified the withdrawal by the fact that the claimant had not registered as a jobseeker, a condition for receiving the AJPP. This was because the legislation had changed and registration with Pôle emploi (government employment agency) was now compulsory, even if the person concerned was not actually looking for work. The claimant was unaware of this. She therefore registered as requested, but did not receive the AJPP for eight months, which put her in considerable difficulty.

The delegate, informed of this delicate situation, intervened with both the CAF and Pôle emploi, to examine the possibility of registering the claimant retroactively and to have the opening date of her entitlement to the AJPP revised.

Thanks to the efforts of all those involved, the claimant's situation was initially stabilised, with partial payments of the suspended allowance. Her case was then fully resolved, with additional payments made retroactively and debt cancellation in respect of other benefits received.

The right to residence for former unaccompanied minors

The Defender of Rights receives regular referrals regarding the difficulties that young foreign nationals taken into care by the child welfare agency (ASE) while they were minors may encounter when they apply for a residence permit when they reach legal age. In this case, the prefect had refused to admit a young Guinean under the care of the ASE at the age of sixteen, considering, on the basis of an expert report from the border police, that the civil status documents produced contained formal irregularities of such a nature as to call into question their authenticity and whether the young person was a minor.

By decision no. 2023-039 of 24 February 2023, the Defender of Rights submitted observations to the court, arguing in particular that the minor status of the young person assessed by the judicial authority was binding on the administration and should not have been called into question by the prefect. In a decision dated 3 November 2023, the administrative court overturned the prefect's decision, ruling that the young person should be considered as having provided proof of his civil status and date of birth, since neither the ASE nor the juvenile court judge had questioned his age or identity. He also pointed out that the law did not require the young person to prove that he was isolated in his country of origin.

Insurance: adapting a replacement vehicle to a disability

Due to her disability, a claimant had a car adapted to be able to operate "all the controls using her hands". Following an accident, her car was out of service for several weeks. She then contacted her insurer, as her contract provided for the provision of a replacement vehicle. However, the insurer explained that there was nothing it could do because there were no adapted vehicles available for hire in her department. The claimant then proposed other solutions to the insurer, such as hiring a vehicle from a private individual,



or reimbursing the cost of public transport or taxi journeys. But the insurer refused.

She then referred the matter to a delegate of the Defender of Rights, who contacted the insurer in an attempt to mediate an amicable settlement of the dispute, making every effort to raise awareness of the issue of the immobilisation of vehicles for people with disabilities. If no adapted vehicle is available for hire and no alternative solution is provided for in the contract for policyholders who need this type of vehicle, the situation is likely to constitute discrimination on the grounds of disability. It based its finding on decision no. MLD-2012-031 of 12 April 2012, in which the Defender of Rights had already reminded insurers of the need to prevent difficulties encountered by disabled policyholders whose vehicles are adapted. In particular, the decision recommended proposing alternative solutions such as covering transport costs.

In this particular case, the insurer responded favourably to the delegate's proposal. It apologised to the claimant and invited her to submit her various invoices for reimbursement. It also decided to pay her the sum of €400 to compensate her for the inconvenience caused while her vehicle was out of service.

A school bus service closer to children

In a rural area, a mother of three children attending primary school asked for a school bus stop to be opened near her home. With no response to her initial request, she followed up with the regional council for several months without success, even though her request appeared to be admissible: three children were involved, the bus would not have had to make a diversion, and the location envisaged for the stop had already been served in the past. In the absence of this stop, the children would have to walk 2 kilometres along the road, on a particularly unsafe route.

A delegate from the Defender of Rights contacted the regional council to emphasise the legitimate reasons for the mother's request. After an in-depth examination of the conditions for setting up this new stop, particularly in terms of safety, the regional council eventually gave its agreement and a bus stop was established at the most suitable location for these children.

2- COLLECTIVE PROGRESS

A major ruling in the fight against human trafficking

The Defender of Rights, as the institution responsible for ensuring that rights and freedoms are respected, and in particular for combating discrimination, was contacted by five victims who had lodged complaints about human trafficking.

For many years, the victims, and most of their colleagues, had been recruited by the same employer in two restaurants and a bakery in Normandy. They had been paid well below the minimum wage and had worked beyond the authorised limit with very few days off. Most of them were in an irregular situation and had been lured in and then detained by false promises, in particular that they would be helped to obtain legal status. Considering that human trafficking constitutes one of the most violent forms of discrimination when it consists of recruiting a person on the basis of their origin, nationality or economic vulnerability, with the aim of subjecting them to working conditions and accommodation that violate their dignity, the Defender of Rights submitted legal observations to the criminal court judge in charge of the case on 19 September 2019. In a ruling on 13 July 2021, the Évreux court found the defendant guilty of the offences of trafficking in human beings committed in exchange for remuneration, subjecting a vulnerable person to undignified working conditions and accommodation, and non-existent or insufficient compensation for the work of a vulnerable or dependent person. Subsequently, the Defender of Rights maintained her observations at the appeal hearing of 7 November 2022, resulting in the ruling of 16 January 2023 by the Rouen Court of Appeal, upholding the ruling of the Évreux court.

This decision must form part of a more systematic recognition of trafficking in human beings by the criminal courts, and the fight against this criminal practice must become a real priority.

The conclusions of the UN Committee on the Elimination of Discrimination against Women (CEDAW)

On 30 October, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) issued its concluding observations on France's compliance with the Convention on the Elimination of All Forms of Discrimination against Women. The Defender of Rights is delighted that several of her recommendations to the Committee have been adopted. In the field of education, the Committee concurred with the Defender of Rights' observations regarding the very inadequate implementation of the policy of education on emotional and sexual life. In particular, it recommended stepping up the introduction of gender-sensitive, age-appropriate and accessible education programmes on sexual and reproductive health and rights and the adoption of responsible sexual behaviour. With regard to gender equality in the workplace, the Defender of Rights welcomed the fact that the Committee, in several of its recommendations, echoed concerns raised by the institution, such as the risk of reproducing biases generated by recruitment algorithms. With regard to the risks of discrimination based on family status, the Defender of Rights welcomed the Committee's recommendation to strengthen programmes to encourage men to most the most of fatherhood. The Defender of Rights also welcomed the Committee's recommendations on combating sexual harassment in the workplace. The Defender of Rights will be vigilant to ensure that these recommendations are properly implemented.

The Defender of Rights' first opinion to the European Parliament on the "standards directives" for anti-discrimination bodies

In her opinion sent to the European Parliament on 28 June 2023, the Defender of Rights made recommendations to improve the European Commission's initial text regarding two proposed directives on standards for anti-discrimination bodies, known as "standards" (Directive on Standards for Equality Bodies). The aim of these directives, presented on 7 December 2022, is to establish binding minimum standards for the independence, resources and powers of these bodies within the European Union.

As the competent body for France, the Defender of Rights has closely followed the development of these proposals to ensure that the harmonisation process raises the overall level of operation of these bodies and consolidates their powers to make them more effective. This involvement is part of the institution's tradition of European and international action and cooperation. The Defender of Rights collaborated with the European Network of Equality Bodies (Equinet) and actively exchanged information with the General Secretariat for European Affairs, the Permanent Representation of France to the European Union, as well as with the Commission and the Swedish Presidency.

The opinion welcomed the overall project as a real opportunity to strengthen the fight against discrimination within the European Union by giving the competent national bodies greater leverage. It highlights the possibility of improving the effectiveness of their powers, particularly in terms of investigations and action before the courts. Nevertheless, the Defender of Rights issued a warning regarding certain provisions of the texts.

Opinion 23-01, presented to the European Parliament, summarised the Defender of Rights' recommendations for optimising the project and guaranteeing its effectiveness without reducing the powers of the bodies concerned.

Discrimination based on origin and LGBT phobias: two government plans on which the Defender of Rights made recommendations

The Defender of Rights was closely involved in drawing up the Government's two new national plans (2023-2026): the plan to combat racism, anti-Semitism and discrimination based on origin (known as Prado) and the plan for equal rights and against anti-LGBT+ hatred and discrimination.

These plans have incorporated a large number of the institution's recommendations: creation of a working group on civil fines, opening up of group action, development of testing, carrying out, on an experimental basis, an audit of discriminatory risks linked to origin in a large public company or public administration, reinforcement of training initiatives in the field of non-discrimination, etc. However, the subject of discriminatory identity checks was not addressed in Prado, which is a major omission.

The Defender of Rights is closely monitoring the implementation of these plans.

The institution has issued an opinion on the bill on the legal framework for group action (see p. 41) and is contributing to the working group on the introduction of a civil fine.

It is also a member of the Prado monitoring committee and has asked for a monitoring committee to be set up for the LGBT plan.

Focus

A PARTNERSHIP INITIATIVE IMPLEMENTED AT LOCAL LEVEL THROUGH AWARENESS-RAISING AND TRAINING

The Occitanie regional centre organised a day of action against discrimination and in favour of gender equality, in partnership with the Prefect of Gers, the Greater Auch area and the “Ressources et territoires” public interest group. On this occasion, the Defender of Rights was able to stress the importance of such a commitment in front of 130 professionals responsible for public policies in the fields of employment, education and housing. Aimed at raising awareness among local players, the day also helped to set priorities for the Territorial Plan to Combat Discrimination (PTLCD), which will be implemented in the area.

Also in the Occitanie region, after receiving complaints from people who had been subjected to discrimination on the grounds of their religious affiliation, and noting the difficulties encountered by many of the organisations involved in applying the principle of religious freedom and its limits, the regional centre, together with its delegates in the field of discrimination, provided training to prevent such disputes. More than 100 “values of the Republic and secularism” trainers (a programme run by the National Agency for Territorial Cohesion and the National Centre for Territorial Public Service) have taken advantage of this in Auch, Perpignan, Tarbes, Albi, Montpellier, Rodez and Toulouse, as well as 70 representatives of associations or government departments at the UNESCO “Master Class against Racism and Discrimination” and a training session for a group of 50 players from Toulouse’s urban policy neighbourhoods. In addition to these examples, the Defender of Rights is involved in all regions of mainland France and overseas France, working with institutions and associations to help them implement the right to non-discrimination.

Identification obligation for law enforcement officers

In a decision published on 11 October 2023, the Council of State enjoined the Minister of the Interior to take measures to enforce the obligation to identify law enforcement officers.

The Defender of Rights had submitted observations prior to the decision. She noted that the identification of law enforcement officers is essential in a state governed by the rule of law. It meets the requirements of transparency as well as the ethical obligations of exemplarity and professionalism of police officers and gendarmes. Without identification, control is impossible: neither the hierarchy, nor internal controls, nor the Defender of Rights, nor the courts can fulfil their role.

The Council of State found that the obligation to identify law enforcement officers by wearing a service number was frequently disregarded, and that when a service number was worn, it was not sufficiently legible. The high court ordered the State to take steps to remedy the situation.

The ban on food distribution: an example of rapid intervention by the Defender of Rights on a serious issue

The Defender of Rights received an urgent complaint regarding the ban on food distribution in Paris in a designated area of the 10th and 19th arrondissements from Tuesday, 10 October 2023 to Friday, 10 November 2023 inclusive. This ban, resulting from an order issued by the Paris Police Prefect, was challenged by several associations. The Defender of Rights issued observations (decision no. 2023-218) in the context of an application for interim injunction lodged by one of them, emphasising that the ban was likely to infringe the right not to be subjected to inhuman or degrading treatment. In fact, the food supply provided by the public authorities in this sector was insufficient to cover the essential needs of people in situations of extreme insecurity.

The opening hours and days of operation of many food distribution points were restricted, while those open every day for all meals were located a long way away or were only accessible to people referred by a social worker. For the most vulnerable people, the ban on food distribution risked depriving them of the resources they needed to meet their basic needs.

In an order dated 17 October 2023, the interim relief judge first observed that the ban on meal distribution created an emergency situation due to the scope of the ban and the saturation of other food aid schemes, and that there was no alternative solution. She therefore considered that the first condition for ordering the suspension had been met.

The interim relief judge then ruled that the public order concerns cited by the police chief to justify the legality of the ban had not been demonstrated. She therefore ruled that the ban was not necessary to maintain public order. As the two conditions required by Article L. 521-1 of the French Code of Administrative Justice had been met, the interim relief judge suspended the order of 9 October 2023.

Access to water in camps

A significant number of camps were established in a French municipality, housing around fifty people of French and foreign nationality. The residents of these makeshift sites had no access to water or sanitation, and were forced to use the limited facilities of a reception centre run by the municipality's communal social action centre (CCAS).

Following a request from an association, the CCAS rejected the installation of a continuous water access point near the camps, arguing that the existing access at the reception centre, combined with other water points in the area, fulfilled the obligations of the municipality.

Faced with this decision, the claimants lodged an appeal for misuse of power with the administrative court, together with a petition for summary suspension seeking an immediate stay of execution.

The Defender of Rights emphasised that the right to water, defined by the French Public Health Code, requires local authorities, including municipalities, to guarantee daily access to water covering all human needs. In the case of makeshift settlements, continuous access is necessary, and the refusal to create such an access point by the municipality could constitute a serious infringement of the right to water.

On 12 December 2023, the interim relief judge of the administrative court, echoing the reasoning of the Defender of Rights, suspended the refusal of the municipality and the CCAS (decision no. 2023-260).

IV• THE NEED TO DEVELOP ISSUES OF GENERAL INTEREST TO PROMOTE RIGHTS

The Defender of Rights uses the knowledge gained through the handling of complaints received, its reports, the studies it supports and its links with civil society to help raise issues of general interest in order to warn and mobilise players and public authorities alike on the systemic infringements identified, to promote access to rights and to change practices.

1• THE EXPERIENCE OF RACISM AND DISCRIMINATION OF PEOPLE FROM EAST AND SOUTH-EAST ASIA IN FRANCE

The REACTAsie study, backed by the Defender of Rights and published in March 2023, was based on in-depth biographical interviews with young graduates from East and South-East Asia living in France. Conducted by the multi-disciplinary research network “Migrations from East and South-East Asia in France” (MAF) and backed by the Defender of Rights, this study focused mainly on the experience of discrimination and racism among young graduates of Asian origin, regardless of their national or regional origin and their migration status, where applicable.

The study reveals the many forms of discrimination and racism to which people perceived to be of Asian origin are exposed in different areas of social life, whether at school, in the workplace or in the public space.

The survey highlighted several specific features of the experiences of racism and discrimination among people of Asian origin: the trivialisation and the normalisation of such incidents, the low rate of reaction and recourse, and a paroxysmal expression of anti-Asian racism during the Covid-19 pandemic. The study shows that racist discrimination and stigmatisation also affect socially advantaged individuals who make up a ‘model minority’.

In the face of these phenomena, the wide range of attitudes suggested a form of social hierarchy between different Asian countries/regions, and highlighted the weight of colonialism in the analysis and awareness of racism and discrimination based on origin among those exposed to it.



2· PARTICULAR ECONOMIC VULNERABILITY (PVE) AND DISCRIMINATION

In response to concerns raised by associations, in 2016 the French legislature included “particular vulnerability resulting from the economic situation” (PVE) among discrimination criteria. In order to better identify the conditions for its application, the Defender of Rights supported a study published in February 2023 (“Particular economic vulnerability”: sociological insights with a view to a better understanding of non-discrimination law), which questioned the very low legal uptake of this criterion.

The research identified several factors explaining the under-use of the PVE criterion. Some individuals are unaware of their situation, while others, even when aware of it, hesitate to turn to the law. In addition, administrative and material difficulties persist, hindering the application of the criterion. The research also revealed confusion in the labelling of the underlying realities, often favouring terms such as “extreme poverty” or “extreme insecurity”.

Those working in the field, despite having never used the term PVE, consider that this criterion is likely to reflect the complexity of the living situations of people in situations of insecurity, combining various elements and liable to give rise to stigmatisation. Using data from the “Access to rights” survey carried out by the institution in 2016, it was possible to trace the apprehension surrounding this criterion in relation to employment, internet-related difficulties, administrative problems, financial difficulties, and access to healthcare.

The research showed that PVE is often associated with general difficulties linked to a lack of financial resources. The individuals concerned are often single-parent families, large families, individuals with fewer qualifications, those under the age of 55, and women. This in-depth analysis highlighted the need to clarify and promote understanding of the PVE criterion in order to improve its use in the fight against discrimination.

3• DISCRIMINATION IN ACCESS TO GOODS AND SERVICES ON DIGITAL PLATFORMS IN FRANCE

Digital platforms, which are playing an increasingly important role in the exchange of goods and services in France, can also serve as echo chambers for prejudices that can lead to discrimination in the use of the services offered by and for their users. A study on “discrimination on the grounds of gender and supposed origin on two collaborative platforms” carried out in March 2023 by the Laboratoire Interdisciplinaire d’Évaluation des Politiques Publiques (LIEPP), with the support of the Defender of Rights, highlighted this possible discrimination on two major platforms: Leboncoin and BlaBlaCar.

On BlaBlaCar, analysis of the data showed that drivers with North African or African-sounding first names were treated differently from those of majority origin. Although they offer higher average prices, when these price differences are controlled for, they receive fewer passengers and earn 15% less on average per journey. An experiment with fictitious profiles reveals that drivers from minority backgrounds receive fewer messages, although this trend is not statistically significant. On the other hand, female drivers are more likely to receive messages and bookings than male drivers.

With regard to Leboncoin, sellers from so-called minority backgrounds experience longer waiting times to sell their goods than sellers from majority backgrounds. The results of an experiment with a fictitious profile showed that sellers from so-called minority backgrounds receive the same number of messages on average, while the probability of receiving a response from sellers is lower for buyers from minority backgrounds, regardless of the type of item being sold.

This initial study revealed the existence of discrimination on digital platforms in France, while highlighting the need to continue experimenting to explore these phenomena in greater depth and to mobilise platforms to prevent such discrimination.

4• ALLOCATION OF SOCIAL HOUSING IN FRANCE

The Defender of Rights has stepped up its efforts to understand the challenges involved in allocating social housing, particularly for beneficiaries of the enforceable right to housing (Dalo). With 5.3 million social housing units in France on 1 January 2022, attention has focused on the growing impoverishment of social housing tenants, a third of whom live below the poverty line.

A study backed by the Defender of Rights, entitled “Difficulties faced by the poorest households in accessing social housing” and conducted by economists from the French Economic Observatory (OFCE), focused on the specific difficulties faced by claimants with the most modest resources in allocating social housing.

Based on an unprecedented statistical analysis of data from the national demand registration system (SNE), the study confirms that the poorest households have unequal access to social housing. Irrespective of the level of local competition and other household characteristics, when they are not given priority, low-income households are disadvantaged in the allocation system compared with wealthier (or less poor) households.

Given its systematic nature, such a disadvantage is likely to characterise discrimination on the grounds of the “particular economic vulnerability” of the claimants concerned.

By revealing differences in the way applications are processed and in the supply of social housing, these results call into question the effectiveness of the right to housing, first and foremost through access to social housing, for certain social groups (immigrant populations and their descendants, low-income households, single-parent families, etc.) and in certain areas.

5- EVALUATING TELEPHONE RECEPTION FOR PUBLIC SERVICES

Six years after an initial study on telephone reception and the digitisation of public services, the Defender of Rights, in collaboration with the French National Institute for Consumer Affairs, undertook a new in-depth assessment of telephone reception at four organisations providing essential and general public service missions, namely the CPAM, the CAF, Pôle emploi and the Carsat.

The results highlighted some significant challenges. Across the four platforms tested, 40% of calls were unsuccessful, and the average waiting time to get through to an agent was more than nine minutes. The availability of agents varied considerably between platforms, with Ameli and the CAF being the most difficult to reach, while Pôle emploi had relatively better results.

Although callers were rated positively for their interpersonal skills, the quality of the information provided remained unsatisfactory. The rate of satisfactory responses to requests for information did not exceed 60% at any of the platforms. Users were frequently directed to the organisations' websites, even those who indicated that they did not have internet access or had difficulties using it. Users without internet access and, to a lesser extent, those who are older or have a foreign accent, frequently expressed dissatisfaction with the quality of the service.

Despite certain improvements, such as the end of premium rate calls, these results highlight the challenges associated with the transformation of the administration towards increasingly digitised public services. The Defender of Rights insisted on the need to adapt public services to the needs of users, favouring omnichannel communication in which telephone services continue to be an important means of accessing personalised information and essential procedures.

The digitisation of administrative procedures must supplement, rather than replace, traditional counter services, paper mail and the telephone, in order to guarantee fair access to public services.

6- THESIS PRIZE 2023

Since 2015, the Defender of Rights Thesis Prize has been awarded each year for work carried out in a legal discipline or in the human, social and political sciences (economics, geography, history, sociology, anthropology, etc.) relating to one of its missions.

The prize, worth €10,000, is awarded by a jury made up of leading figures from the academic world. In the event of a tie, the prize money is shared equally.

This year, two theses were recognised:

- “Disability and social destinies: a mixed-methods study” by Célia Bouchet.

Conducted under the guidance of Anne Revillard (Professor, Sciences Po) and Philippe Coulangeon (CNRS Research Director, Sciences Po, OSC), this thesis examines the social differences between the able-bodied population and several categories of people who have grown up with a disability, in different areas (schooling, employment, family life).

- “Sexual and gender minorities in exile. The minority experience put to the test by migration and asylum seeking in France” by Florent Chossière.

Under the supervision of Marianne Blidon (Senior Lecturer, Université Paris 1 Panthéon-Sorbonne) and Serge Weber (Professor, Université Gustave Eiffel), this thesis looks at the migration experiences of LGBT+ people who, after fleeing their country, applied for asylum in France on the grounds of persecution or fear of persecution linked to their minority sexual orientation or gender identity.

V• THE MAIN AREAS OF DEVELOPMENT FOR THE INSTITUTION

1• AN INSTITUTION RESOLUTELY FOCUSED ON CLAIMANTS

New digital features

The new version of the defenseurdesdroits.fr website, developed in 2023, is now online, representing a significant improvement in terms of clarity and accessibility. Focused primarily on the needs of claimants, this redesign aims to better welcome and inform different audiences, including experts.

The entire claimant process has been overhauled, with a guidance tool enabling claimants to check the suitability of their approach and gradually guide them towards the new referral form. This form, which has been completely redesigned to improve the way in which requests are processed, also features an English translation, underlining the importance of making the exercise of rights accessible to everyone, whatever their level of familiarity with digital tools or legal matters.

Particular attention has been paid to user-friendliness and navigation to support claimants throughout the process. The overall aim of these three complementary projects (website, referral form, navigation tool) is to improve support for claimants in their requests, while at the same time providing more comprehensive information for the examination of cases by delegates and legal experts.

The institution aims to welcome claimants efficiently, to quickly redirect those whose

complaints do not fall within its remit, and to provide better support to those who contact it. This approach is part of an overall drive to make information and services more accessible, applying the principles of accessibility to the digital services it promotes.

A question for...

EMMANUEL SARAZIN

Digital Project Manager in the Press and Communications division

What makes the institution's new website project so special?

A new website is always an exciting project. The senior managers share their vision, the staff describe their missions. Everyone has their own ideas about the institution. The role of communications is to bring everything together and to take the search for common ground as far as possible. Many employees have been involved in the various stages of the project. This has enabled us to be more relevant. The Defender of Rights had set a goal: to be accessible and understandable to everyone. Some people come to the site to seek help, others to find resources. The visitors to the website, however, are very diverse. We have studied their respective needs, devised pathways and adapted the content for each of them. Work has been carried out at every stage to maximise compliance with the accessibility guidelines and take account of disabilities.

User experience, interface design, digital accessibility, development, help with writing in simplified French... We have called on experts in each field. Along with the navigation tool, the new referral form and the clarification of the institution's written material, the new website is one of many projects that are helping to make our services more accessible and more human. At the same time, we have improved resource integration for more expert audiences and created new types of content to better showcase the institution's expertise and better communicate its positions. I am looking forward to seeing whether we have succeeded, and to building on this momentum for future developments.



A new internal guide to harmonise the handling of complaints

On 19 December 2023, the Defender of Rights' new "complaints handling guide" was finalised and presented to staff. The result of in-depth, collective work, it was designed for the institution's staff.

It serves as a daily working tool for the investigation division staff, but is also relevant to all staff given the multiple facets of handling a complaint, both upstream and downstream. In particular, it aims to harmonise procedures, ensure that the claimant is given due attention, streamline approval circuits and consider the most appropriate response depending on the intervention strategy.

A question for...

MIREILLE LE CORRE
Secretary General

Why was the new complaints handling guide important for the institution?

After more than 10 years since its creation, the Defender of Rights needed a new reference document for handling the individual complaints referred to it, in line with its mission of protecting rights in its five areas of competence.

This complaints handling guide, the preparation of which began a long time ago and was completed in December 2023, aims to meet three major challenges. Firstly, to clarify and harmonise working methods, some of which still stem from the different cultures associated with the institutions that merged to create the Defender of Rights, and to develop the use of different methods of intervention compared with the previous guide. Secondly, to cope with the sharp and regular increase in the number of complaints referred to the institution, which requires rethinking internal channels in order to monitor the workload, make each level accountable and encourage exchanges and validation on issues that particularly require it. Lastly, it should be a working tool for all staff, both existing and new, particularly in the investigation divisions, but also throughout the company, since working on a complaint requires cooperation that potentially mobilises all divisions, in terms of promotion, communication, regional action and general administration.

This guide has been designed around one of the Defender of Rights' key priorities: to respond as clearly and appropriately as possible to the expectations of the claimant. From amicable settlement to the publication of a non-anonymised special report, via decisions making recommendations or observations before the courts, the institution has a range of powers at its disposal which it must make use of.



*The Defender of Rights was established without the power to impose sanctions, and is neither an administrative body nor a judge. However, its recognition in the constitution and the powers conferred on it by the **loi organique** [framework law] give it a unique place and role in the French institutional landscape. This guide is an attempt to turn this unique status into an asset and use it to the full, in the service of people whose rights and freedoms have been infringed and require protection.*

Clarification of the institution's written material

As many people have difficulty understanding administrative language, the Defender of Rights has launched a process of clarifying its written material.

The project was launched at the initiative of the Defender of Rights in February 2023. More than 150 agents were able to attend a half-day awareness-raising session on the issues and rules of clear communication, and around twenty agents attended a two-day training course to deepen this knowledge and put it into practice, particularly in the initial letters sent out in response to claimants

(requesting documents, invitations to make an appointment with a delegate, etc.).

These letters are the institution's first response to any person who contacts it. It is therefore not possible to presume the individual's level of knowledge and it is essential not to discourage them from asserting their rights. These letters have therefore been drafted with a view to making them comprehensible to as many people as possible.

The clarification of written material is aimed at informing all of the institution's communications targeting the general public. A number of materials have already been redesigned with this in mind, including certain leaflets, the home pages of the website and the application form.

Better understanding the reasons for abandonment

In order to gain a better understanding of the reasons why some users abandon their rights, the Defender of Rights enlisted the help of students from three legal schools (Sciences Po Paris - access to rights clinic - and the law faculties of Clermont-Ferrand and Poitiers) to survey nearly 400 claimants and gather their opinions on the way their cases are handled by the departments responsible for admissibility.



Carried out throughout the year, this work has not only enabled us to gain a better understanding of the reasons why claimants abandon their rights, but has also highlighted the relevance of several of the recommendations, some of which have already been implemented: clarification of letters and emails sent to claimants, personalisation of written exchanges or referral to listening platforms or delegates to encourage “face-to-face” exchanges.

Reaching out

To ensure that everyone’s rights and freedoms are respected, and to provide a means of recourse for as many people as possible, the institution has always endeavoured to reach out to those who are the least able to assert their rights. In 2023, the institution sought to accelerate this approach, and developed various events and local communication campaigns.

A two-day event in the heart of Trappes

On 29 and 30 September 2023, the Defender of Rights organised the sixth edition of “Place aux droits!” event in the town of Trappes. The event, which was made possible by the municipal team working alongside the

institution, is part of an “outreach” approach that aims to be as close as possible to people to help them learn about and assert their rights. The initiative promotes direct contact with the public and encourages people to contact the institution free of charge if they feel their rights have not been respected.

After previous editions, which took place in the French overseas territories and in major regional capitals, the Defender of Rights wanted this edition of “Place aux droits” to be held in the centre of a suburban town in the Paris region, where many young people report being discriminated against.

Some forty of the institution’s staff and delegates were involved in this urban one-stop-shop, which provided an opportunity to talk to over 600 people in the heart of the town of Trappes, on Place des Merisiers, next to a large market. Over the course of two days, more than 150 complaints were recorded, mainly relating to the right of residence, access to housing and social benefits.

The Defender of Rights and her teams also held discussions on site with local players, associations and institutions (government departments, team from the local Maison de la Justice et du Droit, police force, etc.), as well as directly with young people who wanted to talk about their relations with the police. She was

also the guest of honour at the “Soirée des réussites”, a celebration of young residents of Trappes who have achieved outstanding academic, sporting, entrepreneurial or artistic successes. These are not just individual successes, but also the result of the commitment of a whole range of players who work with young people.

A question for...

DIDIER POTIER

Delegate in Trappes

What is special about an event like “Place aux droits” for a delegate?

For me, as a “young” Defender of Rights delegate in Trappes – I’ve been working there for just under a year – it was an important event. Along with my fellow delegates, Pierre Maurice and Ali Rih, we spend two and a half days a week working at the Maison de la Justice et du Droit (MJD). During the event, I was on the stand for two days, and we had a lot of visitors. In addition to the excellent communication campaign carried out beforehand (posters on the town’s bus shelters, for example), I noticed that the people of Trappes were very familiar with the MJD and our clinics. For me, this event was an opportunity to get to know the people who work at the head office and their involvement, and to talk to them. Finally, we delegates from Trappes were able to talk to Claire Hédon, the Defender of Rights, and Daniel Agacinski, General Delegate for Mediation and Director of Territorial Action, and I personally took part in the Defender of Rights’ meeting with local associations. These meetings were all highly enriching and will be useful for my work as a delegate.

A question for...

CHARLES ROBERT

Legal officer in the Rights Protection - User Relations division

What was your role at the “Place aux droits” event in Trappes?

My role was to be available for the people who came to the stand. I introduced them to the institution, gave them advice or referred them to colleagues when necessary, depending on their problem. Most of the time, we welcomed people in pairs so that we could give them the most comprehensive answers possible. As a lawyer specialising in immigration law, I was particularly able to help these people. I really enjoyed this close contact with the public, and it reminded me of my previous experience working in a regional centre for the Defender of Rights. The event was an opportunity to see the faces of the people I usually help on a daily basis. Over the course of the event, we responded to several hundred people and registered over 150 cases. Since then, when following up on their cases, I have noticed that a close relationship has developed, with some people remembering us and exchanges flowing smoothly.

Raising the profile of the institution at local and national level

In other regions, a number of initiatives have been launched in the same vein: in September, in Nancy, the delegates from Meurthe-et-Moselle and the Grand-Est regional branch set up a stand as part of the Associations Day. They were able to explain the role and missions of the Defender of Rights to the general public, as well as to the partners present on site. They were also able to help a large number of people with their complaints.

At the same time, throughout the month of October, the institution ran a communication campaign aimed at raising its profile so that it would be better known among those who need it. The results of a previous awareness survey showed that the youngest and

most vulnerable members of the public were the least familiar with the institution. This campaign, consisting of a video and a radio advertisement, was therefore specifically targeted at these two groups, using a global approach: broadcast on almost thirty national and overseas radio stations, as well as digital radio stations, with the video broadcast on social networks and the catch-up services of several TV channels, etc.

Focus

BECOMING A YOUNG AMBASSADOR FOR THE RIGHTS OF THE CHILD

The Young Ambassadors for the Rights of the Child (JADE) programme is designed for young people aged 16 to 25 who want to work to promote the rights of the child, equality and the fight against discrimination. Over the period 2022-2023, the JADE programme mobilised 118 young civic service volunteers. Embodying the Defender of Rights' desire to reach out to young people, the JADE programme reached over 53,000 children and young people through more than 3,000 interventions in schools this year. The aim is to reduce the gap between the stated rights of children and young people and their practical implementation on the ground, using appropriate teaching aids, innovative tools and the support of the services of the Defender of Rights. The JADE programme is a unique public service training programme that offers significant professional opportunities.

Delegate clinics ever closer to the needs of citizens

The Defender of Rights now has more than 1,000 contact points, compared with 428 during the final year of the Ombudsman of the French Republic's mandate in 2010. Spearheading the institution's accessibility, delegate clinics are becoming increasingly diversified every year, in order to get closer to those who do not know how to assert their rights.

This means, first and foremost, strengthening the institution's presence in disadvantaged neighbourhoods (known as "*quartiers de la politique de la ville*", QPV). In the Occitanie region, for example, 4 of the 14 new clinics to be opened in 2023 will welcome claimants from disadvantaged neighbourhoods (in Les Izards in Toulouse, in Montauban in the Chambrod-Médiathèque neighbourhood, in Perpignan in Haut-Vernet and in Carmaux in the Rajol - Cérou - Gourgatieux - Bouloc - Verrerie QPV). This is also the case in Besançon, for example, with the opening of a new drop-in centre in Palente-Orchamps.

In order to get closer to certain vulnerable groups, specific places are also being used as new reception centres for delegates, for example, the Maison des associations in Grenoble, the Centre social Bonnefoi residents' centre in Lyon, and the Crest community support centre.

It is important for delegates to be based in places that young people are likely to frequent. With this in mind, specific operations are organised in certain universities, for example in Rennes, Caen or at the Université du Littoral Côte d'Opale. In order to get closer to the youngest members of the community, clinics have also been set up in youth centres this year, for example in Valenciennes, Roanne and Cran-Gevrier, in the new municipality of Annecy.

One of the best places to reach out to young people in difficulty is, of course, local public service organisations, where a number of clinics have been set up in recent years. Recently, the Defender of Rights opened new centres in Liévin and Avignon. In September

2023, a new clinic was opened at the local youth centre of Greater Avignon, staffed by the “anti-discrimination” delegate. Opened as part of the local strategy to combat poverty and discrimination, and in collaboration with the players responsible for youth affairs, it is backed up by a major rights promotion programme for staff at the local public service organisation, to raise awareness of all the Defender of Rights’ areas of competence, particularly in matters of discrimination, and so enable as many young people as possible to have recourse to it.

“Extra-territorial” delegates for French nationals living abroad

The specific mission of the delegates for French nationals living abroad was created in March 2016. Now four in number, they deal with the vast majority of complaints received by email or telephone, but also receive claimants when they are visiting France (by appointment) at their clinic at the Ministry of Foreign Affairs. All French nationals living abroad who feel they are having difficulty in obtaining recognition of their rights and freedoms in their dealings with the French authorities, public establishments and French bodies with a public service remit can contact them free of charge.

Their role is to listen, provide guidance and mediate, and their in-depth knowledge of the consular public service gives them invaluable expertise for the three million French nationals living abroad. The results are particularly positive: 9 out of 10 mediations are successful.

Their interventions in various fields (pensions, inheritance, taxation, civil status, etc.) are increasingly sought after by French people abroad, who referred more than 650 cases to the Defender of Rights in 2023. Just under a third of them live in North Africa (particularly Algeria) and the Middle East, just over a quarter in sub-Saharan Africa (particularly Senegal), almost a quarter in Europe, 10% in Asia (mostly Thailand) and 10% in America. Most of the complaints (85%) concern dealings with public services.

In 2023, 40% of complaints concerned consular authorities, 15% concerned civil status and nationality services, and 10% concerned social welfare and social security organisations.

In order to highlight the difficulties encountered by French nationals living abroad and to help improve the public services available to them, the delegates report their findings each year to the members of parliament elected by French nationals living abroad and to the Assembly of French Nationals Abroad.

Innovating with social centres: mobile outreach services in Marseille neighbourhoods

To reach out to young people in working-class neighbourhoods in Marseille, their families and, more generally, vulnerable groups, the PACA-Corse regional centre got in touch with the Bouches-du-Rhône union of social welfare centres and set up a mobile clinic: the delegate, the “rights of the child” officer, now visits social welfare centres in the 10th, 11th, 12th, 13th, 14th and 15th arrondissements of Marseille “on request”.

The setting up of this mobile service has been accompanied by numerous awareness-raising activities, not only with social welfare centre reception staff but also with the family and youth commissions within each participating residents’ centre, so that professionals can identify users who could be referred to the delegate.

Stepping up efforts to help people in situations of insecurity

The Defender of Rights' approach in the Pas-de-Calais mining basin

Given the difficulties encountered by vulnerable groups in accessing their rights, the high level of poverty in the Pas-de-Calais department and the relatively low number of referrals to the Defender of Rights in this area, the institution decided, in 2022, to implement a proactive “outreach” policy at departmental level.

In practice, a number of actions have been taken: from developing partnerships with the voluntary sector, to setting up clinics in suitable locations, to strengthening targeted awareness campaigns. The year's results show that such initiatives raise the profile of the institution and help users to take control of their rights.

In order to round off the network of clinics, three new clinics have been set up. In Desvres, Hesdin and Liévin, the presence of the institution has thus been strengthened, guaranteeing enhanced accessibility. Efforts were also made throughout the year to raise awareness among elected representatives at municipal and inter-municipal level.

The delegates from Pas-de-Calais met with volunteers and beneficiaries at a number of events, including the *Restos du cœur* food charity breakfasts, to raise awareness of the organisation.

In addition, specifically in the mining basin, thanks to the relay provided by the Lens-Liévin urban community, several webinars have been organised with social organisations and associations with expertise in “outreach”. These exchanges have paved the way for specific partnerships, such as the opening of a delegate clinic within the Liévin local mission. Links with social workers have also been strengthened, both through exchanges with the departmental branch of the Federation of Solidarity Actors (FAS) and through presentations about the institution to students, educators and specialised monitors at the European Higher School of Social Work

(École européenne supérieure en travail social).

The regional branch of the Defender of Rights took part in the two “Children's Parliaments” of the 8 educational centres in Pas-de-Calais, organised in March and November 2023. This provided an opportunity for numerous exchanges with children, parents and educational teams on the subject of children's fundamental rights and the institution's expertise in protecting the rights of the child. Such actions led to an 11% increase in the number of complaints received regarding protection of these rights from Pas-de-Calais between 2022 and 2023.

Facilitating access to the Defender of Rights for Travellers

In 2021, the Defender of Rights took stock of the work carried out by the institution in defending the rights of transient populations and Travellers. In her report “Travellers: removing obstacles to rights”, she also drew up an inventory of the situation as close as possible to the realities and daily lives of Travellers, while formulating a number of recommendations.

In doing so, she noted a huge discrepancy between the number of complaints received by the institution and the reality on the ground. In response to the scale of non-take-up among the travelling community, the institution, in conjunction with Travellers and associations, has produced a brochure on the rights of Travellers and the remedies available to them, and has published online an information pack as well as practical factsheets on very specific situations where Travellers have been denied their rights. Each sheet sets out the law, what the Defender of Rights is able to do and what steps need to be taken: who to contact and what documents need to be gathered. The territorial network of delegates has also been provided with practical and legal information sheets so that it can respond as effectively as possible to the difficulties encountered by Travellers. Since February, when the tools were launched, the institution has seen an increase in the number of



referrals received relating to the rights of Travellers. This number tripled between 2020 and 2023. Two-thirds of these referrals were received by the delegates and one-third by the head office.

Of the referrals received in 2023, one third concerned the closure of reception areas, problems with rules of procedure, refusal of a temporary connection to the drinking water network, the ethics of the security forces, refusal of access to a site, denial of parking and refusal of a temporary connection to the electricity network. The other two-thirds concern more general problems that are not specific to Travellers, such as social welfare, social housing and school meals.

Once the resources had been produced, the institution took action to publicise them and bring them to life in the many places in the region where Travellers are likely to encounter disputes. In February, the Defender of Rights and her deputy responsible for combating discrimination visited the reception area at Hellemmes-Ronchin to talk to residents, the associations that support them and the public bodies responsible for implementing the policies that affect them.

In November, Claire Hédon and George Pau-Langevin met local players in Rouen and Louviers to raise awareness of the infringements of rights experienced by Travellers in almost every area of their daily lives. In Rouen, a meeting at the offices of the “Échelle inconnue” association gave travellers an opportunity to share the difficulties they face: problems of rehousing, particularly for those living at the reception area near the Lubrizol factory, who lack clear information about the outcome of their applications, discrimination in access to bank accounts, difficulties in accessing home schooling, etc. In Louviers, the Defender of Rights and her deputy raised awareness among local councillors of the problems faced by Travellers and reiterated some of the recommendations made in the report “Travellers: removing obstacles to rights”. Finally, they visited Nancy in December.

The heads of the regional divisions, their project managers and the delegates also took action to continue the work of informing, raising awareness and promoting the institution, in particular by taking part in several events and meetings in each of the territories concerned.



2• THE DEFENDER OF RIGHTS, A PIONEER IN MEDIATION

“50 years of mediation in the Republic”: an anniversary to prepare for the future

To mark the 50th anniversary of the law establishing the Ombudsman of the French Republic, the Defender of Rights, the institution that succeeded it, organised a symposium bringing together various players in social and legal affairs.

The Defender of Rights opened the symposium, which brought together more than 200 participants in Paris. She praised the work of institutional mediators working in ministries, local authorities and social welfare bodies, emphasising the importance of their independence and calling for omni-channel access to mediation in a context of digitised administrative procedures.

After the sociologist Pierre-Yves Baudot put into context the birth of the Ombudsman of the French Republic within the framework of the laws of the 1970s reinforcing the rights

of users when dealing with administrations, the Defender of Rights called for the development of a culture of dialogue and respect for rights in all public services, particularly in view of the reluctance of some administrations to engage in mediation.

The first round table explored mediation as a means of improving relations between users and the authorities, with testimonies from claimants who have benefited from the intervention of Defender of Rights delegates. The debates highlighted the impact of mediators' general recommendations in changing administrative rules and practices. The second round table considered the prospects for trust-based mediation at the service of users, in particular by examining the possibility of harmonising the legal frameworks of the various mediation bodies.

Didier-Roland Tabuteau, Vice-President of the Council of State, concluded by highlighting mediation as a sign of progress in the conception of administration and democracy. He stressed the need to improve relations between users and administrations through a cultural change that promotes the defence of users' rights and their right to participation.

A question for...

DANIEL AGACINSKI

General Delegate for Mediation

Can we say that 2023 was “the year of mediation”?

Yes, it was a year like no other for mediation: it opened with the fiftieth anniversary of the creation of the Ombudsman of the French Republic, by the law of 3 January 1973. With the Defender of Rights, we wanted to take this opportunity to bring together the “family” of mediators who intervene in public service relations.

Of course, the legal frameworks and prerogatives are not the same for all these mediation bodies, but we share values, such as equal access to rights and the need for a quality relationship between users and administrations, and we must reaffirm certain common requirements, such as independence and accessibility.

Mediation is the first lever that we, the legal experts at head office and the regional delegates, use to restore the rights of people who call on us, in all our areas of expertise. This is how we can get a police station to agree to register a complaint from a victim that it had initially refused, how we can get a discriminatory job offer rewritten, how we can adapt schooling arrangements for a disabled pupil, or even how we can get a housing benefit paid that had been “blocked” due to an error in the database.

And last June saw the creation of the National Mediation Council, on which I represent the Defender of Rights. In this body, which is enshrined in law and forms part of the “amicable settlement policy” of the Minister of Justice, I will be keen to put forward our vision of mediation geared towards respect for rights, which favours the rebalancing of power through dialogue, even between asymmetrical parties, which does not prevent access to the courts and is part of a dynamic of continuous improvement, through the lessons it enables us to learn, beyond individual situations.

Local partnerships with mediation stakeholders

In almost all regions, the stakeholders involved in user-administration mediation meet regularly to discuss the difficulties encountered by the people who refer cases to them and to share news from their respective sectors: mediators from social welfare organisations, local authorities and local representatives of the Defender of Rights (regional centres and delegates) have formed networks to encourage amicable, local resolution of administrative disputes.

In the Hauts-de-France region, for example, a regional mediation steering committee was set up in 2014, made up of delegates from the Defender of Rights and regional mediators from France Travail, CAF, CARSAT, CPAM, MSA and URSSAF. Committee members meet every two months to discuss institutional news and best practices in mediation, and to organise joint initiatives in this area.

More recently, a partnership was formed between the PACA-Corsica division and the city of Marseille’s ombudsman to ensure that municipal departments take proper account of the complaints received by the Defender of Rights, and to redirect the referrals received by the Defender of Rights’ delegates and the municipal ombudsman within their respective areas of competence.

3- WHISTLEBLOWERS: A STRENGTHENED FIFTH COMPETENCE

With the adoption of no less than four texts as part of the transposition of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019, and beyond, the year 2022 marked a major step forward in the handling of reports and the protection of whistleblowers.

The year 2023, which was accompanied by a net increase in referrals to the Defender of Rights under its competence to support whistleblowers, confirms the strengthening of the protection resulting from this new legal framework, as well as the pivotal role of the Defender of Rights in this protection mechanism.

The institution has adapted to these changes by creating a unit dedicated to supporting whistleblowers, responsible for receiving and analysing all whistleblower reports and monitoring the action of the investigating departments in the area of protection. The whistleblower support unit (Cala) thus has both a central and a cross-functional role, contributing, along with the investigation units, to the development of the Defender of Rights' doctrine on whistleblowers.

The Defender of Rights is both an external authority responsible for collecting and processing whistleblower reports in its areas of competence (rights of the child, discrimination, ethics of security professionals and relations with public services) and the only authority designated by law to support and protect whistleblowers. Every two years, the Defender of Rights is also responsible for evaluating the overall functioning of whistleblower protection in a report submitted to the President of the Republic, the President of the National Assembly and the President of the Senate. The first report is due in 2024.

Support for whistleblowers: from guidance to protection against reprisals

As part of its mission to support and protect whistleblowers, the year 2023 saw a sharp rise in the number of requests for whistleblower referrals, whether these came from the persons wishing to submit a whistleblowing report themselves or from an external authority that considered itself incompetent to deal with the matter. In 2023, more than seventy requests were sent to the Defender of Rights. In order to usefully direct these requests, the Defender of Rights set up a network of external authorities designated by the decree of 3 October 2022 to receive and process whistleblowing reports. The development of this network has facilitated exchanges between these authorities and with the Defender of Rights, in support of more efficient processing of whistleblowing reports.

In several cases, the Defender of Rights has also had to direct the whistleblower to an authority that is not on the list of external authorities designated by the decree of 3 October 2022, as provided for in Article 8, II(2) of the law of 9 December 2016. These situations illustrate the incompleteness of this list, which must be developed further.

For example, the Defender of Rights was contacted by a taxpayer who wished to draw attention to abusive collection practices by his local authority, in particular the issuing of false invoices. The Defender of Rights invited the taxpayer to contact the Regional Audit Office (CRC), which is responsible for auditing the accounts and management of local authorities. Noting that these practices could fall under several criminal classifications, it also invited the individual to refer the matter to the public prosecutor with regional jurisdiction. Finally, with regard to a potential offence of corruption, it referred the person to the French Anti-Corruption Agency, one of the authorities designated by the decree of 3 October 2022. In another case, an employee wished to report the use by a healthcare establishment of subsidies allocated for its medico-social activities by a regional healthcare agency (ARS) to finance its own management activities. The Defender of Rights, following

an exchange with the Inspectorate General of Social Affairs (Igas), directed the whistleblower to the ARS with regional jurisdiction, which was the authority best placed to monitor the establishment and thus put an end to the practices complained of.

In 2023, whistleblowers also took full advantage of the possibility of asking the Defender of Rights to issue an opinion on their status as whistleblowers. Requests for opinions have more than doubled: nearly eighty requests for certification were sent to the Defender of Rights in 2023, compared with around thirty requests in 2022. In 2023, the institution issued 35 favourable certification opinions. These opinions related to requests addressed to the Defender of Rights in both 2022 and 2023, and the six-month deadline imposed by the *loi organique* [framework law] for responding was always respected. Requests for opinions in 2023 that did not give rise to certification are either still being examined or have been closed.

This opinion, also known as “certification”, is intended to support whistleblowers in their efforts, in advance of any possible reprisals. The aim is to inform the whistleblower, as soon as possible after the alert has been made, of the protection to which they are entitled by means of a document that they can, if they wish, bring to the attention of their employer in order to protect themselves from possible reprisals.

The Defender of Rights was contacted by two nurses who had informed their employer of acts of mistreatment committed against the residents of a nursing home where they worked. On the basis of the information provided, it deemed that the conditions for the specific protection system set out in Article L. 313-24 of the French Social Action and Family Code were met since the claimants, who were employed by a medico-social establishment at the time they reported the situation, had reasonable grounds for believing that the maltreatment they had reported had occurred and did not appear to have acted with malicious intent. It also found that these

employees satisfied the conditions set out in the law of 9 December 2016, as amended by the law of 21 March 2022, particularly since no remuneration had been sought in return for their whistleblowing. It concluded that they were entitled to whistleblower protection under these two systems.

In principle, this opinion is given after hearing the respondent’s observations. However, in view of its purpose and the stage at which it is issued, the Defender of Rights accepts that this principle may be waived in certain circumstances, in particular when it appears that its implementation would be likely to expose the whistleblower to a serious risk of reprisals. This was the case for the two nurses.

As soon as reprisals are alleged, other means of intervention by the Defender of Rights, such as a reminder of the law, recommendations or observations in court, are deployed to ensure the whistleblower’s protection. The analysis then becomes more comprehensive, with the Defender of Rights being required to take a position not only on the whistleblower status of the individual having referred the matter to it, but also on the existence of the alleged reprisals and their link with the whistleblowing report. In 2023, more than half of the referrals made to the Defender of Rights by people who considered themselves to be whistleblowers sought to obtain such protection.

The year 2023 provided an opportunity to measure the clarification brought by the law of 21 March 2022 to the relationship between specific protection mechanisms and the law of 9 December 2016. An employee who reports a crime or offence can now benefit from the protection conferred by the status of whistleblower under a specific system without having to demonstrate that he or she meets all the conditions set out in Articles 6 and 8 of the law of 9 December 2016. It will only be verified that they have reported a crime or offence in good faith of which they had knowledge in the performance of their duties. This position was recently confirmed by the Court of Cassation (Cass. Soc., 13 Sept. 2023, no. 21- 22.301).

The numerous requests for certification and protection received by the Defender of Rights in 2023 have made it possible to both affirm and refine its doctrine. For example, the Defender of Rights informed claimants who were proprietors of a staff representative mandate that a distinction had to be made depending on whether they intended to take part in a whistleblowing procedure independently of their mandate, or to act within the specific framework of their mandate. In the latter case, the Defender of Rights considers that these individuals are not whistleblowers. They may in fact be protected by other legal means in respect of activities linked to their trade union or elected office. In particular, the Defender of Rights is competent to protect trade union representatives who suffer discrimination as a result of their trade union activities.

The new guide for whistleblowers

It was deemed essential to provide as many people as possible with a tool that explains the new version of the whistleblowing legislation, in order to make the reporting process more secure.

This is the purpose of the whistleblower guide, published by the Defender of Rights in March 2023, first in [French](#) and then in [English](#).

The document, which is aimed primarily at those involved or considering becoming involved in a whistleblowing procedure, is intended to be both educational and exhaustive in terms of the applicable rules and the ways in which the Defender of Rights can assist whistleblowers. It has been very well received, both by professionals specialising in the dissemination of legal information (the guide was reproduced in full in the Dalloz code of Compliance 2023), and by the Defender of Rights' partners (associations, external authorities for collecting whistleblowers' reports) and more widely, given the large number of downloads of this document from the Defender of Rights' website. Whistleblowers who contact the Defender of Rights regularly refer to the guide.

Advances in case law

The year 2023 saw a jurisprudential breakthrough in the case of a whistleblower whose case led the Defender of Rights to submit observations to the Court of Cassation.

An employee who submitted a report regarding possible offences committed by her employer was dismissed and referred the case to the Defender of Rights. The investigation carried out with the employer revealed that the conditions of the law of 9 December 2016, known as "Sapin II", had been met and that the employee was therefore protected against reprisals. The employer considered that the dismissal was justified by the employee's professional and behavioural shortcomings. The Defender of Rights, on the other hand, noted that the report submitted by the employee may have been the cause of the deterioration in her relations with her superiors. The employee appealed to the courts under the emergency procedure available to whistleblowers under the "Sapin II" law. However, her case was dismissed, as the judges found that she had not demonstrated a clear link between her report and the difficulties she had encountered, and that she could not use the emergency procedure to challenge her dismissal.

The Defender of Rights presented its observations to the Court of Cassation, emphasising that the burden of proof does not lie exclusively with whistleblowers and that the emergency procedure is open to them regardless of the reprisals suffered (1 February 2023, Court of Cassation, Appeal no. 21- 24.271). The Court of Cassation, in line with the observations of the Defender of Rights, overturned the decision of the Court of Appeal, and sent the case back for retrial. The Defender of Rights, who has always argued in favour of summary proceedings for whistleblowers, welcomed this advance in case law.

As for administrative case law, the Paris Administrative Court of Appeal's ruling of 28 June 2023 (no. 21PA04628) recognised that a police officer who had reported to his superiors the unethical behaviour of certain

colleagues towards users could be considered a whistleblower.

In line with the observations of the Defender of Rights, the court ruled that the police officer in question, who had acted impartially and in good faith, had submitted a report in compliance with the law of 9 December 2016. It noted that the warning he had received could not be considered justified by objective factors unrelated to his report, since it was motivated by the non-compliance with the conditions under which this police officer was required to submit his report, at the request of his superiors. As a result, the court ruled that this warning penalty was illegal, contrary to the ruling of the administrative court of first instance, which was overturned.

Handling whistleblowing reports

In 2023, the Defender of Rights adapted its procedure for handling whistleblowing reports to meet the requirements of the decree of 3 October 2022. Details of the procedure have been published on the institution's website.

The investigating divisions responsible for collecting and processing the reports received are required to provide the whistleblower, within a reasonable period of time not exceeding three months in principle, with information on the measures planned or taken to assess the veracity of the facts reported or to remedy them.

The development of their activities, in relation to the new whistleblowing regime, will be assessed, like that of the other authorities responsible for collecting reports, at the time of the Defender of Rights' first report on the overall functioning of whistleblower protection, due in 2024. The institution is already working on this first assessment of the new legislation.

Consolidation of the NEIWA network and contribution of the Defender of Rights to European debates on whistleblower protection

The year 2023 was marked by the consolidation of the NEIWA network, the Network of European Integrity and Whistleblowing Authorities.

At its 8th General Meeting, the NEIWA network adopted a Board of Directors, a Chair and a founding text: the Rome Declaration. The network has also set itself several areas of work, including comparative work on the different forms of support for whistleblowers, sanctions, and external and internal channels for submitting reports.

Since 2023, the network has also benefited from recognition at European Union level, as it now participates in the group of national experts, convened annually by the European Commission, responsible for monitoring the transposition and application of the 2019/1937 directive on whistleblower protection.

It is within this framework that the Defender of Rights was invited to the 9th meeting of this group in October 2023 to speak on training and information on the new rules transposed into national law.

As some NEIWA members are national ombudsmen, they have been able to discuss the issues of integrity in public services, ethics in administrations and whistleblower protection in a context of cross-fertilisation at European level. The European Ombudsman organised an event in Brussels on 9 and 10 November 2023 to exchange views with her national counterparts, including the Defender of Rights, on the lessons to be learned from Qatargate and the introduction of relevant ethical standards and prevention mechanisms within the European Union.



A question for...

CÉCILE BARROIS DE SARIGNY **Deputy responsible for whistleblowers**

What were the key events of 2023 for the Defender of Rights with regard to whistleblowers?

The principal concern and right of whistleblowers is to have their reports taken into account. It is now possible for whistleblowers to do this by means of an external report sent directly to one of the forty-one administrative authorities designated by the public authorities (decree of 3 October 2022).

Within this new framework, as the central authority for handling reports, the Defender of Rights has organised a network of external authorities responsible for collecting reports (AERS), which it brought together in March 2023. It now works on a regular basis with all these bodies. The network has a number of objectives: to learn about one another so that requests can be effectively directed to the authorities best placed to deal with reports; to discuss the most effective methods; and to collectively and coherently resolve difficulties in interpreting or applying

new rules. This joint effort has made it possible to support the implementation of the texts that now govern the handling of external whistleblowing reports. It has undoubtedly avoided deadlock and enabled the various members of the AERS to make more informed choices about how to deal with the requests submitted to them.

At the same time, following the publication of the whistleblower guide at the beginning of 2023, the Defender of Rights' own whistleblower support function has grown steadily.

The first pages of a new chapter in whistleblowing legislation are being written, and will be reflected to a large extent in the biennial report on whistleblower protection that the Defender of Rights will publish in 2024 with the help of all the authorities involved.

4. ADVANCES WITHIN THE INSTITUTION OF THE DEFENDER OF RIGHTS

2023 was a busy year for the internal life of the institution. It made full use of its budgetary resources, reviewed several important aspects of human resources, promoted gender equality and clarified its organisation chart.

Budgetary resources fully utilised

The institution had to deal with a significant increase in the number of complaints and ensured that all the necessary recruitment was carried out in line with the resources allocated in the Finance Act.

In terms of employment, although the employment ceiling did not increase significantly between 2022 and 2023, rising from 249 to 250 full-time equivalents (FTEs) (unlike in previous years - see table below), strong recruitment activity enabled budgetary resources to be used to best effect, with an improvement in annual job usage to reach the authorised ceiling (from 244 FTEs to 250 FTEs over the entire year).

As a result, and not counting the management of trainees (70 over the year, all durations combined) and delegates (voluntary employees of the institution), almost 40 staff were recruited in 2023 (long- or short-term contracts, as replacements or back-ups), and more than 300 staff were managed.

In view of the fact that the institution's staffing levels are still insufficient to deal with the growing number of complaints (a 13% increase in 10 years, while the number of complaints has risen by 75%), a major effort has been made to identify as precisely as possible the staffing requirements by structure and by division, with a view to entering into negotiations to increase resources as part of the drafting of the Finance Bill. In 2023, the institution was granted 10 additional positions for 2024.

With regard to budgetary resources (see table below), the slight increase in the institution's resources will have made it possible to implement, in addition to the incompressible expenditure necessary for the running of the services, a revision of the delegates' allowance incorporating the effects of inflation, the introduction of a freephone number for detainees and the resulting adjustment of contractual terms for call centre agents, a system for ensuring the security of calls from whistleblowers, as well as the renewal of the cybersecurity contract, the finalisation of the redesign of the website and the continuation of a search engine optimisation campaign for the anti-discrimination platform.

The institution has also applied for funding from the recovery plan so that it can initiate projects to upgrade its digital tools, whether this involves the development of new tools to facilitate practices or the circulation of information, or, more generally, the expected upgrades or development of the Agora internal application and the referral form. It also has an operating budget (unchanged for the last 5 years, corresponding to the occupation of the Ségur-Fontenoy site).

With regard to staff costs, in addition to the implementation during the year of government measures including the increase in salary point value and the payment of the exceptional purchasing power bonus (which explains the over-spending of the budget initially allocated), the institution wished to make a special effort, in consultation with staff representatives, to facilitate the salary increase measures contained in the management framework (rules of procedure), in line with the conclusions of the social barometer carried out in the first half of the year.

Major new human resources projects

Two major projects have been completed in the areas of compensation and recruitment on permanent contracts (CDI).

The institution has clarified and reviewed its compensation rules. Following a process of standardising pay levels within the same bracket, this resulted in the lump-sum payment of certain salary progression triggers (promotion, staff mobility, etc.), in the interests of transparency and clarity for staff.

This decision is part of a wider package of measures to help staff, which also includes a commitment to reduce job insecurity by opening up the use of permanent contracts (CDI) for new recruits and, consequently, for existing staff who do not already have one.

The year 2023 also saw several other major projects.

Firstly, the new bodies resulting from the December 2022 vote were set up, both the Administrative Social Committee (CSA) and its specialised body for safety, health and working conditions (FSSSCT).

In addition, a social barometer was drawn up, sent to staff and analysed to produce a roadmap.

Breakdown of the institution's FTE employment ceiling by status

Employment ceiling in FTE* 2023		
Incumbents	Category A+	11
	Category A	21
	Category B	8
	Category C	4
	Subtotal	44
Contract workers		206
Total		250

* FTE = full-time equivalent work

Breakdown of the institution's FTE employment ceiling by gender

	2023	
	Number of agents	%
Women	193	77
Men	57	23
Total	250	100

Budget consumption in 2023

In €	Programme 308 (business expenses)				
	Staff expenses (Title 2)	Other expenses (Non-Title 2)		Total Title 2 + Non-Title 2	
	AC=PC	AC	PC	AC	PC
Initial Budget Act budget	19,097,856	8,259,906	8,259,906	27,357,762	27,357,762
Budget made available	19,002,366	7,681,712	7,681,712	26,684,078	26,684,078
Budget consumed	19,207,779	7,762,418	7,797,976	26,970,197	27,005,755
Usage rate on loans	101%	101%	102%	101%	101%

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

Categories	Women			Men			Total workforce	Breakdown of workforce
	Number	% W	% W/W	Number	% M	% M/M	Number	%
A+	33	65	17	18	35	32	51	20
A	121	79	63	32	21	56	153	62
B	28	82	15	6	18	11	34	13
C	11	92	6	1	8	2	12	5
Total	193	77	100	57	23	100	250	100

A question for...

CHRISTELLE DERRIEN

Policy Officer at the Human Resources and Social Dialogue division

How did you work on the 2023 Social Barometer project?

The launch of a new social barometer was one of the highlights of 2023. This overhaul of our questionnaire involved the administration, staff representatives and an external service provider to help us carry out the work.

The survey was launched in April, with a high response rate from staff (71%). The results were analysed between April and May, with an official presentation to staff representatives in June, and to all staff in September.

The feedback revealed five main areas for action, either already underway in 2023 or to be implemented in the coming months: compensation; internal communication and strategic directions; prevention of occupational risks; working time and workload; and the implementation of forward-looking management of jobs, staff and skills. It was a long, in-depth, collaborative process. I found it really interesting to attempt to devise a questionnaire that was as appropriate as possible, and to faithfully reflect the feelings of staff. Our objective now is to develop certain existing systems, create those that are still lacking, and ensure that staff feel content within the institution. As part of this project,

I would particularly like to thank the staff representatives, with whom we have had some very rewarding discussions.

Investing in gender equality

At the end of 2022, the Defender of Rights appointed an internal gender equality officer to monitor and promote professional equality between women and men.

Trained to deal with the various issues related to gender equality, the officer dealt with individual situations throughout 2023. She conducted awareness-raising campaigns, in particular around 8 March (International Women's Rights Day) and 25 November (World Day for the Elimination of Violence against Women).

An Equality Committee was also set up, bringing together in-house experts on the subject. In particular, the committee was able to draw up proposals for a new memorandum updating the provisions for preventing, reporting and punishing sexual and gender-based violence in the workplace.

These various actions underline the institution's ongoing commitment to professional equality.

Breakdown of the institution's operating expenditure in 2023

Type of expenditure	%
Compensation for regional delegates	44%
Rights advocacy, communication, partnerships, events	19%
Day-to-day operations	17%
Websites, computer tools	7%
Surveys and research	6%
Trainee allowances	4%
Reimbursement of seconded staff	3%
Total	100%

Changes to the organisation chart for greater clarity

In order to clarify the remit of each department both internally and for external parties, changes were made to the organisation chart.

The Department of Admissibility and Access to Rights has become the “Department of Protection of Rights - Relations with Users”. As the point of entry for all complaints and appeals, this department investigates cases as they come in and is one of the three investigation departments (along with the “Protection of Rights-Public Affairs” and “Protection of Legal Affairs” departments).

The department in charge of the regional centres and the network of regional delegates has become a department in its own right: the “Territorial Action Department”. Comprising a network centre and regional centres, its new name reflects the importance of the institution's commitment to the regions and the links between head office and the regions.

The two divisions of the “Promotion of equality and access to rights” department are now called “Youth, Training and Prospects” on the one hand, and “Relations with Civil Society, Studies and Documentation” on the other.

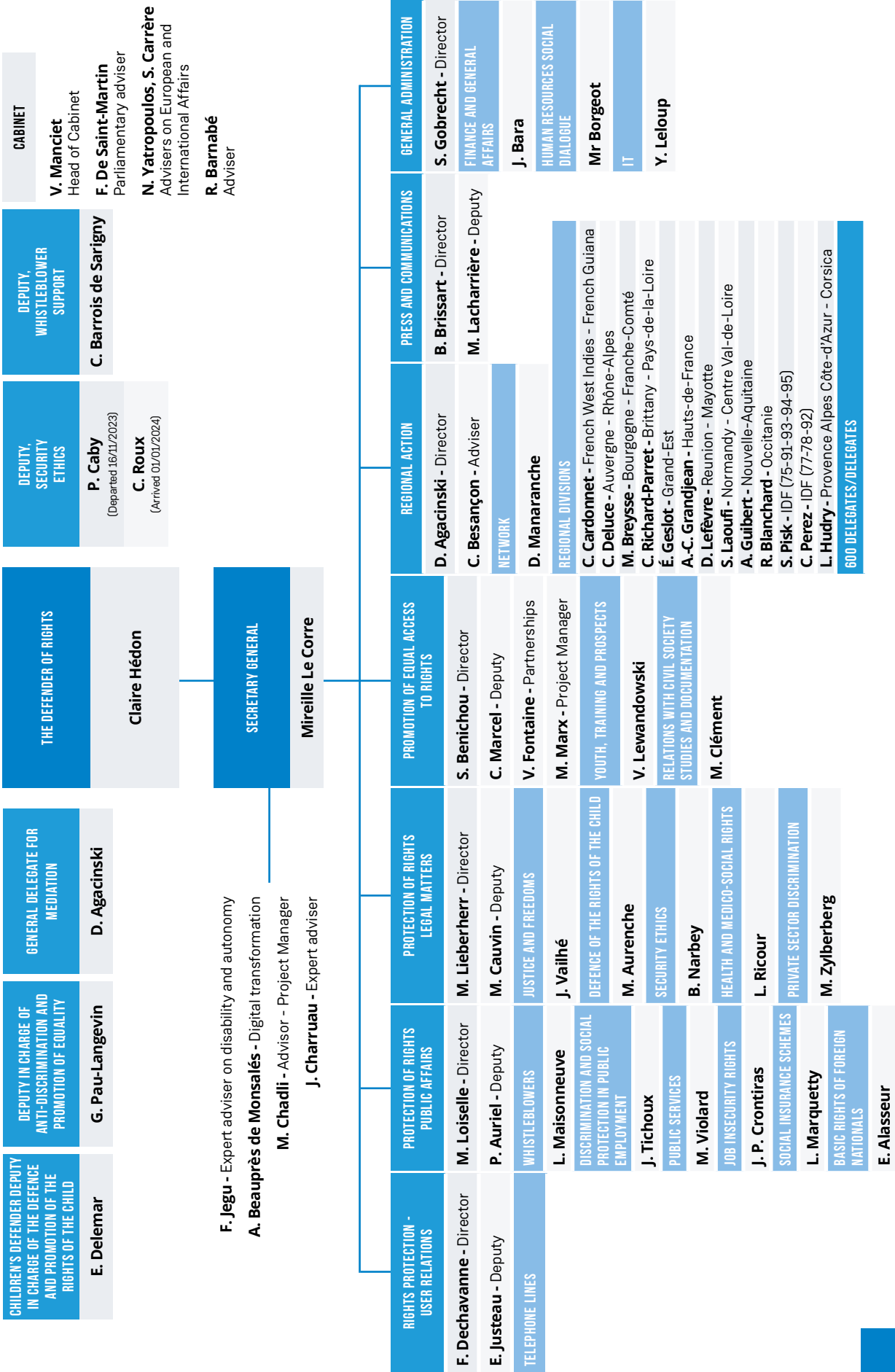
Within the “Protection of Rights - Legal Affairs” department:

- the investigation unit, which deals with all issues relating to health and medico-social rights, is now called the “Health and Medico-social Rights” unit instead of the “Patients’ Rights and Dependency” unit, in particular as the concept of dependency was often misinterpreted;
- the “Employment, Private Goods and Services” unit has become the “Discrimination in the Private Sector” unit.

Finally, within the “Protection of Rights - Public Affairs” department:

- the “whistleblower support unit” has been created, reflecting the new importance of this mission;
- the “civil service” division has been renamed the “discrimination and social protection in public employment” division, better reflecting the institution's remit with regard to public employees;
- the “social protection and solidarity” division has been transformed into two separate divisions: on the one hand, the “Social Insurance Schemes” division, which will deal with complaints relating to the main areas and branches of the social security bodies, including sickness, disability (excluding the disabled adult allowance, which is dealt with by the other division), the family and private pensions; secondly, the “rights linked to the fight against insecurity and employment” division reflects the priority for the Defender of Rights and for the institution to dedicate a division to investigating complaints relating to measures designed to combat insecurity and employment. Social minima, accommodation and social housing, as well as financial aid for people in situations of insecurity, will fall within its remit.

Organisation chart of the institution's services (March 2024)



APPENDIX 1: ADVISORY COMMITTEES

“DEFENCE AND PROMOTION OF THE RIGHTS OF THE CHILD” ADVISORY COMMITTEE

The Human Rights Defender chairs the advisory committee that assists her in exercising her powers in the area of defence and promotion of the rights of the child (Article 11 of the *loi organique* [framework law] on the Human Rights Defender). Eric Delemar, Children’s Defender, deputy to the Human Rights Defender, is Vice-Chair of this advisory committee.

The six-member advisory committee met three times and was consulted on a number of important decisions.

For example, a draft decision recommending that all minors who have been implicated and against whom there are plausible grounds for suspecting that they have committed or attempted to commit an offence, regardless of their age and including minors under 10 years of age for whom a decision to discontinue proceedings is envisaged due to the minor’s lack of criminal responsibility due to their age, should be subject to informal questioning (decision no. 2023-242).

In addition, the decision concerning the failure to take account of a pupil’s academic results in the Affelnet allocation process (decision no. 2023-140 of 26 June 2023) provided an opportunity for a more general reflection on the need to ensure that no individual decision directly affecting a pupil’s orientation is taken entirely automatically.

Finally, the members of this advisory committee also contributed to the work on the annual report on the rights of the child, devoted to the right to leisure, sport and culture.

“Defence and Promotion of the Rights of the Child” advisory committee

Jérôme Bignon

Honorary Member of Parliament, Honorary Barrister (appointed by the President of the Senate)

Odette-Luce Bouvier

Adviser to the Court of Cassation (appointed by the First President of the Court of Cassation and the Public Prosecutor at the Court of Cassation)

Pascale Coton

Vice-President of the CFTC (appointed by the President of the Economic, Social and Environmental Council)

Elisabeth Laithier

Honorary Deputy Mayor of Nancy - Expert adviser on early childhood at the AMF - President of the Lorraine Association for the Promotion of Early Medical-Social Action (appointed by the President of the Senate)

Anne-Marie Leroyer

Professor at the Sorbonne Law School, specialist in personal and family law (appointed by the President of the National Assembly)

Marie-Rose Moro

Psychiatrist, University Professor - Director of the Maison de Solenn adolescent centre, Cochin Hospital (appointed by the President of the National Assembly)

“SECURITY ETHICS” ADVISORY COMMITTEE

The Human Rights Defender chairs the advisory committee that assists her in exercising her powers in the area of security ethics (Article 11 of the *loi organique* [framework law] on the Human Rights Defender). Pauline Caby, deputy to the Human Rights Defender in charge of compliance by the security forces, was vice-chair of this advisory committee. She stepped down in November 2023 and was replaced in January 2024 by Céline Roux.

The eight-member advisory committee met twice and had several opportunities to discuss whether or not the security forces had breached the law.

This was the case in particular for certain cases relating to identity checks: decision 2023-056 on a discriminatory identity check at a railway station; decision 2023-194 on the circumstances in which a police officer pointed his firearm at a volunteer from an association during an identity check.

In addition, a case referred to this advisory committee as well as to the advisory committee in charge of combating discrimination provided an opportunity to issue a general reminder of the independence of disciplinary and legal proceedings and the need to initiate disciplinary proceedings without waiting for the outcome of legal proceedings (decision no. 2023-020 of 5 May 2023 concerning a supervisor who was the victim of discriminatory harassment on the grounds of his origin by a colleague, which took the form of repeated racist remarks made by the latter, without the administration having provided him with sufficient protection). Finally, it was after receiving the opinion of this advisory committee that the Human Rights Defender issued her decision no. 2023-46 of 26 June 2023 on the circumstances in which Adama Traoré died following his arrest by gendarmes.

“Security Ethics” advisory committee

Claude Baland

Honorary Prefect - Former Director General of the National Police (appointed by the President of the Senate)

Alain Fouché

Honorary Senator for Vienne - Former member of the Court of Justice (appointed by the President of the Senate)

Dominique Payen De La Garanderie

Lawyer, former President of the Paris Bar (appointed by the President of the Senate)

Yves Nicolle

Honorary Commissioner General (appointed by the President of the National Assembly)

Olivier Renaudie

Professor of public law at University of Paris 1 Panthéon-Sorbonne (appointed by the President of the National Assembly)

Jacky Richard

Honorary State Councillor (appointed by the Vice-President of the Council of State)

Pascale Martin-bidou

Senior lecturer in public law at the University of Paris Panthéon-Assas (appointed by the President of the National Assembly)

Pierre Valleix

Honorary Advocate General at the Court of Cassation (appointed by the First President of the Court of Cassation and the Public Prosecutor at the Court of Cassation)

“ANTI-DISCRIMINATION AND PROMOTION OF EQUALITY” ADVISORY COMMITTEE

The Defender of Rights chairs the advisory committee that assists her in exercising her powers in the fight against discrimination (Article 11 of the *loi organique* [framework law] on the Defender of Rights). George Pau-Langevin, deputy to the Defender of Rights in charge of anti-discrimination and promotion of equality, is vice-president of this advisory committee.

Discussions within this eight-member advisory committee, which met four times in 2023, provided an opportunity to exchange views on current parliamentary issues as part of the preparation of the Defender of Rights’ opinions, such as the opinion on the bill to combat discrimination through individual and statistical testing (Opinion 23-06 of 13 November 2023).

The members of the advisory committee also gave their opinion on a number of projects relating to sexist and sexual harassment.

In addition, this advisory committee has given its opinion on several projects relating to the issue of pregnancy (e.g. decision no. 2023-142 of 17 July 2023 relating to a care assistant whose last fixed-term contract was not renewed because she was pregnant).

Lastly, the members were informed of the positive follow-up to certain decisions that had been submitted for their opinion, such as decision no. 2022-249 of 21 February 2023 relating to the publication on a specialised online platform of job offers requiring applications from women for dental assistant positions.

Anti-Discrimination and Promotion of Equality” advisory committee

Gwénaële Calves

Professor of Public Law at the University of Cergy-Pontoise, specialist in nondiscrimination law (appointed by the President of the National Assembly)

Stéphane Carcillo

Professor affiliated to the Department of Economics at Sciences-Po Head of the Employment and Income Division at the OECD (appointed by the President of the Senate)

Éric Cediey

Director of ISM CORUM (appointed by the President of the National Assembly)

Karima Silvent

Director of Human Resources for the AXA Group and President of the Establishment for Inclusion in the Workplace (EPIDE) (appointed by the President of the Senate)

Marie-Françoise Guilhemsans

State Councillor (appointed by the Vice-President of the Council of State)

Guy-Dominique Kennel

Former Senator - Honorary President of the Bas-Rhin Departmental Council (appointed by the President of the Senate)

Daniel Sabbagh

Director of Research (Sciences Po-CERI) (appointed by the President of the National Assembly)

Véronique Slove

Honorary Adviser to the Court of Cassation (appointed by the First President of the Court of Cassation)

APPENDIX 2: JOINT COMMITTEES AND LIAISON COMMITTEES

2023 saw the creation of a new joint committee, the “Insecurity” Committee.

A total of 15 joint committees and 3 liaison committees met during the year.

Joint Committee - Advancing Age

- Association Monalisa
- Association française des aidants
- Association Les petits frères des pauvres
- Association Old’up
- Association parisienne de solidarité familles et amis de personnes âgées et de leurs familles (ASFAPADE, member of FNAPAEF)
- Association Réseau francophone des villes amies des aînés (RFVAA)
- Allo maltraitance personnes âgées personnes handicapées (ALMA) PARIS
- Fédération 3977 contre les maltraitances
- International Federation of the Association of Older People (FIAPA)
- Fédération nationale des associations de l’aide familiale populaire (FNAAFP/CSF)
- Fédération nationale des associations et amis des personnes âgées et de leurs familles (FNAPAEF)
- France assos santé
- Générations mouvement aînés ruraux
- Union nationale des associations familiales (UNAF)
- Union nationale France Alzheimer
- Union nationale interfédérale des œuvres et organismes privés non lucratifs sanitaires et sociaux (UNIOPSS)

Joint Committee - Gender equality

- Administration moderne
- Association européenne contre les violences faites aux femmes au travail (AVFT)
- Association pour le droit à l’initiative économique (ADIE)
- Business and professional women France (BPW)
- Fédération nationale des centres d’information sur les droits des femmes et des familles (FNCIDFF)
- Fédération nationale Solidarité femmes (FNSF)
- Femmes pour le dire, femmes pour agir (FDFA)
- Femmes solidaires
- Fondation des femmes
- Grandes écoles au féminin
- La Cimade
- La coordination française pour le lobby européen des femmes (LA CLEF)
- Laboratoire de l’égalité
- Mouvement français pour le planning familial (MFPP)
- Osez le féminisme (OLF)

Joint Committee - Disability

- APF France handicap
- Autisme France
- Confédération française pour la promotion sociale des aveugles et amblyopes (CFPSAA)
- Collectif handicaps
- Fédération des associations pour adultes et jeunes handicapés (APAJH)
- Fédération française des dys
- Association des Accidentés de la Vie (FNATH)

- Groupement pour l'insertion des handicapés physiques (GIHP)
- Groupement national de coopération handicaps rares (GNCHR - GPF)
- GNCHR (ANPSA)
- Nous aussi
- Paralysie cérébrale France
- Sésame autisme
- Union nationale de familles et amis de personnes malades et/ou handicapées psychiques (UNAFAM)
- Union des associations nationales pour l'inclusion des malentendants et des sourds (UNANIMES)
- Union nationale des associations de parents d'enfants inadaptés (UNAPEI)
- L'Association pour l'insertion sociale et professionnelle des personnes handicapées (LADAPT)

Joint Committee - LGBT

- ACCEPTESS-T
- ACT-UP Paris
- ADHEOS
- APGL
- ARDHIS
- Association nationale transgenre
- Centre LGBTQI+ Paris IdF
- CIA - Collectif intersexes et alliéEs
- Collectif éducation contre les LGBTphobies en milieu scolaire
- Fédération LGBTI+
- Fédération total respect / Tjenbé Rèd!
- FLAG!
- Homoboulot
- Inter-LGBT
- L'autre cercle
- Les enfants d'Arc-en-Ciel
- MAG Jeunes LGBT
- OUPTrans
- RAVAD
- SOS homophobie

Joint Committee - Origins

- SOS Racisme

- International League Against Racism and Anti-Semitism (LICRA)
- Association des jeunes chinois de France (AJCF)
- Fédération nationale des maisons des potes (FNMP)
- Conseil représentatif des associations noires de France (CRAN)
- Association nationale des gens du voyage citoyens (ANGVC)
- Romeurope
- Conseil représentatif des français d'outre-Mer (CREFOM)
- Mouvement contre le racisme et pour l'amitié entre les peuples (MRAP)
- Ligue des droits de l'homme (LDH)

Joint Committee - Insecurity

- ATD Quart Monde
- Emmaüs France
- Fédération des acteurs de la solidarité (FAS)
- Fondation Abbé Pierre (FAP)
- Médecins du Monde
- Restos du cœur
- SAMU social
- Secours Catholique
- Secours Populaire
- Collectif Alerte - Union nationale interfédérale des œuvres et organismes privés non lucratifs sanitaires et sociaux (UNIOPSS)
- Centre d'action sociale protestant (CASP)
- Familles rurales

Joint Committee - Child Protection

- Association française des magistrats de la jeunesse et de la famille (AFMJF)
- Conseil national des barreaux (CNB)
- Droit d'enfance
- Convention nationale des associations de protection de l'enfant (CNAPE)
- Conseil français des associations des droits de l'enfant (COFRADE)
- Défense des enfants international (DEI) France
- Agir ensemble pour les droits de l'enfant (AEDE)

- Enfance et partage
- Fédération des acteurs de la solidarité (FAS)
- Fondation pour l'enfance
- Fédération nationale des associations départementales d'entraide des pupilles et anciennes pupilles de l'État (FNADEPAPE)
- Fédération nationale des administrateurs Ad Hoc (FENAAH)
- Groupe SOS Jeunesse
- SOS Villages d'enfants
- Union nationale des associations familiales (UNAF)
- UNICEF France
- Union Nationale Interfédérale des œuvres et organismes privés non lucratifs sanitaires et sociaux (UNIOPSS)
- La Voix de l'enfant
- UNAFORIS (Union nationale des acteurs de formation et de recherche en intervention sociale)

Joint Committee - Health

- Aides
- Comité pour la santé des exilés (COMEDE)
- Croix Rouge française
- Fédération des acteurs de la solidarité (FAS)
- Fédération française des diabétiques
- France assos santé
- Ligue nationale contre le cancer
- Médecins du monde
- Secours populaire
- Association sparadrap
- Union nationale des associations familiales (UNAF)
- Union nationale de familles et amis de personnes malades et/ou handicapées psychiques (UNAFAM)
- UNIOPSS

Liaison Committee - Employment intermediaries

- À compétence égale
- Association nationale des directeurs des ressources humaines (ANDRH)
- Association pour l'emploi des cadres (APEC)
- Pôle emploi

- Prism'emploi
- The Adecco group
- UNML (Union Nationale des Missions Locales)
- Direction générale de l'administration et de la fonction publique (DGAFP)
- Association française des managers de la diversité (AFMD)
- Mouvement des entreprises de France (MEDEF)
- Fédération nationale des centres de gestion (FNCDG)
- Confédération des petites et moyennes entreprises (CPME)

Liaison Committee - Housing

- FNAIM, Fédération nationale de l'immobilier
- FONCIA GROUPE
- LAFORÊT FRANCHISE SAS
- ORPI FRANCE
- SELOGER.COM
- SNPI, Syndicat national des professionnels immobiliers (SNPI) UNIS
- UNIS IDF
- Union nationale pour la propriété immobilière (UNPI) Raymond CARRE DE MALBERG, Contribution à la théorie générale de l'Etat [1922], Paris: Editions du CNRS, 1962 (vol. 1/2), p. 488 489.
- Jacques Chevallier, L'Etat post-moderne, 2^{nde} éd., Paris: L.G.D.J., 2004, p. 151.
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- Koen Lenaerts, "New Horizons for the Rule of Law Within the EU", German Law Journal, vol. 21, no 1, 2020. Le président de la Cour de justice de l'Union européenne emploie une expression de Thomas von Danwitz ("Values and the Rule of Law: Foundations of the European Union – An Inside Perspective from the ECJ", Potchefstroom Electronic Law Journal, vol. 21, p. 1 17).

NOTES

¹ Raymond Carre De Malberg, *Contribution à la théorie générale de l'État* [1922], Paris: Éditions du CNRS, 1962 (vol. 1/2), pp. 488-489.

² Jacques Chevallier, *L'État post-moderne*, 2^e éd., Paris: L.G.D.J., 2004, p. 151.

³ Circular letter from the Prime Minister, addressed to all members of the Government, on his instructions concerning the principles and organisation of government action, 24 May 1988 (p.2).

⁴ Koen Lenaerts, "New Horizons for the Rule of Law Within the EU", *German Law Journal*, vol. 21, n° 1, 2020. Le président de la Cour de justice de l'Union européenne emploie une expression de Thomas von Danwitz ("Values and the Rule of Law: Foundations of the European Union – An Inside Perspective from the ECJ", *Potchefstroom Electronic Law Journal*, vol. 21, p. 1 17).

⁵ ECHR, 19 March 1997, no. 18357/91, pt. 40.

⁶ Cons. Const., 29 July 1998, n° 98-403 DC, cons. 46.

⁷ ECHR, 18 July 2023, no. 49255/22, §108.

⁸ Maurice Hauriou, *Précis de droit constitutionnel*, 2^e éd., Paris: Sirey, 1929, p. 150.

⁹ *Ibid.*, pp. 150-151.

¹⁰ Defender of Rights, Opinion no. 21-01, Jan. 12, 2021.

¹¹ Cons. Const., 26 July 2023, décision no. 2023-853 DC, cons. 37.

¹² Defender of Rights, *Le maintien de l'ordre au regard des règles de déontologie*, 2017 ; decision no. 2020-08 ; framework decision no. 2020-131; *Désescalade de la violence et gestion des foules protestataires*, 2021.

¹³ UN, Human Rights Council, *Guiding Principles on Extreme Poverty and Human Rights*, §62 et seq.

¹⁴ Cons. Const., 25 July 2024, no. 2023-863 DC, cons. 222 et seq.

¹⁵ In practice, these specific physical aptitude requirements are better known as the "SIGYCOP" aptitude benchmark, which aims to define the medical profile of candidates for recruitment. Each letter corresponds to a region of the body or a general and psychological state that is examined.

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Defender of Rights - TSA 90716 - 75334 Paris Cedex 07 - 09 69 39 00 00

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