Annual report for 2007

LE MÉDIATEUR
DE LA RÉPUBLIQUE

AN IMPORTANT PLAYER IN THE DEFENCE OF PUBLIC FREEDOMS

Created in 1973, the Institution of the Mediator of the French Republic is an independent body that uses its skills to assist citizens, individuals or corporate bodies free of charge, with a view to improving their relations with the administration and public services. It handles disputes on a case-by-case basis, checks whether the organisation concerned by a complaint has acted in line with the public service mission entrusted to it, points out existing malfunctions and restores the complainant's rights. When an administrative decision, though legally founded, violates human rights, the Mediator of the French Republic is empowered to make recommendations in all fairness. He may also use his injunction power when the State fails to comply with a court decision taken in favour of constituents. The Mediator of the French Republic equally has an important reform-proposal power with which he helps improve administrative and legal procedures so that the law can be adapted to social changes, and inequities stopped. The Institution owes its dynamism and efficiency to the quality of its employees at the headquarters, its national presence guaranteed by some three hundred delegates, its flexibility and networking. Appointed by decree of the Council of Ministers, the Mediator of the French Republic has a single, irrevocable and immutable six-year mandate. The Mediator of the French Republic is a member by right of the National Human Rights Commission.

The figures provided in this report concern the year 2007.
The report was completed on 30 January 2008.

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EDITORIAL

Jean-Paul Delevoye,
Mediator of the French Republic

How do you manage the difficult balance between the community and the individual, the universal and the local, and between the virtual and the real? Today, our society is going through important demographic, economic, environmental and technological upheavals. These rapid changes are accompanied by new confrontation phenomena and new category-specific, company and religious oppositions, which will increasingly require the intervention of independent authorities. Regardless of any political, judicial, administrative constraint, etc., These independent authorities promote the respect of human dignity and development. Over the past three years, the Institution of the Mediator of the French Republic has developed excellent and respectful partnerships, as well as relations of trust, with all the players in the judicial and administrative world: the Court of Cassation, chairmen of appeal courts, the High Council for the Judiciary, the Council of State. In 2007, we maintained and developed these partnerships further, but we also wanted to create a network of the various parties involved in mediation work; thus, the first meetings of private and public mediators were held at the Paris Chamber of Commerce, and resulted in fruitful reflections with other players such as the CCIP's mediation and arbitration centre. The institution also established the most active relations with big organisations that fight against destitution – Red Cross, Secours Populaire, and the Salvation Army. In short, 2007 was characterised by important contacts with NGOs and national and international Human rights organisations. Today, mediation is no longer possible without taking human rights into account, as a result of a change towards a French-style ombudsman, as is the case in similar countries.

One of the major issues in the years to come will be how restore "good community life" in our societies. Our partners, just like our delegates whose network covers the entire country, are at the heart of individual and public conflicts. As privileged field players and observers, they notice the impact of government policies; they can identify problems and propose some reforms. I am convinced that it is thanks to them and this observation work that the Mediator-ombudsman can play this important role of helping politicians to ask the right questions: Why spend huge sums of money on suppression and detention if this does not lead to reintegration? Why spend billions of euros assisting people whereas this amounts to maintaining situations of social dependence which is contrary to human dignity? Can we develop a political awareness that respects the environment while ignoring this important dimension which is the human dimension? When the human being is no longer the «only quarrel that is worth it", when this concern is no longer the focus of government policies, violence and protest against any law and collective rule may take precedence over the social contract.

The authority must be respectable in order to be respected.
Now, some public service malfunctions become intolerable when it is the most fragile of our citizens that suffer from them. Public policies are too often evaluated based solely on budgetary and economic criteria, but rarely on quality criteria. Rarely on their impacts on the behaviours of our fellow citizens. Rarely on the resulting feeling of injustice which leads to violence. Yet, public services have made significant adaptation and improvement efforts that are worthy of praise. Tax authorities, for instance, have reduced its litigation in an exemplary manner by developing a quality-oriented service and proximity strategy. It is clear that the first measure to take in order to prevent an administrative decision from being contested is to explain it. A good number of conflicts would be avoided if decision-makers took some time to explain their decisions. Efforts should first be geared towards making the decisions understood, after which they can be discussed based on their content and not on their legitimacy. The credibility of administrations, just like that of any authority, depends on the irreproachable quality of its decisions and compliance with laws.

Decisions, as well as their application, must be exemplary. Decision-makers cannot make certain demands from those suffering from their decisions if they do not impose the demands on themselves. When the administration imposes a response time on a constituent and takes ten times more time to reply to the constituent, it is not showing any good example. The manner in which some administrations hire and pay their contract workers or trainees is not at all exemplary. No company in France would escape conviction if it acted in the same manner! The administration must show good examples in order to improve its relations with the constituent. Through his observations, recommendations and analyses, the Mediator of the French Republic strives to find this balance between respect for and understanding of the law. Beyond this administrative excellence, he contributes to the defence and respect of the dignity of man, who must be at the heart of any government policy. ■

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Since it comes up against increasingly complex processes and topics, legal expertise is the subject of recurrent criticisms, which fuel ever-growing litigation. The Mediator of the French Republic has decided to submit his recommendations to the lawmaker, especially in the medical field, in order to restore trust in expertise and experts.

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Despite numerous evaluations, the entire system used to fight against excessive debts among private individuals is still waiting to be improved.

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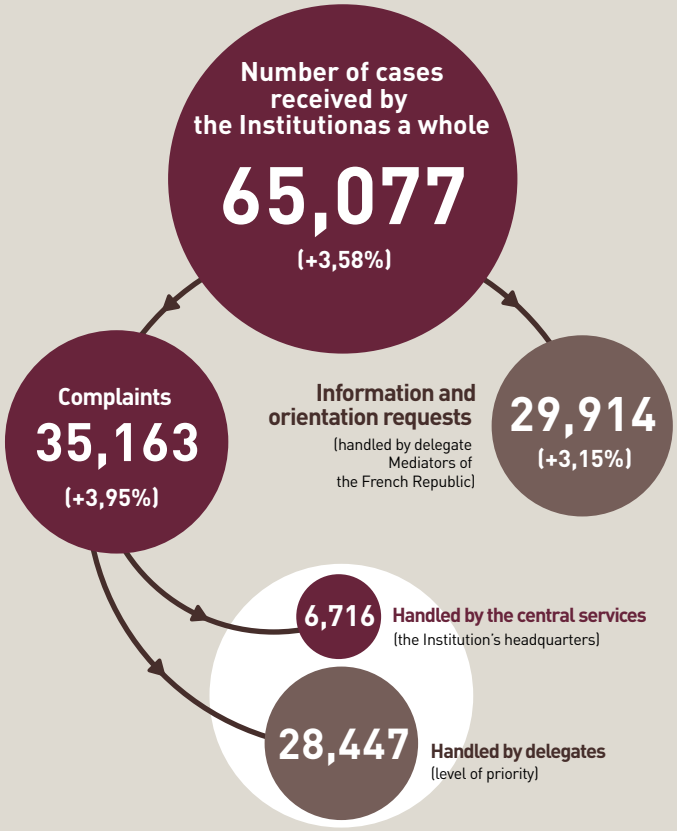
Guarantor of access to the law and member of the CNCDH (the national Human rights commission), the Mediator of the French Republic ensures that Human rights are respected and guaranteed both in France and outside France. 2007 was characterised by important exchanges with the Mediterranean countries.

THE YEAR IN FIGURES

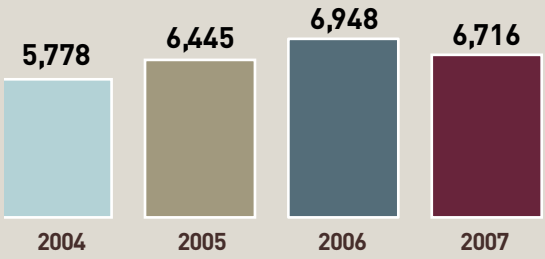
THE INSTITUTION'S OVERALL RESULTS

In 2007, the number of cases referred to the Mediator of the French Republic, the central services and delegates increased by 3.58% compared to 2006, with a total of 65,077 cases received. Information and orientation requests received by delegate mediators of the French Republic rose by 3.15% compared to the previous year. The Institution handled 35,163 complaints, 6,716 of which were handled via the central services of the Mediator of the French Republic in Paris. In 2007, 47% of the complaints received by the central services were sent to the Mediator of the French Republic in line with the indirect referral procedure, through a member of the National Assembly or a senator. Note that this percentage includes 178 cases subsequently regularised by the Parliament (i.e. 5.63%).



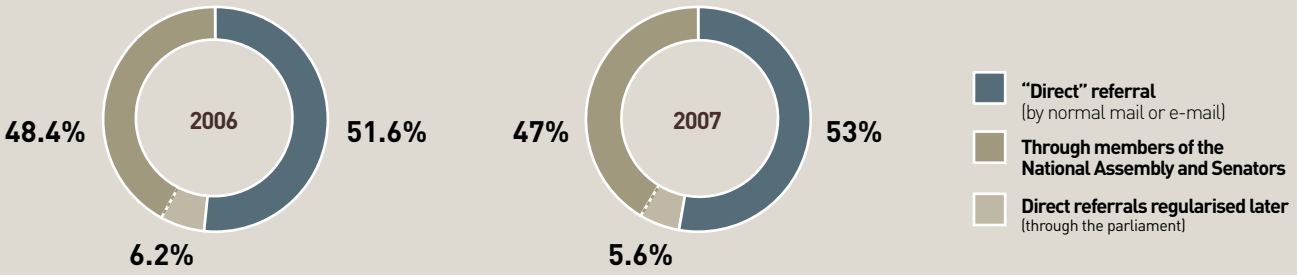
ACTIVITY OF THE CENTRAL SERVICES

Number of complaints received

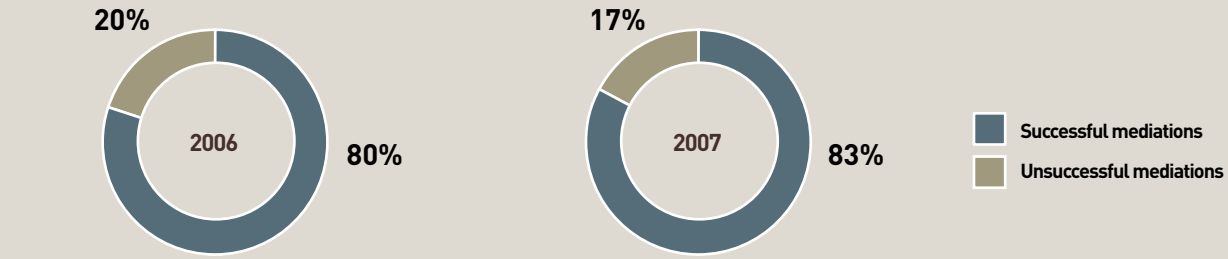


About 19,000 complaints received by phone and 3,586 by e-mail

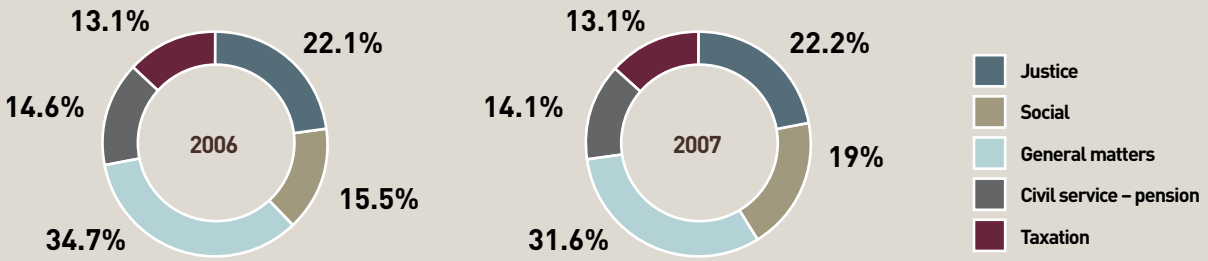
How complaints are sent to the Institution's headquarters



Rate of successful mediations

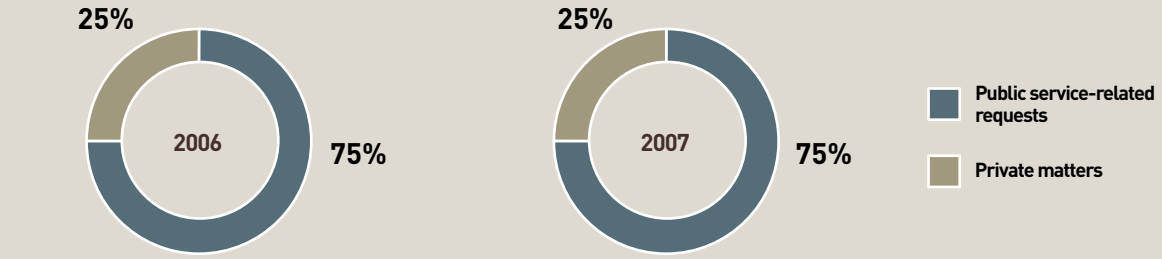


Breakdown of cases closed, by field of intervention

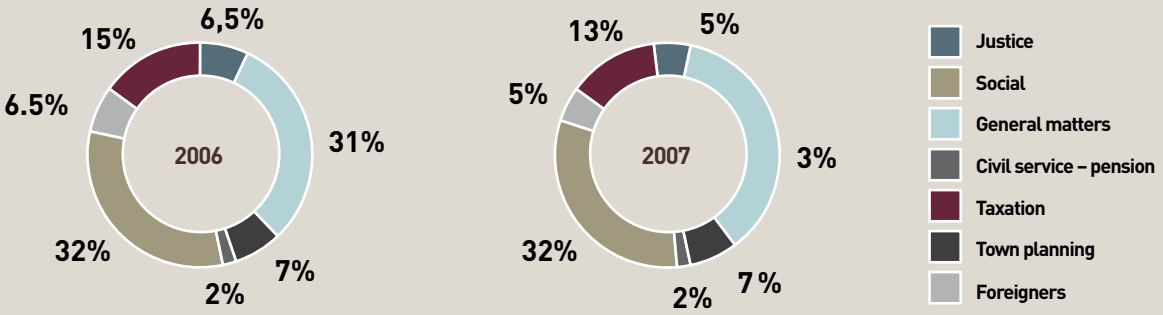


DELEGATES' ACTIVITIES

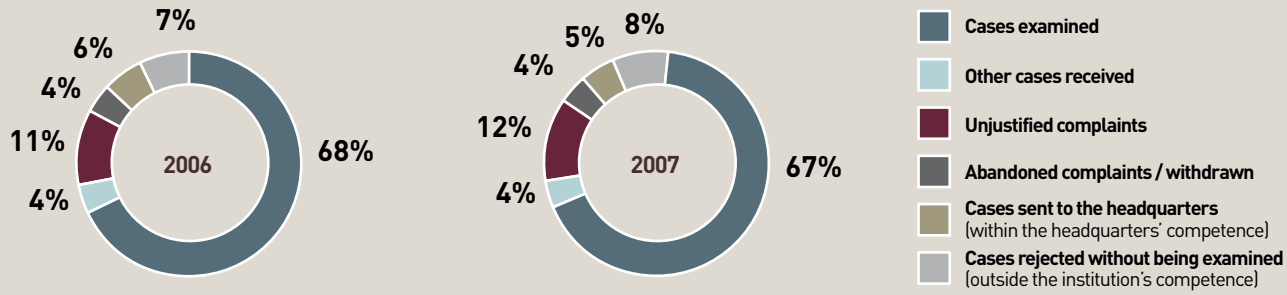
Information – fields concerned



Breakdown of complaints, by field of intervention



Complaints – handling



Complaints – the delegates' success rate

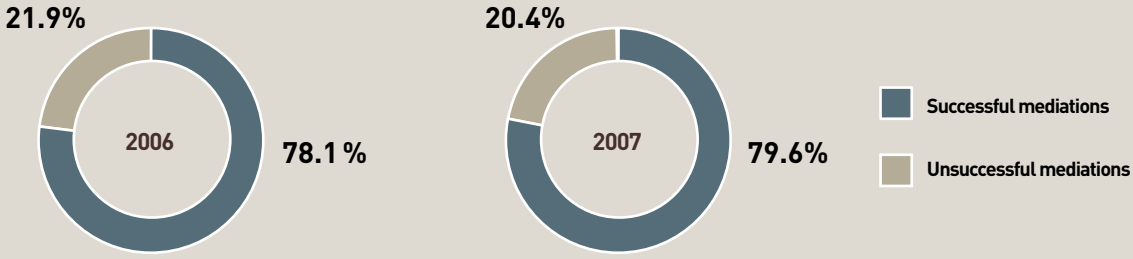


TABLE OF REFORMS

COMPLETED REFORM PROPOSALS

24 Adopted proposals

Proposal	Date of completion
Exercise of subrogation rights by Social Welfare organisations and third parties against victims of personal injury	15/01/07
Payment of housing benefits below the statutory limit	7/02/07 *(partial adoption)*
Using income as basis for paying Social Welfare benefits not subject to contribution	08/02/07
Making regional civil servants or government hospital employees available to the Mediator of the French Republic	21/02/07
Mobility of public-sector employees between the three civil-service categories	4/04/07
Preventing unwarranted payments resulting from the reception of a salary and daily benefits at the same time	30/04/07
Controlling the VAT exemption for continuous vocational training organisations	21/05/07
Informing taxpayers about the deadline for declaring the completion of new buildings to enable them obtain a temporary property tax exemption	21/05/07
Managing the assets of protected persons not allowed to hold a bank account	26/06/07
Exempting from death duties the indemnity paid to victims of hepatitis C	24/09/07
Organising the activity of the legal representatives of adults under guardianship (reform of guardianship)	2/10/07 *(partial adoption)*
Reinforcing legal guarantees for the consultation of the files held by the detective division of the French police, for administrative investigation purposes (STIC and JUDEX files)	4/10/07 *(partial adoption)*
Bank charges and forced debt recovery by the Treasury	15/10/07
Introducing the right to seek the decision of a judge, while contesting traffic code-related fines	31/10/07 *(partial adoption)*
Equal rights of alimony creditors and debtors in terms of access to tax-related information	20/11/07
Granting French citizenship to foreign minors born in France and who are unable to express their will	20/11/07
Releasing spouses or partners of a PACS from joint payment responsibility in case of divorce or separation	24/12/07 *(partial adoption)*
Possibility for de facto couples and partners of a civil solidarity pact to represent a party at a court of first instance and a local court	7/01/2008
Reinforcing the powers of judges in the application of consumer law	7/01/2008
Simplifying and harmonising the procedures for accessing family allowances subject to the conditions of income	7/01/2008
Unclaimed life insurance policies	7/01/2008
Coordinating the health insurance schemes of liberal professionals and employees	10/01/2008
Equal treatment of natural persons in terms of taxation	*Still in progress* [1]

[1] *Partial adoption concerning the dependents' allowance of widows with dependent children*

2 proposals not adopted

Proposal	Date of completion
Social Welfare of job-seekers creating a private business	27/03/07
Allowing notaries public access to computerised bank account files (FICOBA)	12/12/07

13 REFORM PROPOSALS OPENED IN 2007

Proposal	Date of completion
Granting French citizenship to foreign minors born in France and who are unable to express their wish	**Closed on 20/12/07** *adopted*
Simplifying access to family allowances subject to the conditions of income	**Closed on 7/01/08** *adopted*
Unclaimed life insurance policies	**Closed on 7/01/08** *adopted*
Coordinating the health insurance schemes of liberal professionals and employees	**In progress** *adopted*
Introducing a judicial remedy for formal decisions by tax authorities	**In progress**
Modifications to the national register for incidents pertaining to the repayment of loans to private persons	**In progress**
Harmonising the minimum age requirement for the theoretical highway code examination	**In progress**
Income tax-related deferred income (allowance)	**In progress**
Donating one's body to science	**In progress**
Sharing survivors' pension benefits if one of the direct beneficiaries dies	**In progress**
Reviewing the situation of part-time hospital practitioners	**In progress**
Health insurance of employees paid with the *Chèque emploi Service*	**In progress**
Relevant court for and cost of forced execution during litigation on consumer rights	**In progress**

STRONG POINTS OF 2007

2007 was characterised by several advancements in terms of respect of Human rights and protection of victims, as evidenced by the chapter on successful reform proposals made by the Mediator of the French Republic. Concrete actions were also successfully taken in 2007 so that the most marginalised persons can have more and easier access to the law.

BETTER LEGAL ACCESS FOR 25,000 PRISONERS

Deprivation of freedom should not be tantamount to deprivation of access to the law. The Mediator of the French Republic had taken a new step in the effort to further proximity and accessibility of law to all categories of the population, by signing in 2005 with the Minister of Justice an agreement which resulted in the opening-up of delegate-Mediator offices on an experimental basis in prisons. On 13 September 2007, the 31 delegates concerned met to make a first evaluation of the action taken and recommendations on how to consolidate and improve the efficiency and cohesion of the initiative. To follow-up these observations and proposals, especially within the framework of the draft law on prisons, the Mediator of the French Republic insisted on working together on this project with the prison administration and invited Mr Claude d'Harcourt, its director, to close the session with him. The evaluation concerned both the quality of relations with the partners and the quality of services rendered to prisoners. Delegates described their relations with the prison administration, emphasising especially on its respect for their independence and the satisfactory confidentiality conditions. The rate of success of delegates' actions with the prison administration is the same as the one obtained with other administrations: it varies between 60 and 70%, depending on the organisations. However, the delegates deplored the fact that legal access points only existed in less than half of the prisons whereas the agreement signed by the Minister of Justice and the Mediator had made the existence of a legal access point a vital condition for creating delegate-Mediator offices. The delegates also regretted the fact that despite contacts with social workers from prison integration and probation departments, their collaboration had only been formalised and productive in half of the cases.

More than 1,500 complaints have been received from prisoners since March 2005. Five types of complaints about the prison administration merit attention. These are complaints about losses of packs during transfers, and canteen-related thefts, difficulties having access to external cares, problems encountered by foreign prisoners wishing to renew their stay permit, problem of access to computer tools, and absence of written reply to some letters written by prisoners to the prison administration. Today, more than 25,000 prisoners in 35 prisons have better access to the law. The successful generalisation of the experiment started in 2005 is widely known and crowns the day-to-day actions of delegate Mediators of the French Republic.

From the most common to the most urgent situation – health, security, family or payment for work done in prison – some examples of the cases handled by delegate Mediators in prisons since 2005 are available on **WWW.MEDIATEUR-REPUBLIQUE.FR** column: délégués/témoignage

MDPH and courts handling disability-related disputes: the need for reform

A quick tour of MDPHs in France confirmed several types of malfunctions, starting with the question of transfer of resources and, in particular, of the ex-Cotorep and ex-CDES staff to the MDPHs and GIPs set up to manage them. By failing to make available without consultation, then to transfer this staff for a long term, as was done for the TOSs, to secondary schools, a lot of these ex-Cotorep and ex-CDES staff members blatantly refused to cooperate and rejected their transfer. For example: in a big department with 61 persons at the ex-Cotorep, 49 of which were supposed to be made available to the MDPH, there were 30 transfer rejections not made up for by the State. One would be right to wonder what the tasks of these officials are within the civil service. Another problem merits to be pointed out or denounced firmly: the follow-up of the cases. The most striking example was the frequent lack of knowledge about the differences between the powers exercised by Social Welfare tribunals (Tass), courts handling disability-related disputes (TCI) and even administrative courts (TA). In particular, the appeal channels mentioned on decision notifications from MDPH departmental commissions do not explain clearly enough the court to refer a case to based on the nature of the dispute. Moreover, the nomination modalities or working of these different courts are often unknown. It is important to draw people's attention to the working of the TCIs. The TCIs are not working satisfactorily for several reasons which are apparently due to the reform conditions under which they were created and their current composition. Materially, they depend on the Drass, and the staff is within the province of the Justice ministry. It seems necessary to examine a possible reform of the organisation of this litigation, to achieve more consistency and simplification and possibly reduce the time spent on the litigation. As for magistrates, most often retired and whose appointment is proposed by first appeal court chairmen, they do not have any special information and must prepare, hold hearings and compile judgements. For this, they are paid 94 euros, i.e. 85 euros after deducing charges, for approximately 10 hours of work... These chairmen are, therefore, providing a legal service almost on a voluntarily basis. In addition to this first problem, you also have the widely known understaffing of certain TCIs and the shortage of premises to hold these hearings. Thus, although there are as many courts in Orléans as in Lille, there are 28 of them in Marseilles and 17 in Paris, out of which only 12 are actually working. As a result of this, files from ex-Cotoreps constitute a huge part of the stocks and are particularly difficult to update. We also ought to mention the problems of obtaining medical documents required to examine cases, from medical examiners; only disabled persons may obtain them through a very administrative channel.

CORRESPONDING MDPH DELEGATES: FIRST ASSESSMENT

The handicap law of 11 February 2005 created a departmental handicapped home (MDPH) in each department. Their mission: offering a unique access to all the rights and benefits concerning disabled persons, and facilitating all the procedures relating to the situation of disabled persons. To enhance the effectiveness of this system and promote amicable settlement of disputes, the Mediator of the French Republic decided in July 2006 to appoint a "corresponding MDPH delegate" in each department. One year after taking this initiative, a poll organised among these corresponding delegates has made it possible to make a first appraisal of the relations established by the delegates with the MDPHs and the working of the complaint orientation system. This poll was also an opportunity to seek people's opinion about the creation of the MDPH and, more generally, about the implementation of the ambitious and complex law of 11 February 2005. The result of this poll calls for several remarks. The first remark concerns the long-term financial implication of the application of the entire law (accessibility of public equipment, the need to create more facilities for highly disabled persons. Also noteworthy is the complexity of laws and procedures for the general public, but also for the players. There is still a shortage and sometimes the absence of qualified personnel in charge of internal reconciliation. ■

Of what use is a policy that is cut off from the problems it is supposed to solve? What is the need for measures that cannot be taken due to lack of resources? Faced with the same legal loopholes and administrative malfunctions as a result of the nature of the institution, the Mediator of the French Republic is empowered to propose some reforms. These proposals, which emanate from an excellent knowledge of the field and an overall reflection made with the players concerned, aim at restoring equity to places where reality has sometimes distorted the original intention of the lawmaker. In a good number of cases, the Institution of the Mediator of the French Republic helps to improve administrative decisions, for the general good.

AT THE HEART OF SOCIETY

A concrete view of the application of government policies

From family, pension, handicap to minimum benefits, government policies are not in line with reality. Yet, the changes are there, some of them highly expected. But transition periods lead to doubts or a feeling of injustice on the part of the citizens and constituents, who are calling for speedy adjustments and sustained information efforts. What role should the law play? In a lot of cases, it is the duty of politicians to provide the answer.

FAMILY POLICY: FROM LAW TO CONTRACT

New practices and legal loophole

Although the law of 4 March 2002 on parental authority fully recognises alternating custody for children of divorced parents, the method of paying family allowance in such a case still contradicts the general development of family law. A lot of fathers have complained to the Mediator of the French Republic about this unjust situation. In 2003 he had made a reform proposal concerning the sharing, in case of divorce, of the family income supplement paid to civil servants for their dependent children. In 2005, the Mediator of the French Republic made a new proposal to reform the method of paying family allowances to parents when alternating custody is retained during divorce or separation. In January 2006, the decision of the Court of Appeal was sought by Social Welfare courts in a case related to this. The Mediator was involved in the preparation of this decision rendered on 26 June 2006. The Court of Appeal decided in favour of paying family allowances on a turn-by-turn basis to divorced parents in case of alternating custody. The ministry of Family then decided to create a work group on this issue in order to obtain a legal reform. The Mediator of the French Republic participated in this work group. A first measure concerning the sharing of family allowances alone was adopted within the framework of law 2006-1640 of 21 December 2006 on the funding of the Social Welfare for 2007; this measure became effective following the publication of Decree 2007-550 of 13 April 2007. This is the first significant progress made for the families concerned. However, this system has not yet been extended to other types of family benefits. This is why it seems urgent to reactivate the work group which met last in 2006…

Domestic violence: two loads, two measures?

Domestic violence is a worrying and unacceptable reality. The Mediator of the French Republic wishes to draw the government's attention to a loophole in the law adopted to protect victims of domestic violence. In such situations, the family judge may decide to assign the family ▸

- residence to the victim and his or her children and order the expulsion of the violent partner; but the judge can only do this if the couple is married. The judge does not have any such powers for common-law husbands and wives or partners of a civil solidarity pact. In these cases, only the criminal-court judge may take such a decision against the violent partner, but only if the victim lodges a complaint. Now, the fact is that victims of domestic violence often abandon the idea of denouncing their aggressor to the police, for many reasons. This matter is one of the objectives of the new three-year plan (2008-2010) meant to reinforce the fight against domestic violence suffered by women, presented on 21 November 2007 by Valérie Létard, the Minister for Solidarity. In fact, the 10th objective of this plan is to reinforce the protection of female victims of violence, by improving the legal framework, especially in order to "examine the pertinence of introducing measures facilitating the link between civil and criminal procedures".

Why should only one of divorced or separated parents be paid family allowances in case of alternating custody, whereas both of them share equally the resulting expenses? This is a topical issue since alternating custody concerns 10.3% of divorce cases in France today.

Family law should not be contractual only

In view of the diversification of family forms, the time has come to rethink the justification of the existing differences between the legal treatment of couples… At the faculty of law, Université de Lille 2 on 11 May 2007, Professor Xavier Labbée organised a symposium on the topic "Rebuilding the family - a common law for couples?". The Mediator of the French Republic participated in and presented the conclusions of this symposium. The Mediator of the French Republic is of the opinion that the rights of couples should be refocused on a minimum of common rules sanctioning the principles of commitment, solidarity and responsibility which is the basis of any couple. Moreover, law-makers have started reforms in this direction, among others, by giving a legal recognition to the pluralism of couples (married couples, common law couples or couples formed under a civil soli-

darity pact) and by doing away with the distinction between "legitimate" and "illegitimate" filiations.
Nevertheless, the Mediator of the French Republic has adopted a more moderate position on the opportunity to change couple law to family law and, by extension, a basically contractual law. Although such an objective is defendable to respect people's freedom to design and organise their private life, society cannot lose interest in the family. There may be violence and abuse within the family, making protection and community sanction necessary. This is why family law cannot be an exclusively contractual law; public order must always have its place in it.

EMPLOYMENT AND PENSION POLICY

Encouraging mobility through appropriate measures

➜ MOBILITY IN PRIVATE AND PUBLIC SECTORS: THE UNEXPECTED EFFECTS OF A WELL-MEANT MEASURE

A new rule has been adopted in order to encourage the hiring of private-sector employees in the civil service, since the civil service was previously less attractive for private-sector employees because their professional experience in the private sector was not recognised... But those new rules, which propose a higher salary and the recognition of professional experience, have had unexpected consequences, either by sometimes triggering off a feeling of inequality among already existing permanent staff members who had started at a low level, or by slowing down the hiring and confirmation of employees recruited from the private sector. In fact, measures supposed to encourage the hiring of private-sector workers have turned out to be costly, especially for small communities with a modest budget. In addition to this, you also have the feeling of uneasiness among category C regional civil servants who do not understand the reviewing of their salary structure. .

➜ MOBILITY BETWEEN THE THREE CIVIL SERVICE LEVELS

6,500 student nurses within the ministry of Education are deprived of job opportunities due to lack of recognition of professional experience between the three civil service levels: State (FPE), regional (FPT) and hospital (FPH). However, pursuant to the law of 1983, access to and mobility from one civil service level to the other are some of the basic guarantees of their career. Also in 2005, the Mediator of the French Republic made a reform proposal in favour of the access of State-employed nurses to executive ranks in the public healthcare sector. In January 2007, the Minister of Health reported that a first draft Council of State decree on category A was going to be submitted to the High Council of the FPH in March for examination. "A second decree on personal statuses, including healthcare sector executives, was to follow in the second semester of 2007." One month later the ministry of Civil Service stated that it was in favour of opening up the internal competition for access to executive ranks in the healthcare sector to State and regional healthcare nurses. In December 2007 the draft decree allowing executive healthcare workers to take the competitive examination for access to executive ranks in the FPH healthcare sector was still topical. It is expected to be adopted in the first semester of 2008…

➜ MOBILITY IN PRIVATE AND PUBLIC SECTORS: EXAMPLE OF AN OFFICIAL WISHING TO OPEN A PRIVATE BUSINESS

The Mediator of the French Republic intervened at the ministry of Equipment so that the benefit paid to people wishing to create their own company can be paid to one of its former employees who had resigned to set up a private business and whom this ministry had refused this benefit for ▸

no reason, since civil servants are not excluded from this system.
This intervention is in line with the speech made by the French President at the IRA (Institut régional d'administration) - regional institute for administration, Nantes in September 2007 on civil service reform, namely the payment of an incentive "allowance" to civil servants wishing to move to the private sector.

Retirement time still reveals "shaky"

➜ ALL TYPES OF UNEQUAL TREATMENTS

• Case of notary clerks...

The attention of the Mediator of the French Republic was drawn to several unfair aspects of the special pension scheme for notary clerks and employees. Without disregarding the fact that the pensions scheme for this profession has some aspects that are more favourable than that of the national health and pensions scheme, the three issues raise matters that sometimes call to question the equality of treatments between employees and sometimes the equality between men and women. The first aspect concerns the fact that the possibility of early retirement does not apply to members of this profession. The absence of this right within the special scheme for notary clerks and employees is considered as unfair, more especially since a large majority of employees started working at a very young age. Two problems relate to the unequal character of certain measures which reserve to women some advantages in terms of pension. Firstly, the retirement age retained by the special scheme for notary clerks and employees differs according to gender... Secondly, another gender-based inequality existed regarding the survivors' pension benefits for this profession. These distinctions in the conditions for paying pensions benefits by the notary clerk and employee pensions fund (CRPCEN) seem to be contrary to the evolution of our society, especially since some other – national or general - pensions schemes have started taking account of this evolution by discarding certain differences between female and male insurance contributors. Decree 2006-511 of 4 May 2006 harmonised the conditions for paying the child-related pension bonus and the survivors' pension benefit, which are now the same for men and women. One aspect of the Mediator's reform proposal is thus satisfied. A full reform of the special scheme remains pending.

• Case of adoptive mothers

In 2006, the attention of the Mediator of the French Republic was drawn on several occasions to the situation of female civil servants who had adopted one or more children before 1st January 2004. In fact, they suffered unequal treatment concerning their pensions calculated as from 28 May 2003, compared to mothers of legitimate and illegitimate children recognised as born before 1st January 2004. This inequality concerns the payment of the bonus, the condition for which is the interruption of

activity for at least two months to raise a child and which adoptive mothers are not entitled to since the adoption leave was created recently. On 5 January 2007, the Mediator of the French Republic re-contacted the ministries concerned regarding the pertinence of his proposals, underlining the fact that even though EU member States had to adapt to the European jurisprudence, they may exclude from their application field the advantages granted in terms of old-age insurance to persons who have raised some children… The DGAFP is currently studying, in preparation for the government report on the evolution of pensions, the possibility of adapting this system without introducing some inequality between civil servants, regardless of whether they are female or male, natural or adoptive parents.

• Case of a man who had raised several children alone...

Generally, the Mediator of the French Republic is noticing a rising call for equality on the part of men. This is, among others, the case for the increase in the old-age insurance. An example is the case of Mr H. Mr H. raised his seven children alone since his divorce in 1997. Therefore, he asked to benefit from the increase in the duration of old-age insurance, granted to mothers within the framework of the national insurance scheme, claiming that this advantage was henceforth granted to male civil servants with children, but the regional health insurance office (CRAM) rejected his demand. Meanwhile, in a similar case, the Court of Appeal ▸

The application of the European jurisprudence which imposes the same rights for fathers and mothers led the lawmaker, during the pensions reform, to extend to fathers of children born or adopted before 1st January 2004 the right to a one-year bonus, on some conditions.
Now, the combination of this provision and the characteristics of the maternity and adoption leave, instituted in France for some other reasons, resulted in situations which, under many circumstances, penalised adoptive mothers

has just decided that: *"a difference in treatment between men and women that have raised children under the same circumstances is only acceptable if there is an objective and reasonable justification for it; and considering that the ruling stipulates that the advantage resulting from Article L. 351-4 of the Social Welfare Code is granted both to women who have pursued their career without interruption and to those who have interrupted their career, there are no grounds for discrimination between a woman who has not interrupted her career to raise her children and a man who produces the proof that he has raised a child alone"*.

Within the framework of the partnerships he is developing with all the Social Welfare officials, the Mediator of the French Republic organised a working meeting on 10 September 2007 with the national pensions fund (CNAV) to examine different pension-related points, including the issue of increasing the pension of men who have raised their children alone.

➜ CAREERS THAT ARE DIFFICULT TO RECONSTITUTE

• *Having your employee status recognised*

Mr M., who had worked with Editions L. from March 1988 to February 1998, was finding it difficult to have his employee status for this period recognised and was not getting his payment for various professional activities (freelance work, reports, etc.). He, therefore, referred the matter to the industrial tribunal. This tribunal, followed by the Appeal Court, ordered Mr M.'s former employer to issue pay slips in accordance with the reminders for payments due to him, and to forward their decisions to the relevant pensions funds. In June 2004, while asking for pension calculation, Mr M. submitted a copy of the industrial tribunal and Appeal Court ruling to the regional pensions fund (Cram). The disputed claims department of the Cram forwarded his file to the Urssaf, which diligently investigated Mr M.'s former employer in order to recover six years of contributions pertaining to Mr M.'s pension. This investigation was supposed to be completed in April 2006. However, in June 2006, Mr M.'s pension had not yet been regularised…

In view of these circumstances, in November 2006 the Mediator of the French Republic contacted the CRAM as well as the URSSAF in order to find a satisfactory solution as quickly as possible. The CRAM then informed the Mediator of the French Republic that the URSSAF's investigation report had been submitted on 8 November 2006 and that an additional annual declaration of Social Welfare data (DADS) was going to be prepared in order to regularise Mr M.'s pension. On 18 January 2007, the services of the Mediator of the French Republic intervened again at the Urssaf so that their services would immediately forward the document required to review Mr M.s social insurance account to the CRAM. On 1st September 2007, the CRAM started modifying Mr M.'s pension calculation data, starting from 1st September 2005, and Mr M. could finally apply for his supplementary pension.

➜ LONG CAREERS: CIVIL SERVANTS DISADVANTAGED WHILE GOING ON RETIREMENT

In the civil service, the system of early retirement for long careers, calculated on the basis of the national scheme, is real progress, but the intention of the lawmaker was that its application be spread out as a result of the cost for the community. In 2007, the civil servants concerned also experienced in an unjust manner this unequal treatment of careers for access to pension. In fact, actual harmonisation with private-sector employees will only take effect by 1st January 2008... Civil servants who had successively had a career in the public then private sector faced this absence of coordination between the national scheme and special schemes: some of them could not be granted early retirement for "long career" due to their activity in the public sector, whereas they had already been granted said early retirement, but on a pro rata basis, for their career in the private sector. Civil servants who have had a mixed career suffer from lack of prior information, which often puts them in a difficult financial situation when they are going on retirement. The Mediator of the French Republic has referred this matter to the Civil Service ministry to enable the numerous complainants, often public-sector workers, to enjoy this right based on justice and equality between employees who had started working early and who had worked for a long period.

The headache of survivors' pensions benefits

After her application for survivors' pensions benefits she thought she was entitled to after the death of her husband had been rejected by Mutualité sociale agricole (MSA) - the farmers' pensions scheme-, Mrs C. had referred the matter, in vain, to the amicable settlement board then to the Social Welfare tribunal (TASS). By the end of 2005, considering that the pension reform law had changed the rules in a more favourable manner, Mrs C. had referred the matter again to the

amicable settlement board, which had rejected her appeal based on the decision of the TASS. Mrs C. had then sought the help of the Mediator of the French Republic. When contacted the first time, the fund had replied that the initial calculation had been based on the rules applicable at that time and that if the right to survivors' pension was actually open, the application of the regulatory accumulation limits stood in the way of the survivors' pensions department. However, noticing that the new accumulation limits resulting from the pension reform and applicable as from 1st July 2004, could have made it possible to provide the requested pension, the Mediator of the French Republic asked the MSA again about the opportunity for a new request. Again the principle of inviolability of calculated pensions stood on the way; the fund argued rightly that the initial calculation was not rejected as Mrs C. had thought, but had simply ended up in an agreement reduced to zero due to the accumulation limits…

In spite of this, while reviewing the analysis made by the MSA, the services of the Mediator of the French Republic noticed that on 1st April 2005, the regional health insurance office (CRAM) had paid Mrs C. a pensions benefit within the framework of the national scheme. Based on this, it seemed that pursuant to Article R. 353-1-1 of the Social Welfare Code, it was henceforth possible to review the pension as a result of this variation of resources. The Mediator of the French Republic then contacted MSA again, which informed him that the requested payment would be effected retroactively as from 1st April 2005, the date of the event that had led to the review.

The Mediator of the French Republic made two reform proposals in the field of survivors' pension. One of the reforms concerns the sharing of the survivors' pension benefits resulting from the death of a civil servant, in case of multiple marriages and death of a beneficiary. Here, the Mediator proposed that the legal and legitimate rights of the Social Welfare insurance contributors' beneficiaries be restored. The other proposal, made in 2007, concerns insurance contributors covered by the national insurance scheme.

Mrs C.'s case shows the illogical nature of a rule that prevents potential beneficiaries of the 2003 reform from reaping the fruit thereof… except if they are granted new resources! Whether they are covered by the national scheme or the Civil Service scheme, many people are suffering the impact of an ill-suited treatment in terms of survivors' pensions benefits in case of multiple marriages. In such a case, the surviving spouses share the survivors' pensions benefits according to the respective durations of marriage. If any of the beneficiaries dies, the share of the other spouses may be increased accordingly, provided they ask for it. Nevertheless, in this situation, the potential beneficiary is rarely informed about the death of a co-beneficiary of the survivors' pensions benefits. In the current state of the procedures used by the funds, these persons may then be temporarily or definitely deprived of their updated ▸

More information about "L'info retraite" available on: **WWW.INFO-RETRAITE.FR** and the simulator of pension calculation M@rel.

rights. The Mediator of the French Republic has proposed, among others, that within the framework of the efforts made by the CNAVTS to improve the information of its members, measures should be taken to solve these problems.

Right to information: the civil service late

➜ INFORMATION ON POSSIBILITIES OF APPEAL

The administrations' obligation to notify officials about appeal possibilities is not applied uniformly. In fact, the regulatory stipulations according to which appeal channels and deadlines can only be used as evidence against the parties concerned if they have been mentioned on a decision notification do not apply to civil servants-related administrative deeds. Now, this situation may have serious consequences, especially in case of implicit rejection of an administrative appeal filed against a decision to remove people's name from the list of executives or about retirement, not requested by the civil servant, because this latter can no longer appeal to any court.

➜ INFORMATION ABOUT RETIRED PERSONS

Throughout 2007, the Mediator of the French Republic was particularly attentive to the quality of the information given to people approaching retirement age. In fact, the pension reform law of 21 August 2003 gives everybody the right to obtain a statement of his or her individual situation concerning all the rights he or she has constituted within the legally mandatory pension schemes. Moreover, it requires the pensions funds to send periodically to contributors a statement of their situation. The process is under way since October 2007 and is progressing by age bracket. Nevertheless, in this area, the public sector seems to be late compared to the private sector. In fact, the public interest group (GIP) "Info retraite" has already communicated the statement of individual situation for people born in 1957 and the first overall estimate for those born in 1949, including all data on the basic and supplementary pension for the three main pension schemes (the national pension scheme, and the pension schemes for farmers and liberal professionals). On the other hand, the application decrees on the administrations' obligation to automatically notify civil servants about their future pension situation has not yet been published. Civil servants themselves must request for a statement of their services in order to rectify, if necessary, the anomalies and know the amount of their future pension.

Victims not compensated for their loss

After she had worked for ten years as a temporary employee for the same company, Mrs S'.s contract was suddenly terminated. She then took the company to the industrial tribunal where she obtained the requalification of her temporary assignments as an open-ended contract. The company was also found guilty of dismissal without cogent and serious reasons and ordered to pay her the inherent legal redundancy payment as well as other payments due for paid leave and dismissal notice. She informed the ASSEDIC (the organisation managing unemployment insurance contributions and payments within the scope of the unemployment insurance) about this. Mrs S. was then unpleasantly surprised to receive a notification letter concerning an unwarranted payment of over € 14,000 for "accumulating

jobs", as well as a reduction of her allowances from € 28 to € 24. Since she could not understand how the court's decision in her favour could lead to a general deterioration of her financial situation, Mrs S. referred the matter to the Mediator of the French Republic. After analysis and detailed explanation of the situation by the ASSEDIC with a view to finding a more favourable solution, it turned out that there was no argument which could be used by the Mediator of the French Republic to usefully intervene in her favour.

In fact, since the Appeal Court had actually requalified Mrs S.'s fixed-term contacts as open-ended contracts, this requalification brings to 4 and half years the period during which the work contract could be maintained during the period initially indemnified by the unemployment insurance, between the temporary assignments. A calculation of the total indemnified unemployment periods which had become periods of employment resulted in an unwarranted payment of € 9,000. Moreover, the new calculation data leads to a reduction in the allowance.

On this point, the special provisions on temporary workers are no longer applicable. The unwarranted payment amount is thus € 2,750. Finally, the third part of the unwarranted payment, i.e. € 2,450, corresponds to the "compensation for breach of contract". In this case, it is all about the impact of the compensation for notification and for paid leave relating to this notification which changed the indemnification start date beyond the eight-day deferred period applied initially. Moreover, the constant position of the Appeal Court renders the stipulation ineffective in this type of situation. Therefore, there is no malfunction on the part of the Assedic in question. In this case, the € 14,000 unwarranted payment can be compared to the sum of € 26,000 paid to Mrs S. within the framework of the court decision rendered after four years of legal battles. Note: the balance for this type of operation, in other situations, is not always positive, especially if the person concerned has quickly found a new job. In any case, it remains regrettable that the victim of dishonest employers are at the end reimbursed a big part of her losses after a hard struggle. So, within the framework of the reform powers of the Mediator of the French Republic, a study seems necessary to define the legal changes that would guarantee the victim a net balance without any risk of being asked to return all or part of the payment later…

SOCIAL WELFARE AND HEALTHCARE POLICY

Social Welfare does not always follow the changes in working modes

➜ LIBERAL PROFESSIONALS/ EMPLOYEES: RIGHTS IN ONE DIRECTION BUT NOT IN THE OTHER

Until recently, no law allowed the period of affiliation to the scheme for liberal professionals to be taken into account for granting access to the daily allowances paid to employees under the national insurance scheme. This legal loophole could be very prejudicial to liberal professionals taking up a paid job who, since they had not been able to access the benefits paid under the national insurance scheme, could be refused the daily allowance if they stopped work due to illness. Moreover, a contributor who has acquired some rights may have his or her indemnities suspended after the sixth payment month, since his or her rights will have become insufficient to meet the requirements of the Social Welfare Code. This was how liberal professionals taking up a paid employment were penalised, compared to those who remained inactive.

In fact, if a contributor covered by the insurance scheme for liberal professionals stops any activity, he or she retains his entitlements for ▸

twelve months. On the other hand, liberal professionals taking up a paid job lose the rights acquired under the scheme for liberal professionals, due to lack of coordination. But if an employee becomes a liberal professional, his or her previous activity as employee is recognised if his or her period of affiliation to the scheme for liberal professionals is not enough for him or her to benefit from the daily allowance paid by his or her new Social Welfare scheme. It was then not understandable that professional mobility is taken into account for one category of workers (for employees opening a private business) but not for the other category! Finally, a coordination between both schemes exists already for disability insurance. The technical obstacles to the establishment of a similar coordination of health insurance benefits was not visible. The Mediator made a reform proposal along this line, which was included in the law on the funding of the Social Welfare for 2008. Its article 57 contains the principle of general coordination between the different schemes in terms of health insurance and maternity/paternity in order to allow access to the benefits in cash and in kind, and take account of the periods of affiliation, registration, contribution or work done, regardless of the scheme. Since the article refers to a decree yet to be published, the Mediator will remain attentive to the technical modalities thereof.

The Mediator of the French Republic has drawn the government's attention to the absence of coordination rules between the Social Welfare scheme for liberal professionals and the national health and pensions scheme to which salaried workers are affiliated, in terms of health.

➜ CESU: UNFAVOURABLE SOCIAL WELFARE

The personal services sector, boosted by the *Chèque emploi service* universel (CESU) system – paying for services rendered by private persons by cheque – is growing rapidly and already concerns some 635,000 employees. Although the system has made it possible for a good number of clandestine workers to work officially, experience has shown that said workers may be disadvantaged, especially in terms of health insurance, and may be less protected in case of work interruption than other employees or unemployed persons. In fact, the conditions for benefiting from the daily allowances paid by the health insurance office as well as the modalities for calculating the daily allowances may penalise employees covered by the CESU. These jobs are often casual, part-time jobs, sometimes with very different working hours depending on the periods. Moreover, these jobs often involve several employers. Finally, it is regularly possible that over a period of three months, the 200 hours required to be entitled to indemnities are not attained.

The increase in these casual jobs had already made the Mediator of the French Republic to recommend, in a previous reform proposal, a review of the conditions for paying daily allowances in a way that would be more favourable to contributors and more in line with the reality of the job market. In a new reform proposal he also suggested to apply to all persons working within the framework of the CESU the provisions on people working on a non-permanent or seasonal basis. This would enable them to easily meet the conditions for benefiting from the health insurance coverage and, in a more favourable case, to "spread" the reference payments over one year.

In 2007, the Mediator of the French Republic made a reform proposal concerning the unfavourable Social Welfare of workers employed within the framework of the CESU.

Since the same demand was made by the national personal services agency, a decree modifying the Social Welfare Code along this line is being prepared.

Beyond these special aspects, the CESU system seems to pose other problems in terms of Social Welfare that merit to be examined. The Minister of Economy has confirmed the reality of these problems and informed the Mediator of the French Republic that changes were under way to solve them.

➜ SUBROGATION RIGHTS: A LONG STORY... A HAPPY ENDING FOR VICTIMS

Since 2003, the Mediator of the French Republic has been trying to raise people's awareness about the definition of victim's losses and the subrogation rights of Social Welfare organisations (see the 2003 annual report). Despite his actions and the conclusions of the Lambert-Faivre report (June 2003) then the Dintilhac report (October 2005), calling for a reform of third-party payers, every progress has been blocked by the reluctance of ministry of Social Welfare. On the contrary, this ministry strove to include in the draft law on the funding of the Social Welfare (PLFSS) for 2007 a measure extending the already-existing subrogation rights of other Social Welfare organisations to the Social Welfare offices (CAF). Considering that this extension might aggravate the situation of victims, the Mediator of the French Republic, together with the Conseil national des barreaux (national council of the Bars), intervened at the Senate's social affairs commission so that an amendment to the PLFSS for 2007 could be adopted, which was the origin of the reform made concerning the law of 21 December 2006. Spearheaded by Senator Vasselle, the draftsman, and adopted at a public session with the support of all the senators, this amendment resulted in the modification of two articles of the Social Welfare Code. These articles modify the indemnity for all physical, material or moral damages by providing for the right to resort to third-party payers which must be exercised on a case-by-case basis, with a preferential right for victims.

Nevertheless, some application modalities remained subject to interpretations.

On 7 June 2007, further progress was made regarding the rights of victims. In fact, in a notice published on the said date, the Council of State specified that Article 25 of law 2006-1640 dated 21 December 2006 was immediately applicable.

On 29 October 2007, the Court of Appeal made three rulings that further reinforced this reform, by making the following stipulations:

–The law of 21 December 2006 on the exercise shall be immediately applicable.

–The reform shall apply to occupational diseases and work accidents (concerning civil servants).

The compensation paid in this respect shall first be charged to loss of professional gains, then to the part of indemnity for the ▸

On 29 October 2007, three Appeal Court rulings ushered in some changes in the field of subrogation rights. In fact, the court made some specifications concerning the application fields of the reform of subrogation rights exercised against third parties. These clarifications were fully in line with the expectations of the Mediator of the French Republic.

- professional damage. Where the Social Welfare office considers that this payment also indemnifies a personal loss and wishes to exercise its right of appeal on that, it has to prove indisputably that, for a part of this loss, it had actually indemnified the victim for a personal loss.
This clarifies the reform well and should facilitate its application by the courts, especially by making ineffective the circular from the ministry of Justice (CIV/25/07), which seemed to exclude from its application field the compensations for occupational diseases or work accident.
The latest decree 2007-1747 of 12 December 2007 on procedural adjustments takes account of these developments.

POLICY ON HANDICAPPED PERSONS

Applying a new and complex law

With 101 articles referring to 110 application decrees, the law of 11 February 2005 is particularly difficult to implement. Today, it is clear that despite significant progress in the publication of application decrees and circulars, several aspects of the law remain barely or wrongly applied. On his own part, the Mediator of the French Republic received several complaints concerning the complexity and muddle of laws which today are supposed to guarantee the rights of handicapped persons. He will describe this experience and make recommendations to the committee monitoring the law on handicapped persons, formed by the government. Thanks to the role devolved to the Mediator of the French Republic by this law as an interlocutor of the departmental handicapped homes (MDPH), he will, among other things, contribute to the activity of the working group on MDPHs.

➜ DIFFICULTIES OF ACCESS TO EDUCATION

One of the cases referred to the social section is the lack of dialogue between the MDPHs and the ministry of Education. In fact, the MDPHs' rights and autonomy commissions (CDA) approve, among others, the provision of teaching materials at handicapped persons' schools.
The decision is then sent to the local schools inspectorate for further action. Not only the files received are sometimes accompanied by only one, more or less recent, quotation, but also if the request is made in the middle or end of the year, the families are notified about the rejection of their request (often by phone) due to lack of fund.
Parents are then totally confused, with a favourable decision on the one hand and lack of fund on the other. Only those tenacious families that refuse this fate have their requests granted. This is probably why less than 20% of handicapped job-seekers are A–levels certificate holders… This was how, for instance, the attention of the Mediator of the French Republic was drawn to the situation of a deaf little girl. The CDA of the MDPH had approved, in April 2007, the provision of appropriate learning materials for the handicapped pupil. However, in June, the local schools inspectorate informed her parents by phone that it was impossible to finance the materials due to lack of fund. Then, in September 2007, the CDA renewed the approval it had given in April and forwarded the decision to the school authority in charge of implementing its decision based on availability. The Mediator of the French Republic intervened at the office in charge of educational adaptation and education of handicapped children at the ministry of Education and local schools inspectorate.
In response to the intervention, the local schools inspectorate stated that it was waiting for an updated

quotation on the equipment in question and for the release of the fund from the local education authority. Finally, the material in question was made available at the beginning of November.

➜ PROBLEMS OF ACCESS TO WORK

One major objective of the law of 2005 is to facilitate the professional activities of handicapped persons, but the professional plan contained in Article 79 is yet to be designed. Moreover, the possibility to keep a job and receive the disabled adults' benefit is limited to disabled persons with at least 80% permanent disability; a disabled person with 50 to 79% disability rate is only entitled to the disabled adults' benefit if he or she has not worked for one year. However, he or she may apply for it again after one year. This situation is unfavourable, more especially since cancelling the disabled adults' benefit also results in the cancellation of related rights: deduction of resources for calculating housing benefits, various tax benefits, etc.

➜ TRANSPORTATION PROBLEMS

Last year, the services of the Mediator of the French Republic regularly received complaints from handicapped persons lodged in medical/social centres and whose transportation costs were paid until then by the health insurance fund, although the nature of the establishment did not meet the criteria for it and who, when the law on disability compensation benefits (PCH) was passed, lost this entitlement since the health insurance office had decided to apply the regulation strictly and thus stop its reimbursements… Nevertheless, there was a certain period between the date on which the health insurance office changed its position and the introduction of the new system. Now, the problem seems to be solved since the PCH provides for the granting of up to € 12,000 over a period of five years. However, the maximum expenses are very modest in view of the needs in this field and considering that the problem is probably only solved selectively.

The reform initiated by Article 131 of the funding law for 2007, which replaced the notion of «impossibility to procure a job» with the notion of "substantial and lasting restriction for access to an employment", does not seem to solve the inconveniences of the existing rules which handicapped persons are suffering from: in addition to the fact that the decree meant for its application has still not been published, this change of terminology would not remove the obstacle placed by the conditions for access to the AAH to disabled persons' return to employment.

Maybe, the issue of transport should be analysed in its entirety, for instance, based on the nature of the establishment in question (social, medical/social or healthcare establishment), by making provisions for expenses at the level of each establishment (as is the case for medical/social centres for disabled children).

The result of a field enquiry

In June 2007, one year after creating offices of delegate Mediators of the French Republic in departmental handicapped homes (MDPH), the Mediator of the French Republic wished to make a first appraisal. A questionnaire sent to all the corresponding delegates made it possible to assess the relations established with the MDPHs, and to check the working of the complaint orientation system. The study also made it possible to observe the conditions for creating MDPHs in each department. More generally, it reveals the manner in which this ambitious law is applied in everyday life.

➜ ACCUMULATED LATENESS

The MDPH has hardly made up for the accumulated lateness in certain departments. For example, in Seine-Saint-Denis, Mrs C. had been applying for a disability card for her son since May 2005. Despite several visits to the MDPH, friendly responses ▸

and the phone calls she received, acknowledging her requests and visits, she had no concrete reply for more than 18 months. After the delegate Mediator had contacted the director of the MDPH directly, Mr C.'s request was granted within a few days. The delegate Mediator underlined the fact that in the absence of sufficient human resources, the MDPH cannot make up for the lateness of the ex-COTOREP concerning the examination of disability-related requests (parking card or sticker). On the contrary, the situation has worsened in the department, already a disaster area in terms of handling disability-related problems, and which is proportionally one of the most affected departments in France. Another example: Mr B. is suffering from Parkinson disease and is, thus, 100% disabled. His situation has worsened within a short period and he is finding it increasingly difficult to move about. He submitted an application for disability card at the ex-COTOREP in August 2005; this card is required to obtain a sticker which allows you to park on reserved parking spaces. In December 2006, he still had not received any reply but had been accumulating fines for parking on reserved parking spaces without said sticker. Thanks to the intervention of a delegate Mediator at the MDPH, he was able to obtain the sticker within one month.

➜ A REGULATION DIFFICULT TO APPLY

Mr F. was transferred several kilometres away from the town where he lived with his family, including a mentally disabled daughter. He was planning to move, but the psychiatrists considered the state of the child incompatible with a change of residence and family environment. Mr F. then decided to move alone to the town to which he had been transferred and deduct the cost of transportation and double residence from his tax return. However, the administration replied that these expenses were not work related but personal expenses. Despite the documentary evidence of family constraints presented by Mr F. and the intervention of the Mediator of the French Republic, the administration decided to refer the case to the administrative judge.

Years of lack of information

In July 2007, the Mediator of the French Republic drew the attention of the Minister of Labour in writing to the situation of parents of handicapped children and their old-age insurance related rights. He mentioned, among others, the situation of a couple who wished to benefit from the increase in the duration of their old-age insurance for having a dependent handicapped child, in accordance with the Social Welfare Code.

This increase is granted subject to the presentation of a document certifying that the parents in question are already entitled to the education allowance paid to parents of a handicapped child (AEEH), previously known as special education allowance (AES), and its supplement. Now, some requestors cannot produce this document, either because they are not beneficiaries of the AEEH, or because they have never even received the AEEH. This is often because they have never requested for it, due to lack of information about their rights. The Mediator of the French Republic insisted on the serious lack of information about the rights of handicapped persons, and stressed on the fact that the existing law does not take this into account and makes no provision for exceptions to this prerequisite of documentary evidence pertaining to the health and education of the handicapped child as well as the situation of parents.

A convention to ratify, a protocol to sign

Finally we wish to point out that the International Convention on the protection and promotion of the rights of handicapped persons was adopted by the UN general assembly on 13 December 2006 and signed by France in March 2007. The convention does not create new rights for handicapped persons but incorporates those already contained in the Human rights treaties, by adapting them to the special situation of handicapped persons. It reaffirms the equality of all before the law and the prohibition of any type of disability-based discrimination. Therefore, handicapped persons must be able to exercise their civic and socio-economic rights. For instance, they have the right to access information and media in a suitable format and suitable technologies. By signing the Convention, the countries undertake to adjust their laws so as to make these rights a reality. As of today, 101 countries have signed the convention while 56 of them have signed the additional protocol which creates an appeal channel for private individuals at the international monitoring committee. Although very active in the negotiations, France has not yet ratified this convention or signed the additional protocol.

IMMIGRATION CONTROL POLICY

Possible progress

In 2004, the Mediator of the French Republic made a reform proposal concerning the reunion of families of refugees. In fact, his attention had been drawn to the working of the foreigners' movement division of the ministry of Foreign Affairs while examining the family reunion files of people granted the refugee status in accordance with the Geneva Convention. His recommendations concerned the need to adapt the organisation of this division to the missions entrusted to it, and to increase its allocation. Brought to the attention of Mrs Marie-Hélène des Esgaulx, the draftsperson for the Mission for evaluation and control of the evolution of the budgetary implications of asylum demands, created within the National Assembly's finance committee, this reform proposal is still being examined.

Persistence of two legal loopholes

The case of foreigners living illegally in France seems to suffer from two legal loopholes. One of them concerns minors, and the other foreigners from countries at war. The story of Miss L. illustrates the case of foreign minors. On 12 September 2007, she was ordered to leave the country. She does not fulfil the conditions for obtaining a "private and family life" stay permit in accordance with Article L.313-11 2 of the CESEDA, because she had been entrusted to child welfare after the age of 16. She does not have any sufficiently credible professional project or enough proof of integration into French society. So, it is not possible for the Mediator of the French Republic to intervene in her case. In fact, since July 2006, the law provides that unaccompanied minors arriving in France prior to the age of 16 may be granted a stay permit, especially an asylum status. But some minors are not covered by this law because they arrive in France between the age of 16 and 18… As minors, they cannot be deported, yet they are not necessarily given a stay permit. A similar legal loophole concerns people who, after two years, have exhausted all the possible appeal channels for obtaining a stay permit, especially as asylum-seekers... If these persons are from a country at war, they cannot be deported. Yet, their situation is not necessarily regularised. In one way or the other, these persons resort to living in hiding… This situation calls for clarification on the part of the lawmaker and politicians in general. ■

Identifying malfunctions

Pursuant to the law of 3 January 1973, the Mediator of the French Republic receives complaints concerning the working of government offices, local authorities, public establishments and any other bodies vested with a public service mission, in respect of their dealings with the general public. Behind the eminently personal nature of these complaints, there are very often different types of malfunctions, which may range from simple negligence to clearly illegal decisions. What is needed today is, unfortunately, a public investment in terms of reception and information which today is not commensurate with the complexity of laws. The situation is also that of a public administration more concerned about preserving its own system than respecting the rights of citizens.

SHOCKING AND EXCESSIVE SITUATIONS

Unending wait time or deliberate non-response

➜ A CHANGE IN BEHAVIOUR MAY BE AS IMPORTANT AS A CHANGE IN LAWS

A good number of public or local organisations seem to be completely unaware of how a simple lack of reaction can penalise the most vulnerable persons. This is the case of an elderly couple in Val-d'Oise who did not receive any reply to their repeated complaints. Since their garden adjoined the local football field, they regularly suffered from intrusions, damage to their fence, and incivilities… All that was needed was for a company to be mandated by the town council to install a simple protection, but the town council remained deaf to their problem until the intervention of the delegate Mediator of the French Republic… In this case, there is no malfunction in the real sense of it but a negligence that is hard to accept by the constituents. The Institution of the Mediator of the French Republic is too often a witness to the citizens' helplessness in the face of the administration's silence to their information requests or complaints. Thus, a citizen had been asking in vain to be reimbursed a fine paid unjustly… Despite repeated reminders to the Gendarmerie, which had recognised the error, only after the delegate Mediator of the French Republic had contacted the departmental director of public security in Val-d'Oise that the matter was sorted out, and the complainant reimbursed.

➜ INTOLERABLE SILENCE

Behind the administration's silence is often a material error or a certain indifference to the causes of the problem raised. This was the case for Mr B. in Morbihan. For sixteen months, the CRAM of Brittany unjustly deducted the contribution sociale généralisée (a Social Welfare tax payable by all citizens in France) from his low pension, whereas he was not subject to income tax. His complaints and letters remained unheeded. Contacted by Mr B., the delegate Mediator of the French Republic actually received a reply, but this reply was unacceptable to him: Mr B.'s tax exemption had not been taken into account due to the software used by the CRAM! The requestor was, of course, reimbursed the unduly deducted sums, and his situation regularised manually, something that could have been done upon his first request. Sometimes, silence is also a way to avoid fulfilling one's obligations. This was the case of this local government of Ille-et-Vilaine which had placed an order in February 2003 with a consultancy company for a long-term financial study, payable in three instalments. But after submitting the final documents in June 2004, the consultancy company was unable to obtain the payment of the outstanding amount or the justification for this default in payment. After an initial unheeded attempt, the delegate Mediator of the French Republic recontacted the local government, underlining the need to take a clear position on the payment: the local government either had to effect the payment or indicate the reasons for failing to

If Ministerial decrees, decisions, instructions and responses do not respect the law they are supposed to enforce, there is malfunction in the sense of Article 3 of January 1973 which instituted a Mediator of the French Republic, concerning: "an organisation [… which] has failed to work in accordance with the service mission entrusted to it."

pay – reasons that could have been contested before a court of law. The local government then reacted by proposing to pay the outstanding amount due for the study, which according to it was "of little interest". This dissatisfaction had never been expressed clearly, with supporting arguments, and did not in any way justify the three-year delay in the payment of an invoice in line with the contract!

➜ ABSENCE OF REPLY MAY CAUSE SERIOUS DAMAGE

Beyond the irritation resulting therefrom, the absence of response may lead to serious financial losses. This is the case of Mrs N., who was not receiving any reply from the Court of First Instance. She had written several times since the end of 2005 to the public prosecutor, asking for a copy of the report compiled by the Gendarmerie when her husband had died accidentally through drowning. She needed these documents to receive the life insurance taken out by her husband. Within 20 months, she had sent seven letters to the public prosecutor, all of which remained unanswered, even though her lawyer had intervened twice. His son went personally to the law courts but could only obtain a promise of response within eight days. But then no reply came after three months… One week after the delegate Mediator of the French Republic had contacted the prosecutor directly by phone, the court clerk sent the document to Mrs L. The absence of response may have yet more serious consequences, by making people in precarious situation more fragile. For example, in November 2004, Mrs D. had submitted for her three children an application for French citizenship certificate at the office of the clerk of the court of first instance of Saint-Denis. Although her file was considered as ▸

«Facilitating users' access to services, receiving citizens attentively and courteously, replying clearly and within a fixed deadline, processing complaints systematically, and collecting users' proposals to improve the quality of public service". These are the undertakings made by administrations and formalised through "Charte Marianne" (the Marianne charter) of January 2005.
Three years after the introduction of "Charte Marianne", and despite the provisions of the law dated 12 April 2000 establishing officially the administrations' obligations in terms of response to constituents, the government's investment on reception and information is very insufficient. The consequences may range from simple inconvenience to situations of extreme urgency.

complete, she was refused a receipt for the document. In 25 months, Mrs D. made several attempts to obtain these documents. All to no avail. Several phone calls and letters from the delegate Mediator of the French Republic to obtain information about the situation of this request also remained unanswered. Four weeks later, the only reply obtained was that the documents had been submitted to the Minister of Justice for approval… Other persons in the same situation say they are ready to alert the media to get things going.

➜ IN THE END, CONSTITUENTS LEFT ON THEIR OWN

When several public services are involved, each one releases itself from its responsibility, all the more so when the solutions turn out to be difficult or costly to apply.

Each service "lets things drag on" and nobody actually looks for a solution, thus leaving the persons concerned to find a solution alone.

This was exactly what happened to this couple that had purchased a land in Guadeloupe.

When they arrived on site in January 1997 to mark the boundary of the land, they noticed that electricity poles hand been mounted on their land and nobody had notified them about it in advance.

Despite several steps at the town council, the department of Agriculture and Forestry, and at the EDF (the French national electricity company), the couple could not find out who had mounted those poles on their property. They referred the matter to the Mediator of the French Republic in May 2003, but the case has still not been settled.

When people's real situation is not taken into account

The emergency unit created by the Mediator of the French Republic is often faced with extreme situations in which public services remain completely deaf to the citizens' distress. The examples are many and can be found in all the situations of everyday life. A typical example is that of this student preparing to take the advanced vocational diploma exam. On receiving his invitation, he noticed that his optional foreign language was wrong: he was registered for German whereas he had only studied English! He tried immediately to have this error rectified at the examination board. All to no avail. He then alerted the Mediator of the French Republic. The examination board maintained its position even after being contacted by the emergency unit, arguing that it was not possible to modify a candidacy after registration. The Mediator then argued that this administrative error was bound to have serious consequences for the candidate: he would fail his language examination completely and lose one academic year, whereas he was not responsible for the error since it was his school that had performed the registrations.

In the end, the examination board accepted, exceptionally, to let Mr. D. take his examination in the language he had studied. Another example is this French citizen of African origin who had gone on holidays to Mali. On her way back, she was blocked at the Bamako airport because she was not recognised on the photograph on her passport… She immediately notified the embassy attaché, who contacted the prefecture of her domicile to authenticate the passport. Time was passing but both organisations seemed unable to communicate normally! The prefecture claimed that it had sent a documentary evidence by fax, while the embassy said it had not received it... The student's father then sent a mail to the Mediator of the French Republic, stating that his daughter must start a training programme in France within the next few days. The emergency unit took over the case and re-established communication between the prefecture and the embassy. The passport was authenticated and Miss M. could return to France to start her course on time.

The inaccessible absolute proof

➜ WHEN THE ADMINISTRATION TREATS REALITY WITH DISDAIN

The field of taxation is particularly rich in illustrations in this respect. Although we have a system of tax return where the taxpayer is presumed to act in good faith, this presumption is sometimes misused, thereby generating a strong feeling of injustice among citizens. For example, these two persons who handled shopping of food and domestic items for their neighbour, a very old widower without family. While buying their own items they also bought what the old man needed, and the old man paid them by cheque. After the death of this old man, the tax authorities learned about this payment which in the end amounted to €1,650, a sum they considered as a donation before death and subject to death duties at the rate of 60%, and asked the devoted neighbours to pay €990. These latter argued that this money was used for the deceased's personal expenses, without being able to produce the documentary evidence of these expenses. When contacted by the Mediator, the administration finally abandoned the tax adjustment.

➜ WHEN THE ADMINISTRATION ALONE CAN PROVIDE THE PROOFS IT REQUIRES FROM COMPLAINANTS

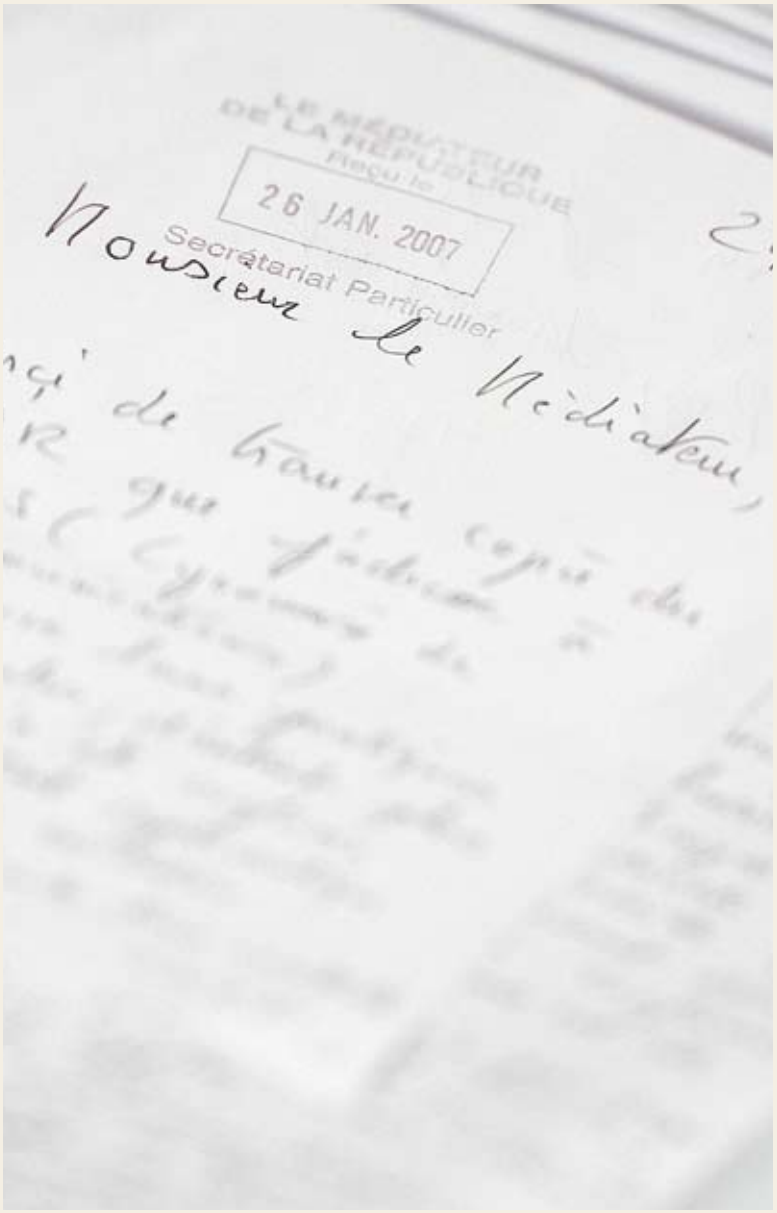
Mr F. contacted the Mediator of the French Republic because he had been faced, for several years, with an unsolvable problem. In fact, the tax authority in his department had noticed a big difference between the amounts declared by Mr F. and the declarations made to the tax authority by the different companies that had claimed to have employed him. Now, Mr F., an employee of only one company during the period under consideration, had never worked for other employers. Considering himself a victim of usurpation of identity, he filed a complaint with the police and with his tax office. His complaint was rejected; the administration argued that the employers' declarations were valid until proved otherwise. Mr F., on his own side, could not prove irrefutably that he had not received the salaries in question. When his attention was drawn to this, the Mediator of the French Republic contacted the tax authority and pointed out that, in view of its communication right, it was better placed to check with employers and banks whether Mr F. had actually received said salaries. After making these verifications, the administration abandoned the contentious tax adjustments.

What do you do when you are right and nobody wants to listen to you? What do you think of an administration that remains deaf to the requests of people in precarious situation? What can you expect of a public service that sometimes seems to misuse its power? The Mediator of the French Republic may be an effective means, yet one would be right to wonder about the working of the public services which only respond to citizens after the institution's intervention.

➜ A SET OF CLUES IS NOT OF ENOUGH TO DETERMINE A CONSTITUENT'S GOOD FAITH ...

The administration sometimes requires a proof that is strictly impossible for the constituent to provide. It is hardly contented with a set of clues, despite the complaints' good faith and the number of proofs at its disposal. Thus, Mrs R. was having problems getting her supplementary pensions fund, ARRCO and AGIRC, to validate two periods during which she had been unemployed. ▸

In fact, these organisations were asking her to produce attestations from the ASSEDIC, documents she could not produce because they had been destroyed. Moreover, since the ASSEDIC does not have any archive, her situation was blocked. The services of the Mediator of the French Republic then tried to gather convincing data which would make it possible to conclude that there had been an indemnification by the unemployment insurance office. A long process which did bear fruit though. Over either of the unemployment periods, the regional insurance office (CRAM), as well as the national pensions fund (CNAV), confirmed Mr R.'s statements. Moreover, she had a last pay slip that reflected a full and final settlement, and her former HRM had also made a testimony. She also had other proofs: an attestation from a future employer highlighting her job-seeker status, attestations issued by the national employment agency (ANPE) after a training programme… – all attesting to the fact that she was a job-seeker over the periods in question. The services of the Mediator of the French Republic pointed out that even though Mrs R. could not produce the attestation of payment of unemployment benefits, she had sufficient justifications corroborating the information validated by the CRAM. They then intervened at AGIRC-ARRCO with these arguments which were heeded. Exceptionally, of course! In terms of taxation, despite the difficulties, taxpayers are sometimes able to produce a set of proofs showing their good faith. But the administration sometimes dismisses them and requires a type of proof that is often too difficult or impossible to produce. Mr S., head of a temporary employment agency, received from the head office of the company T., his employer, some postal orders which he cashed and immediately paid to the temporary workers managed by his agency. During a tax investigation at the company T., the administration considered that in the absence of a strict proof of identity between the amounts received and the amounts paid, Mr S. had to be considered as the actual beneficiary of the cashed postal orders. The Mediator of the French Republic argued that Mr S. had proved, with the help of many documents, the correspondence between the amounts received and the amounts paid. The Mediator thus convinced the administration to abandon the tax adjustments.



➜ …BUT A SET OF CLUES IS ENOUGH TO JUSTIFY AN ADMINISTRATION'S ACTION!

There are cases where the administration is ready to establish a situation contested by the constituent, based on a set of clues.

At a time when cotenancy has become a rapidly growing trend due to the rising housing costs and the ever fragile income, the admin-

istration very often and sometimes hastily assumes that cotenants are common-law husbands/wives. From a point of view of taxation, the proof of common-law husband/wife cancels the half part of dependents' allowance reserved for single-parent families.

This is the case of Mrs G., a single mother raising her children and sharing a flat with Mrs I. Her local tax office refused to grant her the additional half part of the dependents' allowance because she was "living" with Mrs I., i.e. as a common-law couple and not as cotenants. Mrs G. affirmed that she did not have any relationship of common-law couple with Mrs I. and specified that this latter did not participate in any way in the education of her children, not even financially. The tax authorities asked her to prove it. The Mediator of the French Republic argued that Mrs G.'s declarations were declarations on her honour and were equivalent to a proof: it was the duty of the administration to prove that Mrs G. and Mrs I. were a common-law couple. The Mediator of the French Republic argued further that by limiting itself to mentioning in the rectification proposal "information at the service's possession" without providing any proof, the administration had not produced any justification thereof. He thus convinced the administration to restore the additional half part of the dependents' allowance. In another case, the administration considered that the small size of a flat and the small number of rooms necessarily meant that the occupants were common-law couple and not cotenants. The Mediator of the French Republic contested this successfully, arguing that these elements alone were not enough to characterise tenants as common-law couples.

In situations of «alleged» common-law husband/wife, the evidence produced by the administration can only be pertinent if the set of clues are enough to prove that the taxpayer forms a couple with another person in the sense of Article 515-8 of the Civil Code: «a union characterised by communal life, stability and continuity between two persons of different or the same sex, living as a couple".

The sometimes doubtful legality of administrative decisions

The Mediator of the French Republic sometimes recommended the abandonment of a taxation or a contentious plan decision due to the doubtful legality of the standard on which they had been based. Mr F. was refused a research tax credit provided for by the law and General Tax Code, because he had applied for it after the deadline fixed by an equally codified decree. This decree did not allow late regularisation through complaint. Based on a jurisprudence, the Mediator of the French Republic intervened, arguing that although a decree fixed the conditions for application, it was not to fix a binding deadline leading, in case of delay, to the loss of tax advantage. After the intervention of the Mediator of the French Republic, the requestor's tax credit was restored.

THE NECESSARY REMINDER OF THE LAW

Administrations, communities and constituents are regularly reminded by of the law. In some cases, this is done by exercising the injunction power conferred on the Mediator of the French Republic by the law of 3 January 1973.

Administrations or communities at fault: some of them listen, others persist...

• An obstinate committee

Mr T. asked for the internal regulations and a report of a departmental committee meeting which fix the amount of contribution required to include a sporting event on the departmental calendar of the relevant federation. His requests remained without response. He then referred the matter to the Commission in charge of access to administrative documents (CADA), which confirmed that he had the right to receive these documents. Eleven months later the administrative court asked the committee to communicate the said documents. But to no avail... Eighteen months later, the committee was ordered to pay a fine of € 3,900. Since none of these decisions was executed, the Mediator of the French Republic enjoined the relevant confederation to comply with the court's decision within fifteen days.

• Driver's licence: external candidate discriminated against

Mr E. wished to take the Highway Code examination as an external candidate, without registering at the driving school. During an interview with an official of the driving school, he was told that he was not going to be called for the examination before six months due to the priority given to candidates registered with the driving school... The Mediator of the French Republic then contacted the services of the departmental prefecture in question so that the general principle of equal treatment of public service users can be respected. In the absence of a law to the contrary, it does not seem equitable to treat differently persons in the same situation. Mr E. passed his Highway Code exam that he took within a reasonable period. Moreover, the Mediator of the French Republic made a reform proposal which aims to harmonise the minimum age requirement for the theoretical Highway Code examination, regardless of the learning formula chosen. The ministry of Transport has confirmed its interest in this proposal which, since then, is the subject of an alternative study, the purpose of which is to allow a successful candidate of the general theoretical examination within the framework of early learning to retain the benefit for three years within the framework of the traditional learning if the candidate so chooses or is obliged to change his or her field.

• Historic restoration: "yes, no, yes, etc." – different answers for 30 years!

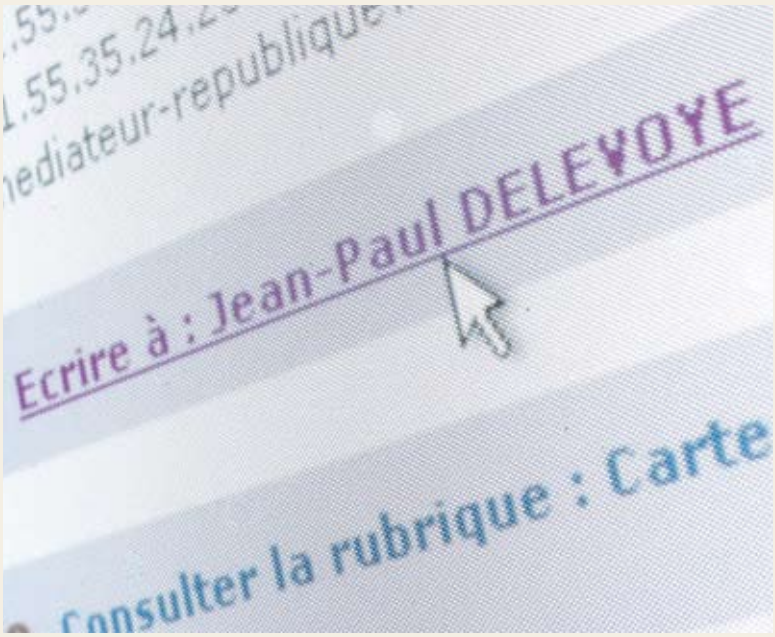
The Mediator of the French Republic intervened in a dispute between a complainant and a town council concerning the rehabilitation of a house bought in 1974 in a historical neighbourhood. In June 1976, the interMinisterial group of average-sized towns had approved a rehabilitation project for this neighbourhood, and the town had initiated an expropriation procedure in September 1980. Never-

theless, it had issued a permit to the complainant to build an average-sized house in March 1980, but cancelled this permit in 1984 at the request of a neighbour. In 1985, the complainant was issued a new building permit and signed an agreement with the town, according to which in return for the sale of plots he was allowed to open bays and a pedestrian path on the town's property. Although approved by the municipal council, the agreement was never executed by the town, and the building company was unable to gain access to the site to perform the work approved through the building permit of June 1985… Meanwhile, the complainant was facing serious financial problems in connection with an inn subjected to receivership. Disputes followed each other, both before courts of law and administrative tribunals. The different jurisdictions made their rulings successively in 1998, 2000, and 2002. In July 2004, the owner of the house was enjoined to perform the necessary work to stop the dangerous situation of the building! The complainant then called for the intervention of the Mediator of the French Republic in view of this legally inextricable situation and financial consequences of non-execution of the agreement in 1985. After close examination of this complex matter, the state of the property based on the town-planning documents, and after a visit to the site with representatives of the city hall, the DDE and the complainant, an agreement was reached, and a new permit granted. In March 2006, the Mediator of the French Republic intervened again in connection with the danger caused by the house under dispute. In June 2006, the town accepted to level with tonnes of gravel the only road allowing public works vehicles to pass, and the renovation work was finally performed. The premises of this historical house, open to pedestrians and cultural events, was inaugurated in the presence of the Mediator of the French Republic in 2007. ▸

In terms of taxation, Article 34 of the Constitution stipulates that the law "shall fix the rules concerning the base, rate and modalities of collecting all types of taxes".

• Excessive hospital bill

A typical case to which the attention of the Mediator of the French Republic is drawn: hospitalisation of a foreigner staying temporarily in France and the hospital bill the host is required to pay, whereas said foreigner had taken out an insurance policy before leaving his or her country and does not have sufficient resources. This is the case of the Mrs K.'s family. Mrs K. was rushed to the hospital when she visited her daughter in France during the end-of-the-year festivities. She died at the hospital some weeks later. For this stay, and pursuant to Article L. 211-1 of the law governing foreigners' entry and stay as well as the asylum law, Mrs K. had taken out an insurance policy. It turned out, however, that her daughter was asked to pay the hospital bill since the insurance company had refused to settle the bill, arguing that the insurance policy guaranteed emergency hospitalisation bill only in case of accident and not illness. Now, such a clause did not seem to be contained in the contract; the Mediator of the French Republic contacted the French branch of the insurance company which referred him to the branch in Turkey. As the Turkish branch was not replying to his letters, the Mediator of the French Republic called for the intervention of France's Consul general in Turkey.



Unacceptable abuses by constituents

The Institution of the Mediator of the French Republic not only handles infringement of the law in one direction. A number of constituents are mistaken when they hope to get preferential treatment from his services, or get round or even break the law. For complaints not made in good faith, the impacts of an unjustified request for the intervention of the Mediator of the French Republic may be far from what the complainants hoped to get, and may sometimes backfire on them.

• Complaining by producing forged documents: seeking the help of the public prosecutor

Miss D. had failed the qualification examination for teaching at a driving school. Since she had the right to apply for the examination for the following two sessions, she renewed her candidacy the following year but could not take the examination for health reasons. The year after, her candidacy was rejected. She then sought the help of the Mediator of the French Republic, asserting that she had not received any invitation for the examination whereas she had taken the necessary steps… She even produced copies of her application form and the acknowledgement of receipt from the prefecture. The prefect then informed the Mediator of the French Republic that the documents had been tampered with and simply falsified, and that he was going to notify the public prosecutor about Miss D.'s acts in accordance with Article 40 of the code of criminal procedure. The Mediator of the French Republic approved the prefect's decision and also referred the case to the relevant public prosecutor.

Facts about Europe

In terms of driver's licence, the principle is mutual recognition between EU member States. If you acquire your "normal residence" (live there for at least 185 days a year) in a member State other than the one in which you had been issued the driver's licence, the host member State may enter on the driver's licence the information required to manage it. On the other hand, a member State is not obliged to automatically recognise a driver's licence issued by another member state in place of a driver's licence issued by a third-party State.
http://ec.europa.eu/transport/home/drivinglicence/index_en.htm.

• *Lying in order to be considered a victim: flat refusal*

The delegates and services of the Mediator of the French Republic are always careful because cases reported by constituents may sometimes turn out to be very different from the reality described by the administration. An example is Mr B.s case. Mr B.lives on a caravan installed on a land on which he says he plans to build a house. Therefore, he was given a temporary electricity connection for close to four years. But, upon the town's demand, EDF cut this connection as winter was approaching. The delegate Mediator of the French Republic then wrote to EDF's manager, asking for Mr B.s case to be re-examined and for power supply to be restored. In his reply, the EDF manager described the circumstances that had led to the suspension of the temporary connection, mentioned the insecurity of the installation and corrected the complainant's unjustified allegations:
absence of indiscriminate power interruptions, many unpaid bills, lack of courtesy on the part of Mr B. … it turned out in the end that Mr B. had lied so as to be considered a victim. Since no malfunction had been noticed regarding the EDF service, the delegate Mediator closed the case.

• *When citizens fail to "accept" the law: mediation impossible*

Complainants sometimes find it difficult to accept the idea that "law is law"», especially when the law is not in line with their personal interests. Mrs F. acquired a piece of land on which, according to the purchase deed, a chalet-style house was built in 1975 without authorisation.
Shortly thereafter, the complainant asked to change the components of the chalet containing asbestos. The town council rejected the application for work permit for several reasons: it concerned a house built without permit, the land was located in a protected natural area not connected to the networks, there was no fire protection, the building could endanger public health and security. Despite all, the complainant performed the work then asked to be connected to the electricity network, which was refused by the town council.
She then called for the intervention of the Mediator of the French Republic, saying that she had two young children in her home, and that their life was rendered difficult by the absence of electricity.
But the Mediator of the French Republic could only confirm the reply given to her in accordance with Article 111-6 of the town-planning code, which stipulates that houses built illegally cannot be connected permanently to the electricity, water-supply, gas or telephone networks.

• *Requests for preferential treatment rejected*

Preferential treatment should not be expected when referring a case to a delegate Mediator of the French Republic. At least, this is the lesson that Mrs K. must have learnt from it. After submitting at the office of the clerk of the court of first instance of Nîmes an application for French citizenship certificate for herself and her ▸

Relations with town councils not always easy

Delegate Mediators of the French Republic highlight the large number of conflicts involving the council of a small rural community. Fortunately, there are courteous mayors who strive to protect public interest in an impartial manner. Still, there are others who misuse their power and settle scores instead of solving problems. Successive decentralisation laws have confirmed these latter in their opinion that their power is almost absolute and they do not hesitate to make this known to some constituents or… delegate Mediators of the French Republic, through their casual response of even silence.

children, Mrs K. was worried that she had not received any reply. The court of first instance reassured her by confirming to her that her request had been recorded but the requested documents could only be issued much later. She took an appointment with the delegate Mediator of the French Republic, hoping to quicken the procedure. After checking with the services concerned and noticing no malfunction, the delegate Mediator of the French Republic could only ask the requestor to communicate to him any element that could justify why her application should be given priority over other applications. Mrs K. has not showed up again since then.

• When the constituent is responsible for a malfunction: correction

Mrs L., a civil servant, sent a mail to the delegate Mediator of the French Republic to explain her problems with the MGEN. As a handicapped person, she had previously been affiliated to the CPAM, but she was now covered by the MGEN as a civil servant. Now, this latter organisation refused her 100% coverage since her new affiliation. Upon receiving her file, the delegate Mediator of the French Republic contacted MGEN then the CPAM. The delegate Mediator did not notice any malfunction; the 100% coverage granted for five years was to be renewed on a specific date, corresponding to Mrs L.'s new affiliation. This is a standard verification procedure before extending the coverage. Therefore, Mrs L. only had to apply for renewal by having her attending physician fill out a form. But Mrs L. refused! The delegate Mediator of the French Republic also pointed out to the Mrs L. that her disability card had expired and advised her to apply for its renewal at the MDPH. Disappointed, Mrs L. insulted the delegate Mediator of the French Republic. Apparently, she had only wanted preferential treatment but failed to obtain it.

TWO TYPICAL SOURCES OF MALFUNCTIONS

Lack of harmonisation: the example of three statuses for civil servants

A contract civil servant who had worked for two years in two different hospitals with several fixed-term work contracts was unable to obtain his unemployment benefits to which he was entitled at the end of these successive contracts, since each hospital claimed it was the responsibility of the other hospital to pay him said benefits… The Mediator of the French Republic explained to the hospital concerned that it was the duty of the hospital that had employed him for the longest time, and not necessarily the last one, to pay these unemployment benefits. The worker thus obtained his entitlements. This mistake, among others, shows the difficulty in interpreting civil-service-related laws. State employee, regional employee, healthcare-sector employee – these three public-sector employee categories refer to complex regulations which are sometimes difficult to interpret and far from being harmonised. From simple misunderstanding to long-lasting litigation, this situation often hampers employee-employer relationships. The Mediator of the French Republic has made several reform proposals with a view to simplifying or harmonising these different regulations.

Incivility: refusal to mediate

Certain behaviours may make the services of the Mediator of the French Republic to reject a mediation request. Contacted several times by a contract worker in show business who, after a sick leave due to a work accident, had received a notice of excess payment from ASSEDIC, a delegate Mediator of the French asked to see the letter written by the complainant to Assedic. The delegate Mediator of the French Republic had to reject the mediation request in view of the particularly rude tone of the letter and the unacceptable accusations made against the official of the Assedic office.

➜ SOCIAL WELFARE OF REGIONAL EMPLOYEES: BELATED LAWS

Regulations on the three civil servant categories change at different rates. Thus, all civil servants do not necessarily have the same advantages in terms of Social Welfare. For instance, since 29 November 2006, hospital employees who are ill for a long time but have used up all their statutory leave periods are automatically entitled, just like State officials, to half treatment until the date of administrative decision to remove their name from the list of executives. This is not always the case for regional civil servants. Since nothing has been expressly indicated in this respect in the statutory documents, regional civil servants may face tragic situations and remain without income, some-

times for two years, due to lack of knowledge of the law, especially in small towns, whereas the application decree dates back to 1960.

➜ STATE OFFICIALS: PROBLEMS NOT ENCOUNTERED BY OTHER CATEGORIES OF CIVIL SERVANTS

The Mediator of the French Republic intends to make a reform proposal to the Minister of Budget, which aims at avoiding certain malfunctions that State official suffer from. In fact, his attention has frequently been drawn to the situation of State-employed civil servants whose names have been removed from the list of executives due to disability, without the ministry's pensions service giving them access to the corresponding rights. A situation most often due to malfunctions in the upstream examination procedure followed by the reform commissions and the employment administrations of the persons concerned… The result is that in case of disagreement, a State official may end up having no means of support. Now, in the regional civil service and public hospitals, the CNRACL (pensions scheme for local government employees) must intervene before the reform commission, which makes it possible to settle the disagreements between the two bodies without the employee in question being penalised by lack of agreement which in the State civil service may deprive him or her of income for a longer time. To prevent the incoherence of similar decisions from penalising the legitimate interests of State civil servants alone, it shall be recommended that, to harmonise the rules adopted for regional and hospital employees affiliated to the CNRACL, the coherence of the decisions in question should be better guaranteed, for instance, by adopting a regulation that will make the removal of employees' names from the list of executives subject to the approval of the pensions fund. ▸

The decree of 11 January 1960 on the Social Welfare of permanent employees of departments and towns and their public, non-industrial or non-commercial establishments stipulates that employees in this type of situation are entitled to benefits in kind, just like beneficiaries of disability pension. Nevertheless, this right is not specified again in the regional civil service status.

➜ DIFFERENT TREATMENT WITHIN THE SAME FUNCTION

The attention of the Mediator of the French Republic was drawn to the situation of practitioners working on a part-time basis in hospitals (PHTP), who deplore the differences in the treatment given to them in terms of recruitment, responsibilities and similar service obligations, compared to their colleagues working full time in public hospitals. In fact, depending on the length of time devoted to hospital service, full-time practitioners (PHTC) and PHTP belong to two categories of civil servants and have two different legal statuses. Therefore, while waiting for the bodies and statuses of the hospital practitioners to be harmonised, the Mediator of the French Republic has recommended that several regulatory measures be taken to restore homogeneity and equity in the salary scales of full-time and part-time hospital practitioners. He also proposed that part-time practitioners be given the same right to training leave as their full-time colleagues, that other indemnity for engagement in public service be granted only to part-time practitioners devoting their entire professional activity to public service, and that the basis for calculating the contributions of part-time hospital practioners be reviewed at Ircantec, which does not have any objective reasons to reduce the gross salary by two thirds.

Stacking up laws: examples in the fields of environment, equipment and taxation

Some laws are more problematic than the others. We have seen the impact of this above, especially on disabled persons. The services of the Mediator of the French Republic also receive a large number of important cases in which the administration calls to question the benefit of a tax credit. This is often the case in the field of equipment and environment.

➜ SUSPECTED ILLEGAL PROVISIONS

In 2007, the services of the Mediator of the French Republic handled a certain number of cases in which the tax authorities rejected a request for tax credit for the acquisition of a boiler used at a main residence, arguing that this tax credit is reserved for boilers installed in apartment buildings… For this, the administration refers to Article 18B of Appendix IV of the General Tax Code and the tax instruction on tax credit. This article defines the list of equipment items that give right to a tax credit. The instruction on the tax credit adds in relation to Article 18B that this tax credit is granted only for heaters installed in apartment buildings. In these cases, the Mediator of the French Republic argued systematically that the said article and instruction are only applicable to taxpayers if they are regular. And they are only regular if they are in line with the law to which they are supposed to apply… Now, Article 200, the only article that defines the basis for tax credit in accordance with Article 34 of the Constitution, mentions among the expenses that give right to a tax credit "the acquisition of large equipment provided within the framework of installation or replacement of the heating system". This perfectly clear stipulation does not limit the tax credit to works performed in apartment buildings. As for the decree fixing the list of equipment items concerned, it cannot for any reason whatsoever encroach upon the power of the legislator, which is exclusive in terms of taxation basis. In fact, the decree defines the list of eligible works in the technical sense of it (for instance, what is meant by heating system), without imposing any other conditions on these equipment items. As of now, the Mediator of the French Republic has not received any reply from the ministry for some cases dating back to more than one year.

Tax credit: three similar rulings by administrative courts confirm the analysis made by the Mediator of the French Republic and recognise the illegality of Article 18 B. On 5 July 2007, the administrative Court of Appeal of Lyon confirmed the ruling made by the administrative court of Dijon in favour of taxpayers in very clear terms: «Considering that the power conferred on the Minister of Budget by Article 200 of the general tax code is limited to establishing the list of equipment that give right to tax credit and does not include defining the buildings in which these equipment must be installed; considering also that by limiting through the decree of 17 February 2000 the granting of tax credits for the installation and replacement of heating systems only to "buildings with several premises", the Minister of Budget has added a restricting element not provided for by the law and, thus, misinterpreted the level of power conferred on him by Article 200 of the general tax code, tax authorities may not use as basis the provisions of Article 18 B of Appendix IV to the General Tax Code, which are, thus, illegal, to refuse Mr and Mrs X. the tax credit to which they were entitled as a result of the contested expenses.

➜ VERY TECHNICAL LAWS CONTRADICT ILLEGALLY THE PRECEDING LAWS

In other cases, the technicality of laws invariably makes them difficult to apply. Despite or due to the too technical character of the conditions on which the law is applied, taxpayers may be disadvantaged by the vagueness used by the administration. This is the case of a complainant who, in 2006, had installed a heat pump in his main residence. Before making this installation, he had sought the opinion of the tax authorities concerning the eligibility of this equipment for the tax credit granted for equipment-related expenses made on a main residence pursuant to the general Taxation Code. The tax authorities then sent the requestor the decree of 12 December 2005, applicable on the date of the request, which defined the technical characteristics required to benefit from the tax credit. The installation seemed to fulfil all the conditions defined in this article. However, after the installation work, the organisation in charge of verifying the equipment's compliance with the performance standards required by the afore-mentioned decree informed the taxpayer that the tax credit was only applicable to heat pumps used for all the living rooms, and that in the particular case, the taxpayer could not benefit from the tax credit since this condition was not fulfilled! The condition of device availability in all living rooms results from an instruction commenting the tax credit and which adds to it a condition only to texts which can be used as evidence against taxpayers… By making the tax credit subject to the availability of heat pumps in all the living rooms, the administrative instruction adds a condition that does not exist in the law or in the decree to which it refers. Since its application by the tax authorities seems to be a malfunction, the services of the Mediator of the French Republic intervened in favour of the requestor. Although the tax authorities refuted this analysis, the Mediator of the French Republic informed the Minister in charge of taxation law and the Minister of Budget that he was maintaining his analysis on the illegality of the instruction.

➜ THE QUESTION OF FINANCIAL GUARANTEE

Concerning windmills, Article L.553-3 of the Environmental Code stipulates as follows: "the operator of an installation that generates electricity from wind-based mechanical energy shall be responsible for its dismantling and restoration of the site at the end of the operation. In the course of this operation, the operator shall constitute the necessary financial guarantees (…). A Council of State ▸

decree shall determine the conditions for constituting the financial guarantees". In November 2005, the Mediator of the French Republic asked that the application decree make express provisions for the adjustment of said financial guarantees in view of the service life of these installations, estimated at 20 years. He also recommended that the State should ensure compliance with the five-year deadline for recovering the costs inherent in repairs. Finally, the Mediator of the French Republic underlined, concerning the sitting of windmills, the decisive role of prefects, the DDEs and DRIRES as the "relevant decentralised authorities" of the State that refuse or grant building permits, with special instructions when the planned constructions may endanger public health and security. As of June 2007, the draft decree was still being examined…

DEVELOPING AND ENCOURAGING GOOD PRACTICES IN THE ADMINISTRATION: THE PUBLIC SERVICE QUALITY TROPHY

On 5 October 2007, the 5th edition of the public service quality trophies (organised by the ministry of Budget's general directorate for State modernisation) rewarded the winners selected by a jury, of which the Mediator of the French Republic was a member, satisfied to focus this time not on malfunctions but on exemplary initiatives of administrations and other public service providers. Six out of the 21 nominees received a first prize for their innovative character and efficiency in view of the different objectives pursued. Improving the reception of constituents is a real concern which does not necessarily need the mobilisation of new resources but more motivation and imagination. Thus, the Caisse d'allocations familiales du Nord (Social Welfare office for the Northern zone) has created a real user counselling centre run on a part-time basis by voluntary CAF officials trained specially for this. The town of Colomiers (Haute-Garonne) received the «Qualiville» certification for actions taken to improve the efficiency, cordiality and accessibility of services rendered to users.

The accessibility of public services to people in difficult situation or isolated persons is also an important issue. The association «Itinéraires 17» was rewarded for its transportation and social support services for rural dwellers in precarious

All the trophies are available on:
WWW.MODERNISATION.GOUV.FR

A code of conduct for civil-service-related laws?
In view of the complexity and diversity of the Social Welfare regulations applicable to the three civil service categories, and considering the increasing number of complaints pertaining to a wrong interpretation of these regulations, the Mediator of the French Republic would like to promote a "code of conduct". This code would harmonise all the rules applicable to unemployment benefits, statutory sick leave, disability pension or survivors' pension benefits...

situation. It is a good idea to combine social assistance (listening, support, orientation) with physical assistance to provide services that can meet people's needs. The regional council of Auvergne has used new technologies to facilitate administrative procedures in rural areas thanks to a videoconference base station. Another remarkable project concerning access to justice: the creation by the court of first instance of Cambrai of a penalty execution office which, once a ruling is made, takes care of both the convicted party (informed about the grounds for his or her conviction, the consequences of a second offence and the means of executing the sentence) and the victim. Finally, the revenue collection centre of the city of Lille (which collects public revenues paid by cheque or through bank transfer for the treasuries under its jurisdiction) has set up an industrial organisation which optimises the rapidity and security of public revenue collection. ■

AGENTS OF REFORM

Successful reforms made by the Mediator of the French Republic

Recommending modifications which he deems necessary when the application of a law or regulation results in unfair situations is part of the prerogatives of the Mediator of the French Republic. Several of the proposals he made in the past few years or months were incorporated into the different laws passed in 2007.

SIMPLIFYING THE LAW

Law 2007-1787 of 20 December 2007 on the simplification of laws introduced several reform proposals made by the Mediator of the French Republic, especially in form of amendments. A new provision thus stipulates that citizens may be assisted or represented before the court of first instance, local court or industrial tribunal by their common-law husband/wife or the person with whom they have signed a civil solidarity pact. The same thing applies to the Social Welfare tribunal, the national court in charge of incapacity and fixing work accident insurance tariffs, as well as the agricultural rent tribunal. Without fully adopting the proposals of the Mediator of the French Republic in terms of increased fine for Highway Code related offences, two provisions aim at reducing the opacity of fine processing procedures:

– The copy of the administrative opposition, meant for the person liable for payment, for forced collection of a fine, must include, in the absence of invalidity, the nature of the fine as well as the date of offence if it is all about an increased fixed fine, or the date of the court decision in other cases

– The motivated complaint procedure, followed by an offender after receiving a notice of increased fixed fine is not well clarified: Article 530 of the Code of criminal procedure is modified to specify that the notice which must accompany the complaint is the increased fixed fine notice and, that in the absence of the required documents, the complaint shall be inadmissible.

Another measure of equity proposed by the Mediator of the French Republic was retained by members of parliament: alimony creditors and debtors whose status is recognised by a court decision may consult information concerning the taxation of their debtor or creditor,

Not only is the French law full of obsolete provisions, the laws must also be adapted to a rapidly changing world. It was in this spirit that in October 2007, a proposed law to abrogate obsolete regulations and simplify the law was examined, including several proposals made by the Mediator of the French Republic.

as the case may be, regardless of the tax office in which the taxation of the debtor or creditor is established. This provision guarantees that alimony creditors and debtors have equal rights in terms of access to tax-related information.
On the other hand, one of the proposals not adopted is the introduction of direct referral to the Mediator of the French Republic, at the same time as the referral through a member of parliament.

LAW 2007-1786 OF 19 DECEMBER 2007 ON THE FUNDING OF SOCIAL WELFARE FOR 2008

Two reform proposals made by the Mediator of the French Republic in 2007 were included in this law. The first one concerns the coordination of the scheme for liberal professionals and the national welfare scheme for employees, which give right to the daily benefits paid by the health insurance office. In fact, the attention of the Mediator of the French Republic had been drawn to the problems arising from the absence of coordination rules between these schemes. Article 57 of the law on the funding of the Social Welfare for 2008 responds to this concern by providing for the principle of general coordination between the different schemes in terms of health insurance and maternity/paternity in order to allow access to the benefits in cash or in kind, and take account of the periods of affiliation, registration, contribution or work done, regardless of the scheme concerned. Since this article refers to a decree yet to be published, the Mediator will remain attentive to the technical modalities thereof.
The second one aims to simplify and harmonise access to family allowances which are subject to the conditions of income. To facilitate the beneficiaries' procedures and avoid unwarranted payments, by correctly calculating the amount of allowance, the Mediator of the French Republic had proposed that information about the beneficiaries' income held by tax authorities should be systematically sent to the Social Welfare offices (CAF) and the farmers' welfare scheme (MSA). This proposal is in line with the conclusions of the report of the modernisation audit mission concerning the rationalisation of housing benefit management, as well as those of the work group made up of State representatives (DGI and DSS) and the organisations in charge of paying family allowances (Cnaf, MSA). On 24 April 2007, this reform proposal was accepted by the Economic Minister. This measure, which is contained in Article 106 of the law on the funding of the Social Welfare for 2008, will enable over eight million beneficiaries to save the time spent making tax returns. Finally, within the framework of exchanges with the national health insurance scheme for employees (CNAMTS), the Mediator of the French Republic had noticed the difficulties generated by the wording of Article 53 of the law on the funding of the Social Welfare for 2002 which, by making reference to accidents occurring, or illnesses noticed after 1st September 2001, had created an inequality of treatment; the beneficiaries of insurance contributors who had died between 1st September 2001 and 31st December 2002 as a result of an accident or illness prior to 1st September 2001 could not benefit from the new rates, unlike the beneficiaries of insurance con- ▸

- tributors whose accident or illness had occurred after 1st September 2001. Now, since the beneficiaries allowance is due to death and not accident or illness, applying different rates for similar causes seems unfair. Therefore, the measure targeted by Article 87 will henceforth allow all the beneficiary compensations paid after deaths occurring after 1st September 2001 to benefit from the currently applicable rates, no matter the date of the accident or illness that led to the death.

THE 2008 FINANCE LAW 2007-1822 OF 24 DECEMBER 2007

Article 5 of the finance law institutes the right to be released from joint responsibility after divorce or separation. Henceforth the ex-spouse or ex-partner of a PACS, sued by tax authorities for joint-tax-related debts, may ask for an equitable distribution of these debts. The ex-spouse shall be released from the obligation to pay in case of significant disproportion between the tax debt and the financial and proprietary situation of the requestor, provided said ex-spouse has respected his or her tax obligations since the break-up.

It is regrettable that at this stage, the proposal made by the Mediator of the French Republic to authorise the attachment of all children aged below 25 to their parents' tax household has not been accepted.

THE AMENDED 2007 FINANCE LAW 2007-1224 OF 25 DECEMBER 2007

At the Mediator's request and with the government's consent, the Senate has adopted an amendment concerning the dependents' allowance of widows/widowers with dependent children for income tax calculation. This provision modifies Article 194 of the general tax code and thus cancels, in the calculation of the dependent's allowance applicable to widows/widowers, the distinction between children born while married to and those born while not married to the deceased spouse. Today, all widow/widowers with dependent children are considered as married taxpayers.

IMMIGRATION CONTROL, INTEGRATION AND ASYLUM LAW 2007-1631 OF 20 NOVEMBER 2007

During discussions on the draft law on immigration control, integration and asylum, Défenseure des enfants and the Mediator of the French Republic called on the lawmakers to modify the articles of the Civil Code which introduced an unjustifiable inequality of treatment in terms of access to French citizenship between foreign minors unable to express their wish due to a handicap, depending on whether they were aged 16 to 18 or 13 to 16. For these latter, the Civil Code required that they express their personal agreement to this procedure, without providing for cases in which they may be prevented from doing so… This was the case of P., born in Mantes-la-Jolie on 26 August 1993 of parents born in Zaire. This young boy is suffering from serious autism that prevents him from expressing himself. His parents had submitted for him an application for naturalisation which the judge of the court of first instance had rejected because the child in question could not express himself! The provisions of Article 21-11, paragraph 2 of the Civil Code, pursuant to which the request had been made and which stipulates that French citizenship may be obtained on behalf of a minor born in France of foreign parents as from the age of 13 AND with his or her consent, did not make any provision for the case of minors who could not give their consent for health reasons. The Senate has adopted an amendment allowing a minor to be represented in such a situation, no matter his or her age. This measure is contained in Article 39 of the law.

LIFE INSURANCE (law 2007-1775 of 17 december 2007 which allows the search for beneficiaries of unclaimed life insurance policies and guarantees the rights of insurance contributors)

The year 2007 was characterised by significant progress in the field of life insurance. After his cry of alarm in his 2006 report concerning unclaimed life insurance credits, the Mediator of the French Republic made a reform proposal aimed at guaranteeing the respect of subscribers and beneficiaries' rights. Less than one year later, the law which "allows the search for beneficiaries of unclaimed life insurance policies and guarantees the contributors' rights", adopted unanimously by members of the National Assembly and senators, basically incorporated the proposals of the Mediator of the French Republic, especially the proposal on the reduction of the stock of unclaimed policies. In fact, the adopted law requires insurance companies, life insurance and mutual insurance companies to obtain information about possible death of the insurance contributor. For this, they must consult the data contained in the national directory of natural persons and death. During debates, it was specified that this obligation was general and applicable to expired and current policies. In the event of a subscriber's death, these same organisations shall also be obliged to search for the beneficiary to notify him or her about the stipulation made in his or her favour, even if the policy does not contain the beneficiary's address. The Mediator of the French Republic is very pleased about the general consensus on this issue in the Parliament and will remain attentive to the actual application of the law, especially in terms of the processing of the stock of policies.

THE LAW ON THE DEVELOPMENT OF COMPETITION AT THE SERVICE OF CONSUMERS (adopted on 20 December 2007)

In accordance with a reform proposal made by the Mediator of the French Republic on 4 October 2006, an amendment aimed at giving the judge, in consumption related disputes, the right to automatically point out the protective rules contained in the consumer code, was unanimously adopted by the Senate. ■

Priorities of the Mediator of the French Republic in 2008

HELPING FAMILIES TO COPE WITH DIFFICULT TIMES

Instituting a civil status for stillborn babies, and paternity leave

Although the number of stillborn babies is fortunately limited (3000 to 5000 births per year), it is still all about particularly painful situations that require humane treatment so as to better assist affected families in their mourning process. Now, some stipulations on civil status and Social Welfare clearly go against this objective. The Mediator of the French Republic has made two reform proposals in this respect. One of them aims to reinforce the legal status of stillborn babies in terms of civil status, and the other one the recognition of a right to paternity leave.

➜ A WORK GROUP AT THE INITIATIVE OF THE MEDIATOR OF THE FRENCH REPUBLIC

Pursuant to the existing law resulting from Article 79-1 of the Civil Code and the general instruction on civil status, a child declared as stillborn cannot be recognised and, therefore, cannot be given any patronymic, paternal or maternal name. A certificate of stillborn baby may only mention the first name(s) of the child and the first names and surname, date and place of birth, domicile and profession of its father and mother… Moreover, only married couples may register this child in their family record book, which they received on the day of marriage; unmarried couples are deprived of this symbolic comfort if they do not already have a child making it possible to issue this record book… Conscious of the sensitive nature of this issue and the need to appreciate all the implications, the Mediator of the French Republic has recommended that its examination be entrusted to a work group, whose mission will be to explore the possibilities of improving French law in favour the families, without disrupting our legal order. This work group, made up of representatives of the ministries concerned, civil-status service directors, hospital practitioners and jurists, has planned to create a guide of good practices making it possible to better assist parents faced with this mourning. Some obstacles at the Ministerial level still remain to be overcome in order to improve the legal status of children declared as stillborn. Therefore, the Mediator of the French Republic is still working on this issue, together with members of parliament who are sensitive to this matter.

➜ GRANTING PATERNITY LEAVE

The attention of the Mediator of the French Republic had been drawn to the impossibility of paying the daily benefits due as paternity leave when a certificate of stillborn baby is presented. The granting of paternity leave was, in fact, subject to the presentation of a birth certificate attesting to parentage, which is not issued for stillborn babies. Thus, the father of a stillborn baby could not have access to paternity leave whereas, in this same situation, the mother justifiably has access to her maternity leave. Apart from the financial loss suffered by these fathers, they have a real feeling of injustice. This is all the more so since paternity leave can be granted to the father of a child who dies before the declaration of birth, but for which a birth certificate and a death certificate have been issued based on the medical certificate attesting to the fact that the child had been born alive and viable. The psychological support offered through this leave when the family is mourning the death of a child

Legal status of stillborn babies

In 2008, the Mediator of the French Republic intends to make the lawmaker conscious of the need to adjust our law, especially based on the experience of other European countries. In fact, he wants an objective definition of viability, taking account of the criteria defined by the World Health Organisation (i.e. a child born after 22 weeks of amenorrhea or weighing at least 500 grams) and included, for information purposes only, in interMinisterial circular 2001/576 of 30 November 2001, to replace the current subjective definition which depends on free interpretation by the doctor issuing the medical certificate. This reform would make it possible to give equal treatment and grant the same rights to all parents facing the death of a child who has reached the minimum level of viability before the declaration of birth.

upon its birth, presupposes that it be extended to fathers of stillborn babies, which was proposed by the Mediator of the French Republic. Following favourable recommendations made by the Ministers for health and Social Welfare, a decree dated 9 January 2008, reflecting this reform proposal, has been published.

Donating one's body to science: new, non-homogeneous and uncoordinated practices

The attention of the Mediator of the French Republic has been drawn to the problems encountered by families of persons who have donated their body to science. These problems are mainly as a result of non-compliance with the existing law. Two specific problems have been identified; one of them concerns the fate of the body after being handled by the donees, while the other concerns the expenses borne by the donors or their legal claimants.

Body donation is a voluntary act which has become largely indispensable to the teaching of tried and tested techniques, the development of innovative operation techniques and research in the field of anatomy, surgery and biomechanics. It may also be a solution to the concern of non-wealthy donors not to have their descendants bear the burden of their funeral… But such a step quickly comes up against the complexity of the protocols.

Although the general regional code stipulates that "the donee organisation shall bear the cost of burying the body or cremation", since 1998 most, if not all, of the organisations only practice cremation after using the body. To this end, some of them use as argument the regulation on the disposal of refuse resulting from healthcare activities with danger of infection and human parts, as defined in the public healthcare code. Moreover, concerning the expenses, the organisations have various practices, at their own rates. Donors are, thus, asked to pay fixed "closing costs" corresponding most often to service charges and, more precisely, incineration charges as well as the cost of transportation ▸

- from the place of death to the donee organisation.
  The Mediator of the French Republic has proposed to complete, within the humane logic of body donation, the legal framework of this body donation exercise readapted to the missions and constraints of donee organisations, while continuing to encourage donors. At his request, a work group, coordinated by the ministry of Interior and ministry of Education and comprising representatives of the ministry of Health, ministry of Justice and the Mediator of the French Republic, has been created. This group, entrusted with making proposals which may be included during the planned reviews of the law on bioethics and the decree on funeral operations, met for the first time on 27 November 2007 and again on 17 January 2008. The first meeting made it possible to highlight the big differences in the practices of the organisations, which are facilitated by the legal vagueness concerning the body donation procedure. It was decided that the ministry of Education would conduct a study on all these problems at the donee organisations.

OCCUPATIONAL DISEASES: THE ASBESTOS SCANDAL CONTINUES

In professional environments, the diseases resulting from the inhalation of asbestos dusts have been maintained on the list of occupational diseases, but their recognition as such is still posing a number of problems… Thus, an electrical fitter with the CHU of Toulouse had been recognised as suffering from an illness resulting for exposure to asbestos, but both the pensions scheme for regional government employees and the national health insurance office refused to pay him any compensation. One of them was of the opinion that this illness was not due to his functions at the CHU, while the other argued that this illness should be taken care of by the fund to which he was affiliated when the illness was recognised. The Mediator of the French Republic argued that the principle of recognition provides for exemptions for victims no longer affiliated to a Social Welfare fund and for those whose illness does not result from the last affiliation fund. The CPAM then accepted to compensate the employee in question.

The Mediator of the French Republic regularly receives other complaints from marines wishing to benefit, like other Defence staff members, from the early retirement benefit paid to victims of asbestos related occupational illnesses, arguing that they are also in the same situation. The Institution also received a complaint from a pit worker who, after working for 32 years and was suffering from a respiratory disease, had asked to be indemnified for chronic obstruc-

tive lung disease, included on the table of occupational diseases…But his request was rejected because he had been diagnosed with the disease after the legal coverage period, i.e. five years after being exposed to the danger!

The ministries concerned remain silent on the question

In view of an equal protection of victims from one scheme to the other, their lack of coordination and coexistence of conflicting rules on responsibility, the Mediator of the French Republic had, in 2005, made several reform proposals. They concern the conditions for access to the early retirement benefit paid to asbestos workers (the so-called ACAATA benefit) and harmonisation of the rules on the coverage-related responsibility of the different schemes, as well as the recognition and compensation for occupational diseases in general. Two years later, no measure has been taken to improve the situation – despite two important parliamentary reports presented on this issue – and the draft agreement on the reform of the scheme for work accidents and occupational diseases, signed by the social partners in March 2007, does not contain any provision on the reform of ACAATA and the associated fund (FACAATA). During debates on the funding of the Social Welfare (PLFSS) for 2007, an amendment aimed at harmonising the schemes for the ACAATA service was rejected because of the necessary negotiations between social partners, with 30 June 2007 as deadline. Although a specification measure of Article 41 of the amended law 98-1194, instituting the ACAATA, was adopted (Art. 119 of law 2006-1640 dated 21/12/06), the relevant decrees are yet to be published. It should be noted that the ministry of Labour had specified, in a letter dated 11 October 2007, that an interMinisterial reflection was in progress in view of a possible in-depth reform based on the 2005 and 2006 reports of the IGAS, the Senate and National Assembly. However, the ministry had said that this reform was subject to the results of a work group on the reform of the FCAATA, created by the end of the year, of which the Mediator of the French Republic is a member. The latter intends to insist on the urgent need for action in this area, and will remain particularly vigilant about the concrete measures that will be taken regarding the proposals of this work group.

THE REFORM OF MINIMUM BENEFITS STILL A TOPICAL ISSUE

The reform is in progress

➜ A MORE COHERENT INCOME ASSESSMENT

The Mediator had made a reform proposal aimed at harmonising the conditions for assessing the income of couples, for access to minimum benefits. Although it is natural to use the composition of a home as a criterion for determining the right to these welfare benefits, the notion of "home" gave room for various interpretations, depending on the benefits under consideration: sometimes it is limited to the income of the applicant and his or her spouse (as was the case for the minimum disability and pension benefits), and sometimes it is extended to the income of a common-law husband/wife or of a civil solidarity pact (PACS) partner. Since this different treatment of couple is both incoherent and unfair, the Mediator of the French Republic had recommended that a single notion of "spouse" be retained for all the minimum social benefits. This harmonisation was initiated with the reform of the minimum pension and disability benefits, within the framework of a decree of 24 June 2004 which stipulates that the solidarity benefits for elderly persons "shall only be payable if the total ▸

of this benefit and the personal income of the person concerned and his/her spouse or PACS partner is not above the limit fixed by the decree". It also brought this additional disability benefit scheme into line with the new minimum pension benefits. This harmonisation is effective since the publication of the decrees of 12 January 2007. Therefore, only one notion of home is used for all the minimum Social Welfare benefits.

➜ MORE EQUITY FOR MINIMUM INVALIDITY ALLOWANCE BENEFICIARIES

To ensure the same level of minimum income for all disabled persons, the Mediator of the French Republic recommended that the minimum disability allowance be brought into line with the disabled adults' benefit (AAH), plus the additional benefits. In fact, it had been paradoxical that the income of AAH beneficiaries could be above those of minimum disability allowance beneficiaries, whereas these latter had contributed in order to benefit from an allowance that is at least partially subject to contributions (the AAH is not subject to the contributions paid for national solidarity). A first measure in the required direction was adopted within the framework of the funding law for 2007. Article 132 provides for the creation of an "income supplement" for beneficiaries of minimum disability allowance in order to bring their income to 80% of the minimum wage, just like it is already the case for AAH beneficiaries. This same Article provides that the increment for independent living shall also be paid to beneficiaries of the additional allowance from the special disability fund (FSI).

However, this effort should be continued by harmonising these minimum Social Welfare benefits, both in terms of income assessment modalities, where there are still some differences, and in terms of succession-related recovery, applicable to FSI benefits but not to AAH. The proposed law on the reform of minimum Social Welfare benefits, which was adopted during the first reading by the Senate under the previous term of office, harmonises these schemes. Let us hope that the examination of this law will be quickly continued. Something to which the Mediator of the French Republic will be particularly attentive.

Preparing the integration forum

Although a lot of efforts have been made in this direction, some problems still need to be solved, and the Mediator of the French Republic continues his action in this area. On 2 October 2007, the French President accepted the proposal to organise an integration forum under the responsibility of the High Commissioner for active solidarity against poverty, Martin Hirsch. This was an opportunity to open up a large consultation, to collectively define how to reconcile work with solidarity, in particular. Whereas the creation of the active solidarity income (RSA) was being launched through first experimentation periods, it seemed important to take account of all aspects of integration to meet the needs of people who are very far from employment and those of people close to it. At the event, Martin Hirsch called for the participation of the Mediator of the French Republic in two preparatory work groups on 7 and 13 November 2007, including about thirty representatives of social partners, associations and integration officials.

Information provision should be improved, and the systems harmonised

➜ NEW REGULATIONS ARE HAMPERED BY LACK OF INFORMATION

In the course of 2007, the Mediator of the French Republic received a certain number of complaints from job-seekers who had signed a contract on integration income from minimum activity (CIRMA) but who had discovered too late the impact of their undertaking on their social rights. In fact, the requestors are complaining that they had not been informed about the consequences of the contract on the amount of minimum benefit paid to people without other sources of income (RMI) or on the one-parent allowance (API) and on their housing benefit. They consider themselves victims of injustice, especially compared to

In France the principle of national solidarity provides that the most impoverished persons amongst us should be guaranteed minimum income: this is known as minimum welfare benefits. This income must be provided with the highest level of equity, both vis-à-vis the beneficiaries and contributors. The Mediator of the French Republic made some reform proposals in this direction, and these proposals were included in some laws passed in 2007.

people working under a traditional fixed-term contract whose rights are maintained. This is the case of Mrs S., an API beneficiary, who had taken up a paid job within the framework of a CIRMA. She lost her right to the API which she was previously receiving and would have retained for three months had she signed a simple fixed-term contract! She also lost the special allowance of € 295 she had been receiving as a result of her status of single parent. Mrs S. thinks that far from encouraging her integration, the CIRMA deprives her of the income she had been receiving until then and, therefore, paradoxically exposes her to the rising danger of exclusion... After some simulations, it actually turned out that the Mrs S.'s total income (welfare benefits and salary) was below what she would have received had she signed a fixed-term contract. Nevertheless, it is noteworthy that later the rights to benefits subjected to a condition of income will be higher for the employee in question than for an employee that has signed a fixed-term contract, since no tax shall be paid on the part corresponding to employers' aid within the framework of the CIRMA. Moreover, the CIRMAs have been created to encourage the creation of additional jobs, especially in favour of the beneficiaries of minimum Social Welfare benefits who would perhaps not have found a job in the absence of this system. Still, this case really reveals the incomprehension and feeling of injustice arising from the application of CIRMA related regulations to beneficiaries who do not receive clear and precise information on the consequences of signing such a contract. This is why the Mediator of the French Republic has drawn the attention of the Minister of Economy to the need to reflect on the information, both its content and form, that must be given to beneficiaries of minimum social benefits concerning the procedure for returning to an employment to which they may have access, especially concerning the amount of their benefit when it is partly activated in form of incentive for employment.

➜ SOME SYSTEMS ARE NOT WELL COORDINATED

The Mediator of the French Republic received a good number of new complaints in 2007 concerning the exceptional work resumption allowance (for the private sector) then the work resumption allowance (for all the sectors). Since 1st September 2005, beneficiaries of the minimum Social Welfare allowances are entitled to an exceptional work resumption allowance (PERE) amounting to € 1,000, on certain conditions. Accessible to beneficiaries of disabled adult benefits (AAH) until 31st December 2006, this PERE was replaced by the work resumption allowance (PRE) introduced in October 2006 and applicable to all types of work contracts.

Thus, some people, especially those employed at the beginning of a school year by educational institutions, were unable to benefit from any of the allowances! Before 1st October, only the PERE for the private sector was applicable. On 1st October 2006, date on which the PRE became effective for all employee categories, these persons had already signed their employment contracts since the school year had already started! ▸

➜ TOO COMPLICATED PROCEDURES FOR CIVIL SERVANTS

Contrary to clichés, civil servants do not have the same rights as private-sector employees during their career, and this continues during retirement… For instance, civil servants are not paid any additional old-age allowance or additional disability benefits like private-sector employees. This again shows the need to harmonise, not only the different minimum Social Welfare benefits, but also the different pension and Social Welfare schemes. In the field of minimum Social Welfare benefits, several proposals made by the Mediator of the French Republic were included in the proposed law on the reform of Social Welfare benefits adopted by the Senate in January 2007, especially the difference between the minimum salary received by some civil servants and the payment that some beneficiaries of the employment incentive may receive. This is a difference that cannot be explained by the similar nature of the work done, and which gives rise to an understandable feeling of injustice. The help of the Mediator of the French Republic is regularly sought by civil servants who have some difficulties in receiving the minimum pension benefits when they have worked for less than two years, or if their disability is not attributable to the service or is below 60%. In fact, in these cases, the amount of pension paid is subject to a very complicated calculation that the administrations are sometimes unable to do! This situation calls for a reform.

Pursuant to Community law, some national welfare benefits, such as the additional allowance from the pension solidarity fund in France, are "special benefits not subject to contributions" and can, therefore, not be exported from one member State to the other. A special benefit is any benefit that replaces or completes a Social Welfare benefit and guarantees its beneficiary a minimum means of livelihood. Whether or not the benefit is subject to contribution depends on the funding method (depending on whether or not it is directly or indirectly funded through Social Welfare contributions or public funds.)

EUROPEAN AND INTERNATIONAL MOBILITY

7.2% of European citizens change their place of residence every year. In 15% of the cases this is for professional reasons. In 2007, an ambitious plan in favour of mobility was launched by the European Commission. Workers and their family which, since a general directive in 2004, may be made up of two persons of the same sex must be able to have access to welfare services at all stages of their mobility experience. The issue of return, especially the reintegration of workers into their national job market after they have worked in a foreign country, must be taken into account, while mobility must become a natural aspect of a career. Today, many reforms seem to be needed in all aspects of professional and private life.

Access to healthcare services in Europe

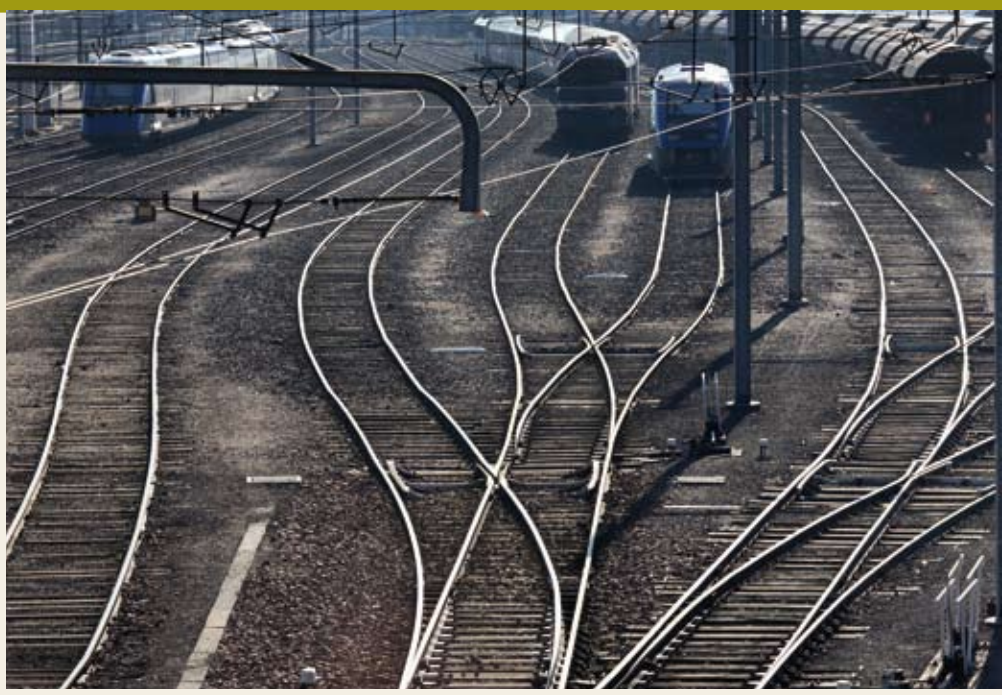
A lot of complaints received by the Mediator of the French Republic concern free access to healthcare services in European countries. This is the case of Mr L., aged 37, victim of a cerebrovascular accident in May 2006. Three weeks after this accident, the services of the CHU of Angers diagnosed neurovegetative coma. Mr L.'s family complained about the lack of medical follow-up: no kinesitherapy, or body stimulations… The family looked for a hospital more suited to Mr L.'s state. Several standby solutions had been found in France, before Mr L. was finally accepted by Cen-

tre de Lennoxsis in Belgium. But the health insurance office of Mayenne refused to transfer Mr L. to Belgium, arguing that he could be treated in France... When the matter was referred to him by Mr L.'s family, the Mediator of the French Republic contacted the director of CPAM in Mayenne and obtained an approval for Mr L. to stay in the Belgian hospital for two years…

Concerning the health insurance coverage for medical treatments received in another member State, Article 22 of the 1971 regulation on the application of Social Welfare schemes to employees tends "to allow a patient from one member State to benefit from services in kind in other member States, no matter the national institution said patient is affiliated to or his or her place of residence". However, the patient must obtain, in the country of residence, an authorisation for medical treatment in another member State, which can only be issued if the treatment in question is on the list of services provided for by the law of the country in which the patient concerned is living and, considering the state of the patient and the probable evolution of his or her illness, if these treatments cannot be provided within a period normally required to obtain the treatment in the country of residence. Therefore, the authorisation for treatment abroad may be refused if an identical treatment or a treatment with the same level of effectiveness can be obtained within an appropriate time in the member State of residence. So, an authorisation for treatment may not be refused because the cost of treatment in another member State is higher than that of the country of residence. It may not be refused either on grounds that the principle of free medical services in the country of residence would force it to create a system of reimbursing the relevant authorities in the member State in which the treatments were received.

Family allowance in Europe

Mrs L. lives in Austria where her husband is working as a European official. After the birth of her second child and while on maternity leave, she applied for child-rearing allowance (APE) at the Social Welfare office (CAF). This application, renewed after the birth of each child, had always been rejected by the CAF due to the absence of residence or activity in France. After referring the matter several times to the amicable settlement board ▸



(CRA), Mrs L. referred it to the Social Welfare tribunal, but the situation remained unchanged. She then sought the help of the Mediator of the French Republic. The Mediator of the French Republic then wished to know the position of the Social Welfare office on this matter which implied making the French regulation on child-rearing allowance complaint with European law. In fact, there seemed to be no reason why Mrs L. should not be paid the allowance. At the beginning of 2004, following a formal notice sent by the European Commission, France had recognised the exportable character of the APE, and instructions had been given to the organisations in charge of family allowance, specifying, especially, that the condition of residence in the country should not be used as an argument against requestors living in another member State of the European Union (EU). The intervention of the Mediator of the French Republic was heeded.

Pursuant to European law, a European Union citizen may not be limited in his or her movement within the EU.
A member State may refuse a citizen of another member State entry into its territory for reasons of public order or public security. But the use of the notion of public order alone as an exception to the principle of free movement cannot be determined unilaterally by one State. This notion of public order or public security must be based on the personal behaviour of the citizen in question, and must constitute a real and serious threat to society.

PACS in Europe

Various possibilities of civil union do exist in European countries for some years now: PACS, registered partnerships in Denmark and Sweden, civil partnership in England, life partnership in Germany, civil union in Italy, legal partnership in Luxembourg, etc. Beyond this fact, the differences in the possibilities open to same-sex couples have to be pointed out: marriage in Belgium, Spain and Netherlands, civil union in the other countries. European citizens moving to other countries are then faced with problems that do not exist in case of marriage. Thus, two persons involved in a registered partnership in Denmark are considered as single in France, but as a couple in Denmark, which, therefore, prevents them from engaging in a PACS in France. Within the framework of the development of a wider European mobility, the Mediator of the French Republic is about to study the possibilities of changing the regulation so that civil unions in other European countries can be recognised in France.

Diplomas and employment in Europe

The services of the Mediator of the French Republic regularly handle complaints about recognition of diplomas and professional experience. There is no general legal principle of equivalence between the titles and diplomas obtained abroad and the French diplomas issued in the name of the State of France. Nevertheless, there are some provisions in European law which prohibit any form of discrimination based on citizenship. For non-regulated private-sector activities, it is the employers themselves that assess the candidates' level of training. For regulated pro-

Community law. A European healthcare policy can be created by working out regulatory tools such as framework agreements on healthcare related cooperation. France has signed these agreements with several border States, the latest of which, with Belgium, was ratified through the law of 3 October 2007.
Objective: creating a clear legal framework for healthcare related cooperation, to rationalise the organisation of treatments and medical and social services offered to patients living at the borders.

fessions, which require a title or a special diploma, the relevant ministries determine the diploma(s) that must be obtained in order to exercise them. European directives fix on a case-by-case basis the diplomas recognised for each EU country. Regarding public-sector activities, most of them are open to all European Union citizens, except jobs involving the exercise of State authority, which are reserved to nationals (prefecture, police, army, judiciary, diplomacy, etc.).

For the three civil service categories, competitive tests, which remain the most frequent access modality for these positions, are open to all European Union citizens. Apart from the language, European candidates must have diplomas recognised by special validation commissions of the three civil service categories, which examine the diplomas in view of the tests and do not issue equivalent diplomas. After the European citizens have passed the tests, their previous periods of employment are taken into account. In fact, a decree dated 2 May 2002 allows the reception of transferred civil servants of a European Union or European Economic Area member State in the three civil service categories, if provided for in the statute. Thus a teacher which a Finnish Masters degree in music wished to work in conservatoire of music in France… He was rightly required to take a competitive test. In fact, it is the duty of the administration organising the competitive test to determine whether the diplomas presented reflect appropriate knowledge of the activity being applied for. It may also asks for full or partial validation of past experiences by an ad hoc university commission. Regarding the special case of doctors who obtained their diplomas outside the European Union (Europeans are required to take the same competitive tests as nationals), several successive procedures have been applied. They have been abrogated and replaced with special competitive tests open in all specialties and for a specific period. With time, the situation of all doctors with diplomas from outside the European Union, and who so wish, must be examined by the ▸

ministry of Health. The objective for these doctors is to enable them to be registered with the medical association and, thus, to work in the conditions of their choice.

Taxation and working abroad not compatible

Beyond the agreements signed with European countries concerning mainly the Social Welfare and health of migrant workers, there is also the question of the status of people living abroad pertaining to taxation. This is the case of Mr F., a consultant, and his wife, who lived in Saudi Arabia for 20 years. Their children, upon becoming of age, returned to France to study, while Mrs F. returned from time to time in 2001 and 2002, a period characterised by high political instability in the Middle East and by the aggravation of the threats made to expatriates in this region. The tax authorities conducted a tax readjustment for these two years on grounds that the couple was fiscally domiciled in France and imposed a 40% tax increase for absence in good faith. The Mediator of the French Republic argued that although the children and sometimes the couple were present in France over this period, the couple's sources of income and main residence was actually outside France and that it was not at all obvious for them that they had to make their tax return in France. This case shows the difficulties encountered by the administration to understand the situation of families which, established professionally in some regions of the world with reigning situations of violence and insecurity, prefer to stay temporarily in France. In Europe, the problem of tax domicile may hamper mobility as evidenced by the complaints handled by the services of the Mediator of the French Republic, who has made a reform proposal aimed at replacing the French income tax notice, required from Community citizens, with an equivalent document. The notion of reference fiscal income seems to be specific to France. Now, there is no legal provision for the possibility of Community citizens coming to live in France or French citizens going to work in another European Union member State, or returning from there… This situation calls for a harmonisation of the internal law with the principle of free movement of persons within the European Union. At the end of 2006, the Minister of European Affairs spoke in favour of creating an interMinisterial work group on this issue. The question is still waiting for a reply from the Minister of Budget.

In European law, although indirect taxation, such as VAT, is being expressly harmonised, direct tax, on the other hand, remains subject to national law. Tax laws are, in fact, considered as a matter of State sovereignty and must be adopted unanimously by the Council of Ministers. However, the European Court of Justice sometimes allows the Community lawmaker to intervene on direct tax issues when there is a "direct impact on the creation and working of the common market". *Cf. articles 93 et 94 of EC Treaty.*

LEGAL EXPERTISE

Increasing difficulties

Expertise is getting ever more important in lawsuits, where they may fulfil the following functions: bringing to the judge the technical knowledge he or she may be required to take a decision, establishing a means of evidence, and enabling the judge to estimate the cost of his or her decision. Today, expertise is faced with a double challenge: the ever complex cases and lawsuits, and argument (which gives reasons to reflect on the place of the parties to the lawsuit in the expertise process). The building, public works and real estate management sector alone covers 59% of the demand for expertise. The case of Mr N. handled by the services of the Mediator of the French Republic is typical of the difficulties encountered in this domain. After buying a house, Mr N. hired a certain number of craftsmen to perform some works on it. Dissatisfied by the services of one of the service providers, since he had noticed many faults on the ordered materials and did not obtain satisfaction from the supplier, Mr N. filed a lawsuit via his lawyer against the company concerned. One month after the first of court instance of R. had ordered an expertise and elected an expert, this latter went to the work site. But it was one year later that Mr N. received a preliminary report on it. A second meeting was organised by the expert six months later… Mr N., seeing not only the interruption of work on his house being prolonged in an unacceptable manner, but also a deterioration of the building, exposed to bad weather, sought the help of the Mediator of the French Republic. Upon receiving his file, the Mediator contacted the court of first instance of R., which notified him a few weeks later that the expert had just submitted his report to the relevant jurisdiction.

Reflections on a reform proposal

Recurrent criticisms against the system of legal expertise justify that some reflections be made on how to reform it. The law on legal expertise dates back to 1971, with a single partial reform in 2004. The outcome of such a reform should be to restore confidence in expertise operations and experts (and, thus in the legal system), by guaranteeing compliance with the principles that must be the basis for any expertise operation: reliability, (including the expert's technical skill), loyalty and impartiality of the expertise (which requires the independence of the expert). The Court of Appeal itself has looked into this issue: after creating an internal work group, it organised a consensus conference, associating the different players in the legal system, with a view to making recommendations on good practices for jurisdictions. The orientations and recommendations of the work group were made public in a public debate organised on 15 November 2007. The Mediator of the French Republic decided to contribute to this reflection by focusing more especially on the legal expertise procedure in the medical field, which concerns 35% of expertise operations covering both physical injury and the more specific field of medical accidents. The reform proposal which the Mediator of the French Republic wishes to make to the government on this issue has been worked out in collaboration with a work group comprising qualified personalities, academics, lawyers, etc. The reform proposals currently under examination concern the process of drawing a list of experts, their registration, their nomination by the judge, initial training as well as the control and assessment of expertise, compliance with the principle of independence and impartiality, respect of arguments, remuneration of experts, as well as the cost of expertise operations. These reform proposals, meant for medical expertise, may be applied to all legal expertise operations. Moreover, a change towards the ▸

- harmonisation of expertise procedures within the civilian, criminal and administrative legal system would appear desirable because the guarantees offered to litigants cannot vary according to the nature of the litigation and jurisdictional orders. Finally, in terms of medical expertise, the rules governing the communication of medical evidence shall also have to be passed into law to enable, in particular, the jurisdictions specialised in the Social Welfare's general and technical litigation to work and have people respect the contradiction, without the funds' medical examiners using the medical secret as argument against them. ■

LINK CREATOR

An organisation anchored to reality

With a wide network of delegates, contacts as well as social and institutional partners, the Institution of the Mediator of the French Republic has the special feature of being very close to citizens and constituents, and very close to their concerns. It is while carrying out his mission of listening, communicating and mediating that the Mediator of the French Republic gains from the core of the daily reality his in-depth knowledge of the difficulties and disputes occurring between citizens and administrations. When complaints reveal real general malfunctions or iniquities, the Institution can analyse the problems raised and make broad reflections with experts, academics, leading personalities, in order to make recommendations and, if necessary, propose a legal reform. Thanks to practical experiences, enhanced by reference players, the reform proposals sent to the relevant Ministers and members of parliament reflect a link reconstructed from the social reality to the political decision, between the constituent and the administration, between the citizen and the politician.

THE NATIONAL NETWORK

The delegates' network: a force to reckon with all over France

The Regional Development section (DDT) organises and manages a network of 275 delegate mediators of the French Republic. These persons, present on 375 different sites all over France, constitute an unequalled action and observation force. In 2007, 90% of the cases referred to the Institution of the Mediator of the French Republic were handled by the delegates.

➜ RESTORING TRUST THROUGH DIRECT CONTACT

35 new reception centres were opened in 2007. Historically located in prefectures and in the heart of sensitive neighbourhoods, the presence of the Institution was reinforced among the less privileged, especially in 26 additional prisons and 9 new offices. This physical presence is undeniably an element of trust and calm. Users, generally puzzled by answering machines and interactive voice response, really appreciate direct contact and the attention given to them. The delegate mediators of the French Republic are trained and equipped to manage efficiently the complexity of the situations facing the general public. Thanks to dedicated computer, Internet and intranet equipment provided by the Institution, they can make the research necessary for processing the cases, save their activity data, ▸

- communicate with other delegates and the headquarters, and make the administration available to all, electronically.

➜ A FINE NETWORK FOR BETTER PERFORMANCE

More than half of the cases handled by the delegate mediators of the French Republic show a need for information on the procedures to follow and for orientation towards the right services. The delegates necessarily have good knowledge of administrative procedures. 75% of them are from the public sector where they had occupied positions of responsibility. This experience is often useful to them, in that it helps them to identify the right interlocutor, explain the reasons for an administrative decision or a regulation. If it turns out that a problem noticed locally actually exists on a larger scale, it is at the national level that the Mediator of the French Republic, once notified by his delegates, can intervene. Finally, the fine network of delegate mediators offers an excellent observation forum for administrative practices. Delegates regularly share their field experience with the central services of the Institution and of the Mediator of the French Republic.

Extract from a letter sent by a citizen to a delegate mediator of the French Republic:

«Madam, I would like you to know that I was not tenacious in this matter but your tenacity, at the service of justice comforts me strongly. You do credit to the public institution you represent, and I, as a simple citizen, am reinforced in my attachment to republican principles. This reinforcement is not due to the compensation of the financial losses I suffered; it goes beyond that: the principles on which our community life is based."

• 275 delegates
• 58,361 cases received in 2007
• 375 public reception centres

Partnerships, to act locally and enhance reflections

Beyond their counterparts in large organisations ministry of Finance, Economy and Labour (Minefi), La Poste, EDF, SNCF…), the central services of the Mediator of the French Republic work daily with a close network of correspondents in many administrations (ASSEDIC, tax authorities, CAF…).

➜ FOR A BETTER CONTRIBUTION TO HITCH FREE ADMINISTRATIVE PROCEDURES

For concrete actions and actions close to the field, this is the best way to find the right interlocutor at the right time. Thanks to contacts established in local administrations, a quick solution can be found for sensitive matters. Beyond the difficulties handled on a case-by-case basis, sometimes they highlight a serious problem that needs to be solved more extensively. The central services and delegate mediators of the French Republic then work together with the administration to find lasting solutions to them, thus contributing to the hitch free working of the administration, and to make a joint reflection in an often complex legislative and administrative environment. In 2007, the proposals on legal expertise in the medical field were the fruit of a partnership involving members of the High Authority on Healthcare with which the Mediator of the French Republic is about to sign a cooperation agreement.

➜ MAKING DAILY COOPERATION OFFICIAL

The Institution of the Mediator of the French Republic has already signed several agreements of this type:
– in May 2006: draft agreement with CNAF;
– in January 2006: partnership agreement with the high council of notaries public, which also provides any requested legal expertise, especially on reform proposals for laws concerning the activities of notaries public;
– in August 2005: draft agreement with CNAMTS. In 2007, the Mediator of the French Republic participated in the first national day of CNAMTS health insurance conciliators;
– in July 2005: draft agreement with UNEDIC.
These agreements make official a daily cooperation effort to improve the public service. They also aim to organise the cooperation between the services of the Mediator of the French Republic and those of the signatory organisation. As the case may be, they are manifested in commitments on the quality of access to rights and services rendered, harmonisation of law-application modalities, integration of the observations and recommendations made by the Institution, or even the provision of a dedicated correspondent. They may also consist in making joint reflections aimed at a reform proposal.

An emergency unit and direct online reception

The admissibility section, at the Paris headquarters of the Mediator of the French Republic, serves as a real complainant reception and

orientation platform, no matter the problem to be handled or the region concerned. This section performs two distinct functions. The first one consists in receiving and examining the requests sent to the Mediator of the French Republic. Admissible complaints are then forwarded to one of the Institution's five examination sections, or to regional delegates. The most frequent disputes are of social origin.

The second function of the Admissibility section corresponds more particularly to the objectives of the Mediator of the French Republic in terms of access to the law, proximity and education. It is all about handling complaints which are not admissible in accordance with the law of 3 January 1973. The non-admissible cases handled in 2007 basically concerned fines and private disputes: family problems, relations between tenants and landlords, consumer law, on-going legal proceedings, etc.

The Admissibility section, thus, received and handled directly 3,252 cases in 2007.

The partnership agreements of the Mediator of the French Republic are available on:

WWW.MEDIATEUR-REPUBLIQUE.FR

Column: partnerships

➜ FACILITATING ACCESS TO LAW

Non-admissible cases are examined in order to give each complainant the clearest, most comprehensive and most useful answer possible. Each reply specifies why the Mediator of the French Republic is not empowered to intervene in such a case, which steps the complainant should have taken – or can still take -, the addresses of the organisations or persons to contact, if need be. It is noteworthy that services such as 3939 or CIRAs (inter-Ministerial centres for administrative information) are not known to the general public.

➜ UNDERSTANDING AND TAKING ACCOUNT OF THE URGENCY OF SOME SITUATIONS

Today, as a matter of principle, the Admissibility section does not

• 3,252 cases were handled by the Admissibility department.
• 98 of the complaints received concerned the Universal Postal Service.
• 90 cases were handled by the emergency unit.
• 3,586 complaints were received by e-mail, that is + 22% compared to 2006.

▸

▸ reject any request because it was not made through a member of parliament. The internet has simplified and accelerates access to the services of the Mediator of the French Republic. This often makes it possible to quickly detect emergency situations (risk of expulsion, blocked bank accounts, non-payment of a minimum income, etc.). In such cases, the emergency unit takes over the matter. Due to an error made while making income tax return by the end of 2006 and because these errors were not corrected, the minimum welfare benefit paid to Mr and Mrs T.'s family was cancelled as from February 2007. As a result of the family's very difficult financial situation, it was unable to pay the current expenses and, in particular, the water bill for the second semester of 2006. In the absence of any reply to its reminder letters, the water company cut the water supply. The Mediator of the French Republic intervened at the Social Welfare office and obtained, after calculating the family's real income since the end of 1986, the retroactive payment of the minimum welfare benefit from February 2006 to May 2007, and its maintenance as from June 2007. Meanwhile, the water company restored water supply on 21 June 2007, immediately after the intervention of the Mediator of the French Republic.

CENTRALISED EXPERTISE

Patience and active follow-up to meet complainants' needs

For the General matters section, 2007 was characterised by the successful conclusion of several important cases, sometimes followed-up for years. The long mediation time spent on disputes sometimes makes it possible to find a solution. Thus, a house located at the edge of crossroads, bumped into several times by heavy goods vehicles because of the configuration and narrowness of the secondary road will, four years after the case was referred to the Mediator of the French Republic, benefit from a development plan adopted by the municipal council on 25 September 2007 in order to secure it; DDE will handle the project, while the departmental council will provide financial aid. Another example: an industrial company was able to obtain a European grant amounting to €400,000 three years after applying for it. There are also other new cases. For example, the Mediator of the French Republic was contacted regarding the problems encountered by some architects to exercise their profession, after a decree of 26 August 2005 had modified the conditions for the exercise of their profession. Building project

• 1,062 cases the examination of which started in 2007
• 1,121 cases closed in 2007
• 50% of the cases were "fines" related.
• 14% concerned town planning, environment, public domain and roads.

managers with a "receipt" had to submit, before 28 August 2006, an individual application for registration on the regional table of architects of the region in which they exercised their main activity. But some architects had been unable to submit their application due to the unequal publication of these specifications according to geographic origin or membership of a trade union. Therefore, some professionals, who had an activity that was sometimes old, could only exercise their profession of building project manager under very restrictive circumstances and on behalf of natural persons... After the intervention of the Mediator of the French Republic, an additional time was given to enable "receipt holders" to submit their applications for registration on the regional table of architects.

➜ A DYNAMIC AND CREATIVE APPROACH

The General matters section handles any legal question pertaining to economic, human, administrative, environmental, professional, educational, land-related and cultural activities managed by administrations or regional authorities. In addition to the importance of the cases handled, the section follows legal news dynamically. The seven people in charge of the general-matters section are from the legal services of the central administrations, regional authorities or public organisations. They combine their knowledge of administrative life with their wish to support complaints which merit a mediation so as to find fair solutions, in keeping with the legal framework and the interest of the parties involved. This is a rigorous and creative work, which may neither accuse an administration, nor undermine the political liberty of elected representatives. It encourages, if necessary, the administration or authority to modify its practices. ▸

Areas covered by the general-maters section

Agriculture – Regrouping of lands – Regional authorities– Public works contract– Press and communication – Public liberties – Economy and various subsidies – Public services – Education and professional training – Recognition of diplomas– Access to regulated professions – Culture – Environment – Expropriations – Town planning – National planning – Road – Domaniality – Public works – Transport and road traffic – Tourism – Healthcare – Administrative responsibility – Administrative police – Execution of legal decisions taken by the administrative jurisdiction...

Better access to the law and clarified rights

The Justice section examines complaints pertaining to disagreements between a natural person or corporate body and the public service of the judiciary, and issues concerning civil-status and foreigners' rights. This activity covers the three components of the ministry of Justice: courts, prisons and judicial means of protecting the youths. It also covers the administrative judicial tasks handled by members of the jurisdictions, as well as the activities of the professionals that participate in the jurisdictional and legal procedures (lawyers, solicitors, notaries public, sworn experts).

➜ MIGRATION POLICY: BETTER KNOWN PRINCIPLES

In 2007, the Justice section noticed a readjustment of mediation requests in its sphere activities.

In 2007 half of its activities concerned foreigners' rights (visa, stay permit, family reunion, naturalisation, etc.), while this had represented two-thirds of its activities in 2006. This change in situation is due to the new immigration policy adopted in 2003, in order to be compliant with the European policy, and reinforced in July 2006. The principles guiding immigration have been clarified and are now better known both by complainants and the administration. Previously, the complaints received often showed a feeling of arbitrariness vis-à-vis administrative decisions. The Justice section basically played a pedagogical role to complainants: explaining why these decisions had been taken. Concerning the administration, the work of the Justice section consisted in pointing out the elements not sufficiently taken into account by prefectural services.

Complaints about adults under guardianship had risen very quickly in 2006 (+ 50%) and is still a major part of the activities of the section.

➜ PRESENCE IN PRISONS: GENERALISING A SUCCESSFUL INITIATIVE

Another evolution in 2007: the increase in the number of complaints received from prisoners. It concerns both the Justice section and delegates. In fact, the generalisation of the presence of the Mediator of the French Republic in prisons attests to the success of this initiative. More than 25,000 detainees now have better access to the services of the Mediator of the French Republic, through his delegates in prisons, which is real progress in terms access to the law. Most of the complaints concerned transfer requests, but also the conditions of detention (a disabled person in an inappropriate cell, etc.), or even access to healthcare. The interlocutors of the Justice section are the directorate of prison administrations and the management of the prisons concerned.

Ending the precarious and emergency situation of certain civil servants

The Civil servants/Pension benefits section examines complaints filed by civil servants from the three public-service levels (State administrations, regions, hospitals), who are in disagreement with their administration. But these complaints must not concern the exercise of the administrative authority's hierarchical and disciplinary power, since this does not fall within the powers of the Mediator of the French Republic (Article 8 of the law dated 3 January 1973).

• 750 cases opened
• 1,011 cases closed
compared to 884 in 2006

• 587 cases opened, that is +9% compared to 2006
• 772 cases closed, that is 24% more than in 2006

In 2007, just like in 2006, a lot of requests concerning the right to civilian pension benefits were filed by active civil servants, not only due to the changes ushered in by the 2003 pension reform but also as a result of the gradual and sometimes late publication of application decrees (especially for information on pension related rights). The Mediator of the French Republic also handled a large number of complaints about gender-based discrimination in terms of civilian pension – with regard to the number of children – and survivors' pension benefits – in case of several marriages. But most of the complaints received by the section concerned civil servants' Social Welfare.

➜ TOO MANY AND TOO COMPLEX LAWS – THE NEED FOR HARMONISATION

Several reform proposals concerned the call for harmonisation and are among the priorities for 2008 (see the chapter "Priorities for 2008"). In fact, some civil servants may remain without pay if their rights to different statutory leave categories are exhausted and if their unfitness to exercise their functions for health reasons is not yet established.

➜ CIVIL SERVANTS WITHOUT A JOB ...

Another dispute often referred to the Mediator of the French Republic concerns access to unemployment benefits. The law on this matter is so complex that public-sector employers have a poor knowledge thereof, thus putting civil servants in precarious situations. The highest number of complaints concerns the grounds for a civil servant's resignation (is it legitimate or not?, Voluntary or not?).

➜ CIVIL SERVANTS WITHOUT INCOME...

A contract civil servant, with several fixed-term contracts, is entitled to unemployment benefits at the end of his or her contacts. But who pays? The administration that employed the civil servant most. Now, the administration still does not know that the fixed-term contract it signs with a civil servant shall be followed by a shorter-term contract, either in the private or public sector, and that it has to pay the benefits... and the Mediator of the French Republic must intervene to explain the law. ▸

A lifeline when the user is in need... of a clear reply!

The Social section handles Social Welfare related cases. These cases range from litigation calling to question all the branches of the national health and pensions scheme and other schemes (except the civil service) – health, maternity, pension, disability, industrial accident and occupational disease –, both in terms of contributions and benefits; or litigation concerning family allowances, Social Welfare benefits and minimum income (minimum benefit paid to those with no other income, disabled adult benefits, etc.), unemployment benefit, employment aid and vocational training.

Its vast field of intervention covers every age bracket and the most striking fragile and precarious situations.

In 2007, 58% of the cases closed by the Social section concerned citizens' need for a clear, detailed and pedagogical explanation of their rights or non-rights, while only 19.2% justified the intervention of the Mediator, ending successfully in 74.5% of the cases. In fact, the complexity of laws and regulations, the interaction of the responsibilities of partner organisations generate incomprehension, or sometimes even a feeling of injustice on the part of requestors, which explains the high rate of complaints.

In the social field, the industrialisation of productions seems to result in a restriction of access to the law for the general public, which encounters some problems that call for a general and multipurpose solution.

Today, citizens are turning to delegate mediators of the French Republic or to his central services to obtain answers which, in most cases could have – should have – been given by the Social Welfare organisation. This fact shows to what extent it is necessary to work on the citizens' access to law and to information, in order to most often and more quickly provide the "right" answer. This would reduce the work load of the organisations concerned...

• 636 cases opened, that is -19% compared to 2006
• 980 cases closed, that is +57% compared to 2006
• 74% of the mediation actions successful

➜ CLOSE COOPERATION WITH CERTAIN ORGANISATIONS

Fortunately a good number of organisations are engaged in an improvement spiral. The Social section has, thus, been able to develop a particularly effective network. Several social and administrative organisations have created correspondents of the Mediator of the French Republic enabling them to gain quick access to information and handle certain cases efficiently. The Social section also works on a network with regional delegate Mediators of the French Republic, who are closest to complainants. Finally, the complaints filed by disabled persons or parents of disabled children continue to highlight the urgency of emerging needs: disabled-child education allowance, reimbursement of accommodation and transport expenses, disability cards, compensations.

The need to educate the general public

In 2007, the Taxation section noticed a high rise in complaints about the technical complexity of laws in the environmental field (see the chapter "Malfunctions"), and about the monetary value of real estate, partly due to the boom in the real estate market. 95% of the cases examined by the Taxation section concern State or council tax. The complaints are filed by natural persons or corporate bodies (companies, associations) due to disagreement between them and administrations. 12% of the complaints come from companies. The nature of these cases may vary a lot. Presented at all stages of administrative and litigation procedures, they result from very diverse situations with a lot of economic, financial and social implications, ranging from a few euros to the survival of a company and the future of its employees. Cases of inland-revenue inspection in companies and the social consequences occupy a large space, with more than one third of the complaints received. Generally, personal taxation related questions are generally linked to family situations, be it for divorce (deduction of alimonies, increase in dependents' allowance, etc.), or for inter-generation solidarity. Finally, complaints involving regional authorities basically concern changes in their taxes and fees, especially in connection with the collection of household refuse.

➜ ALWAYS EXPLAINING THE ADMINISTRATIVE POSITION

In addition to the solutions of compromise, tax relief or deduction brought to the complainants, the replies also contribute immensely to pedagogy and explanation of administrative decisions, especially when the case leaves no room for mediation or free review.

• 442 cases opened
• 95% of the cases concerned taxation.
• 12% of the tax-related complaints came from companies.
• 5% of the cases were in connection with fees and various compensations.
• 87.5% of the mediations are successful.

The activity of the Taxation section is basically State finance administration oriented (taxes, public accounts, and customs). Its contacts are their central services or those located in the regions: tax services, Treasury offices… The Taxation section also intervenes in some organisations attached to the ministry of Economy and ministry of Budget, such as the national agency in charge of indemnifying French citizens overseas, and for various local taxes and fees – at the regional authorities. Finally, other cases handled by the section, that is 5% of its activity, are not tax related: land registry, indemnification of repatriated French citizens, etc.

From the field to politics: the Reforms section

The laws of 3 January 1973 and of 12 April 2000 confer on the Mediator of the French Republic the power to make reform proposals himself, through direct referral from a citizen, a member of parliament or another independent authority. The reform proposal mission is a logical extension of the individual mediation task. In fact, this makes the Mediator of the French Republic an observer of the social realities that fuel any useful reflection with a view to improving our laws or regulations.

➜ AN ACTION IN LINE WITH ONGOING BIG DEBATES

The Mediator of the French Republic has a large field of action at the heart of on-going debates: changes in the family, professional mobility, harmonisation of European and ▸

national laws, protection of citizens and consumers, disabled persons, work accidents, and occupational diseases. The reform proposals of the Mediator of the French Republic are either aimed at correcting the malfunctions in a public service or in an administration, or reducing the situations of iniquity resulting from the application of a regulatory or legal standard. In 2007, the Mediator of the French Republic made 13 reform proposals, aimed at protecting people (welfare, fundamental rights, vulnerable persons), or improving public systems (taxation, the legal system, etc.). At the same time, 24 reform proposals were adopted.

The reforms of the Mediator of the French Republic are available on:
WWW.MEDIATEUR-REPUBLIQUE.FR

See Table of Reforms on p.8-9.

➜ CREATING AWARENESS: A FORM OF ACTION

When the examination of a reform request does not result in a reform proposal in the real sense of it, but the problem raised is real, the Mediator of the French Republic alerts the relevant ministries to it so as to possibly make a reform at the level of these ministries. In 2007, thirteen cases were thus reported and have already led, for some of them, to the targeted modifications. ■

Contributing to political decisions

DIFFERENT FORMS OF CONTRIBUTION TO THE SOCIAL DEBATE

The reforms of the Mediator of the French Republic are available on:
WWW.MEDIATEUR-REPUBLIQUE.FR

The law of 1973 made the Mediator of the French Republic a full actor in public debates. The Mediator of the French Republic is regularly auditioned by the legal, finance and social affaires commission of the National Assembly and Senate. He regularly collaborates with each parliamentary commission entrusted with issues for which his contribution may be useful. Another form of cooperation consists of joint reflections, especially with the university and research world.

This was, for example, the case when the Mediator of the French Republic participated in a symposium organised at Université de Lille 2 on 11 May by Professor Xavier Labbée on the topic "Rebuilding the family - a common law for couples?". The synergy developed with ministries allows concrete solutions to be found on topical issues. This is how the Mediator of the French Republic worked with the relevant interMinisterial officials on the problem of unwarranted payment encountered by some contract public-sector workers on sick leave, maternity or work accident leave. Generally resulting from an attentive field observation, completed proposals are always a fruit of work done in collaboration with players from the political, economic, social and university fields. Regularly, contacts established with members of parliament lead to the submission of amendments that give rise to debates on and, as the case may be, adoption of proposals made by the Mediator of the French Republic. There are situations in which the Mediator of the French Republic initiates a debate himself, like the case of life insurance or excessive debt for which remarkable progress was made in 2007.

LIFE INSURANCE: A PROBLEM CONCERNING ALL FRENCH PEOPLE

In February 2007, the Mediator of the French Republic submitted his 2006 activity report to the French President, in which he drew attention to the "unacceptable" situation of life insurance policies not claimed after the death of a subscriber because the insurance company had not been notified about the death or had failed to search for the unfortunate beneficiary whose details were not included in the policy… At a press conference held upon publication of his report, the Mediator of the French Republic also alerted the media, which also reported about this issue of "escheated life insurance policies". During the first semester of 2007, the Institution made sustained exchanges with the press and insurance companies. June 2007: the insurance company, AXA, reported about the measures it was making to find the beneficiaries of some 3,000 policies amounting to more than € 5,000 and the holders of which were above 100 years old. The Mediator of the French Republic encourages initiatives which are examples of good practices. Title of an article in *Le Parisien Aujourd'hui en France:* "New cry of alarm by the Mediator of the French Republic about unclaimed life insurance policies".
In September 2007, the Mediator of the French Republic was invited to participate in the television programme Capital, on M6, a French television channel, devoted to unclaimed life insurance policies. Meanwhile, members of parliament, Yves Censi and Jean-Michel Fourgous, were working with the services of the Mediator of the French Republic on a legal proposal which aimed to facilitate the search for beneficiaries of unclaimed and escheated life insurance policies.
One month later, this proposed law, comprising the recommended measures, especially on the search for subscribers and beneficiaries, and enhanced with several parliamentary amendments, was unanimously adopted during the first reading by the National Assembly. The law applies to insurance companies and mutual insurance companies. Debated upon on 7 November 2007, these measures were unanimously adopted at the Senate, after new improvements concerning, among others, the third-party stipulation rules and the reprocessing of the stock of old policies. Law 2007-1775, which allows the search for beneficiaries of unclaimed insurance policies and guarantees the rights of insurance contributors, was published on 17 December 2007. The Mediator of the French Republic wishes to praise the quality of the work done by the Parliament, which has led to several major changes that reinforce the relationship of trust between the general public and insurers, and which is a quick and ideal legislative response to the treatment of this particular issue.

EXCESSIVE DEBTS: SOME EFFORTS STILL NEED TO BE MADE

In February 2005, the Mediator of the French Republic made a reform proposal on the harmful consequences of being registered in the Fichier national des incidents de remboursement des crédits aux particuliers (FICP) – the national register for incidents pertaining to the repayment of loans to private persons – for excessively indebted persons, and underlined several malfunctions in this field. In April 2005, the governor of Banque de France reacted by underlining the need to harmonise the duration of registration on the FICP and recommended to remove the names of people whose debts had been (partially or fully) cancelled after they had finished paying them in full. November 2005: the Canivet report on the application of the provisions on excessive debts also contained three proposals made by the Mediator of the French Republic. One issue of *Médiateur Actualités,* the Mediator's magazine, was devoted to the question of excessive debts as a social phenomenon that needed urgent attention. All along 2006, the Mediator of the French Republic continued his efforts on this issue, by meeting many institutional players, economists, social science researchers, magistrates, representatives of associations, credit institutions distributions giants, in connection with the problems of excessive debts. At Maison de la Chimie, in Paris, on Thursday 14 December 2006, the Mediator of the French Republic met with all these players for a press conference on the theme "Wrong debts: a new social emergency?".

Early 2007, the Mediator of the French Republic made a second reform proposal for new improvements in the working of the FICP.

He sent this proposal to the ministries of Economy, Labour, and Justice, as well as to the governor of Banque de France, the Chairman of CNIL and the national association of judges of court of first instance (ANJI). This latter had noticed the misuse of the FICP by finance companies and had alerted the Mediator of the French Republic about it. In October 2007, the Economic and Social Council also presented its report to the government. This report, compiled in collaboration with the Mediator of the French Republic, recommends, among others, the development of social micro credit and calls for more attention on the part of banks to the most fragile clients. Today, all the measures taken to fight against excessive debts among private persons are waiting to be updated in view of the assessments made already (the Canivet committee, CES, Mediator of the French Republic, etc.). The work group planned by the ministry of Finance on the issue of excessive debts has not yet been created. ■

Whereas in France, a number of debates are going on about the question of a "a French-style ombudsman" enlarging the current field of the activities of the Mediator of the French Republic, the Institution confirms its strong commitment to Human rights at the international level. In Europe, the Institution maintains close relations with its counterparts, acquiring with time real expertise in the implementation of European laws. Thanks to several initiatives of the Mediator of the French Republic in the Mediterranean basin and French-speaking countries, France's message for peace and dialogue between civilisations has been spread.

THE INSTITUTION AT THE HEART OF DEBATES

In 2007, important in-depth debates pertaining to Human rights and respect of Human dignity were brought to the political scene. They concern, among others, better user protection against illegal decisions, via direct referral to the State Council for a ruling on the legality of a decree, or examination. It is also all about the assessment of detention centres by an independent controller. In either case, it was envisaged to entrust these new missions to the Institution of the Mediator of the French Republic and, thus, enlarge its field of activity. In his report on the modernisation of institutions, presented to the French President on 29 October 2007, the "Balladur" committee included these different proposals. It proposes, among others, to «institute a defender of fundamental rights, with all or part of the powers of the Mediator of the French Republic, Defenseurs des enfants, general controller of prisons, the high authority for the fight against discriminations and for equality (HALDE), and the national committee for information technology and liberties (CNIL), and empowered to refer cases to the Constitutional Council". No matter the options chosen, it is interesting to note how much on-going public debates have shown the need to create independent authorities capable of creating a balance between politicians and citizens, between the administration and constituents. Capable also to bring dialogue to the issue of equity, and finally, to be heard both by the most powerful and least powerful.

Auditioned on several occasions within the framework of these preparatory reflections, the Institution of the Mediator of the French Republic has demonstrated the daily work performed over several years in favour of law, equity and justice.

ENSURING COMPLIANCE WITH THE LAW, ALSO IN PRISONS AND DETENTION CENTRES

On 16 September 2005, France signed the optional protocol of the United Nations Convention against torture and other cruel, inhuman or degrading treatments. At the end of 2006 and early 2007, the Institution of the Mediator of the French Republic participated actively in reflections that must accompany the ratification of this protocol and the creation of a national prevention mechanism. The Mediator of the French Republic has met about fifty actors (associations, trade unions, control and inspection bodies, Ministerial representatives, doctors, elected representatives, etc.) and taken note of their expectations and the sense each of them wished to give to this project. In April 2007, in pursuit of its strong participation in the public debate, the Institution presented, at a press conference, its proposals for the creation of an organisation in charge of appraising prisons, detention centres, closed education centres, and psychiatric hospitals.

The experimentation then generalisation, in 2007, of the presence of delegate mediators of the French Republic in prisons was also aimed at accompanying the improvement of access to the law and respect of ▸

▸ human dignity. On 30 October 2007, the Parliament adopted the draft law instituting a general controller of freedom deprivation centres. The Institution was delighted at this decision, in view of its huge contribution to the emergence of the debate in France.

Since then, the Mediator of the French Republic has continued his action in the field. In November 2007, he visited on several occasions the psychiatric hospital of the prefecture of police of Paris, highlighting all the difficulty inherent in keeping people under surveillance, not on the basis of offences committed, but due the risk of danger to themselves and others. In this respect, the transition between the time the person is under police custody and the time he or she is catered for by the hospital's medical staff is at the heart of the Mediator's work.

On 18 January 2008, the Institution of the Mediator of the French Republic organised, together with the Council of Europe's Human rights commissioner a conference entitled "Deprivation of liberties and human rights", to which all European ombudsmen and national human rights institutions were invited.

TOWARDS A FRENCH-STYLE OMBUDSMAN?

By wishing to enlarge the field of activity of the Institution of the Mediator of the French Republic and enter it in the constitution, the Balladur committee intends to change it to an ombudsman, like its European counterparts. These proposals are thus in line with the changes undergone by the Institution for the past three years.
These proposals also mark the desire to take an important step towards improving the protection of citizens' rights. This is exactly the most important point. The Mediator of the French Republic has, therefore, always worked in close collaboration with other independent administrative, national or international authorities, with only one objective: improving everybody's access to the law. It is also useful to underline the importance of creating relatively similar structures from one country to the other, so as to develop and maintain dynamics which are indispensable in a society that has become multi-national and multicultural. Therefore, and societal debates go along this line, the creation of a French ombudsman is based on a need of modern society and a strong political wish, as shown by the Balladur proposals. Finally, it will guarantee significant exchanges between countries that do not necessarily communicate through their traditional structures. ■

To see the cases handled by the delegates and staff of the Mediator of the French Republic, go to:
WWW.MEDIATEUR-REPUBLIQUE.FR

INSTITUTIONAL MEDIATION AND HUMAN RIGHTS: A FRENCH AND INTERNATIONAL ISSUE

2008 will mark the 60th anniversary of the Universal human rights declaration, adopted in Paris on 10 December 1948 by the United Nations General Assembly. After the horrors experienced during World War II, it was all about reaffirming solemnly the fundamental rights of every human being, "the dignity inherent in all members of the human family", "the equal and inalienable rights which are the basis of freedom, justice and peace in the world". Sixty years later, the struggle for promotion and respect of fundamental rights is still going on. In France and in the European Union, the speedy progress of technology regularly raises the question of protection of data and private lives; moreover, due to security constraints priority may be given to efficiency to the detriment of liberties. Elsewhere, the most fundamental rights may not be respected, or their universality criticised, or their actual application hampered by lack of means. Therefore, the Mediator of the French Republic, the guarantor of access to rights and member of the National Human Rights Commission, also exercises in France a vigilance function in this field. Abroad, he maintains relations of cooperation with international organisations and similar institutions. These relations are particularly close if it is all about countries linked to France through their geographic location or history (European, or French-speaking countries).

CONTRIBUTING TO DEBATES IN FRANCE

The Mediator of the French Republic is a member by right of the National Human Rights Commission (CNCDH), since 1993. Heir to the commission created in 1947 at the initiative of René Cassin, *Compagnon de la Libération* and future Nobel Peace Prize laureate, the CNCDH is made up of representatives of NGOs, human rights defence associations, trade unions, religions, thinkers and qualified personalities. It is consulted by the government and makes recommendations on draft laws and legal proposals as well as on national and international laws, concerning their consequences for human rights. It may also handle these matters itself. Its report on the fight against racism, antisemitism and xenophobia is remarkably documented and is used to assess each year the evolution of feelings and manifestations of intolerance. By participating actively, both in sub-commissions and plenary-session debates, the Mediator of the French Republic contributes to the opinion of the CNCDH while nurturing his own reflection on societal debates. The Mediator of the French Republic and CNCDH, recognised by the Council of Europe as two "national human rights structures", thus have a complementary role in the field of human rights protection. ▸

BUILDING A EUROPE OF RIGHTS

The Mediator of the French Republic maintains regular relations with about one hundred national and regional counterparts in European Union countries. Together with his colleagues in Belgium, Luxembourg, and Rhineland-Palatinate in Germany, he is a member of the network of Mediators of the "Big Region", created to facilitate common processing of cross-border files. Above all, the networking of the services of all the European mediators, facilitated by the services of the European Mediator, Mr Nikiforos Diamandouros, allows an irreplaceable exchange of information and experiences. This legal watchdog function at the European level, as well as the wish to draw from the on-going experiences of other similar institutions, is essential in an environment characterised by the presence of Community law and free movement. With time, a «network» of European Union Mediators has emerged, with real expertise, especially in the application of Community law in member countries. These mediators and ombudsmen, together with those of aspiring European Union member countries, meet every two years, and it was in Strasbourg, France, that they met in October 2007. This seminar, co-organised by the Mediator of the French Republic and the theme of which was "Thinking good governance in the European Union" gave the participants the opportunity to reflect on the difference between strict legality and good governance, and on the type of remedy and services offered by the mediators. It was also a forum to compare their experiences and proposals in terms of the relations between ombudsmen and law courts, and free movement of persons within the European area. A final declaration of the European network of Mediators made it possible to show, in particular to national authorities and Community institutions, the spirit in which the "family" of European mediators worked.

As a result of European cooperation in the field of human rights, the Mediator of the French Republic also maintains special relations with the Human rights commissioner at the Council of Europe, Mr Thomas Hammarberg. These relations are based on two principles. Firstly, on the question of human rights in prisons, with the constant and determined support of the Council of Europe for the reflections made by the Mediator all along 2007, at the request of the government, on the introduction of external and independent control of prisons.

This control, which is a consequence of the signature by France in 2005 of the optional protocol of the United Nations Convention against torture and other cruel, inhuman or degrading treatments (OPCAT), was established through the adoption, on 30 October, 2007 of the law creating this national control mechanism. It was within this framework, and to follow up the consultation and awareness creation work done in 2007 among his foreign counterparts that the Mediator of the French Republic hosted on 18 January 2008, together with the Council of Europe's Human Rights commissioner, an international symposium of mediators on the OPCAT.

The Mediator of the French Republic also cooperates with the human rights commissioner on the issues of referral to the European human rights court and the implementation of its jurisprudence; the French Institution will, thus, examine on an experimental basis, the awareness-creation role that could be played by mediators to prevent the court from being inundated with referrals, a majority of which would end up being inadmissible.

PROMOTING MEDIATION AND ITS VALUES IN FRANCOPHONE COUNTRIES AND WORLDWIDE

In 2007, the services of the Mediator of the French Republic received, like each year, many foreign counterparts and personalities who came to observe the role and working of the French Institution.
The Mediator and his staff also described the Institution's experience at several international meetings, especially in Poland, Bulgaria and Benin Republic.
As the secretary general of the Association of Francophone Mediators and Ombudsmen (AOMF), the Mediator of the French Republic, together with his colleagues, continued the reorganisation of this network initiated since the Paris Congress of 2005. Thanks to the creation of a permanent secretariat by the AOMF, regular publication of a bulletin of contact and joint reflection on concrete cooperation projects, the performance of AOMF has been improved as a member of the networks of institutional partners of the International Francophone Organisation (OIF). The quality of the relations established in 2007 with the OIF, and in particular with Mr Hugo Sada, its new delegate for Peace, democracy and human rights, has facilitated the development of a partnership of trust in the interest of promoting democratic values in the Francophone area. The orientation of the AOMF became clear at the association's 5th congress held in Bamako on 11, 12 and 13 December 2007. The richness of the debates on problems of detention and children's right, as well as the quality of external speakers, helped in creating more awareness among the participants from about thirty countries pertaining to these problems. In a final declaration, the participants unanimously called on the governments of the Francophone countries to take account of these problems and facilitate the action of mediation institutions in their respective countries. The general assembly that followed the congress adopted a reform of the statutes and the method of calculating contributions based on the principle of responsibility and equity. In fact, the principle of

ambitious collaboration between the AOMF and the Moroccan institution, Diwan al Madhalim, was also adopted to facilitate the training of the staff of mediators of southern countries. Finally, it was also in collaboration with the People's Defender in Spain that the first meeting of mediators of Mediterranean countries was organised in Rabat from 8 to 10 November 2007. This new initiative offered an opportunity to deliver a strong message on the area for peace, stability and dialogue of civilisations which must be the Mediterranean region. A permanent consultation and cooperation structure will be created, and these meetings will henceforth be held regularly; the next one will be held in Marseilles in the second semester of 2008. ■

ADMINISTRATIVE AND FINANCIAL MANAGEMENT FOR 2007

BUDGET	10,831,000.00 €
Staff remuneration charges	7,011,000.00 €
Staff	5,701,000.00 €
Delegates	1,251,000.00 €
Training	59,000.00 €
Charges	3,552,000.00 €
Office premises	2,322,000.00 €
General operating expenses	891,000.00 €
Others (including training-related travel expenses)	339,000.00 €
Investments	268,000.00 €

"Public works contracts"

On 31/12/2007, 18 supplies and services activities were thrown open to formal public tenders.
In 2007, 10 new procedures were initiated: 9 contracts were awarded (for the Mediator's publications, reception, cleaning of office premises, office supplies, computer maintenance, purchasing of computer hardware) and 1 was not (transport).

Annual performance report

To measure the objective fixed by the finance law, "facilitating everybody's access to the law», the Mediator has 29 internal indicators, including:
– the number of access points (for regional delegates)
– the percentage of successful mediations (headquarters and delegates), average file processing time (headquarters and delegates)
– the number of reform proposals completed successfully
– the amount of outstanding work.

Preparing the change of status

In line with the recommendations of the National Auditors Department, the Mediator of the French Republic requested that a public accountant be entrusted with executing the Institution's payment and reception orders, which implies changing the existing methods. This has given rise to many work group meetings with the general directorate of public accounts and the agency in charge of the State's finance-related computer technology, in which the budget and accounts controller of the services of the Prime Minister was associated. Article 98 of the LFI for 2008 (law dated 31/12/2007) gives concrete expression to this plan by modifying the status of the Mediator, who becomes "a major official with power to authorise payment".

Transparency of human resources management

Clarifying the status of the personnel

Article 50 of the law dated 02/02/2007 on the modernisation of civil service recognises, for the first time, the existence of the "services" of the Mediator of the French Republic. A State Council decree will clarify the necessary modification to be made to the working of the Institution's consultative and participative bodies, as well as the adoption of rules stabilising the internal working modalities.

Delegating management

In 2006, the 46 staff members previously made available free of charge to the Mediator of the French Republic by different ministries were transferred to the Mediator. Agreements were concluded between the Institution and the ministries concerned concerning the reimbursement of payments made by said staff members' ministries of origin. 2007 was marked by the finalisation of the entire management delegation year.

Staff of the Mediator of the French Republic (as of 31 December 2007)

		CATEGORIES		
	TOTAL	A	B	C
Staff made available to him	41	26	8	7
Staff of Social Welfare organisations (CPAM, CRAMIF and URSSAF)	6	1	1	4
Seconded staff	16	10	0	6
Contract staff	27	18	1	8
Staff assigned by the Government Office of Secretary General	3	0	1	2
TOTAL	93	55	11	27

To find the subjects treated in this report, the organisational chart, the law of 3 january 1973 and news about the Institution:

WWW.MEDIATEUR-REPUBLIQUE.FR

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