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# Editorial



Jean-Paul DELEVOYE,  
Mediator of the French Republic

The *burn out* of French society attests to an urgent need to create new hopes that correspond to the efforts made. The law-maker's restlessness reveals an illusion to replace the decline in individual responsibilities and morality with law. Spoon-feeding needy citizens allows us to relieve our conscience, but it is not the solution to our problems.

The right political answers are lacking for issues that shape our future. Debates are undermined by propaganda speeches, and causes to be defended drowned in electoral calculations. Now, citizens' spirits are sapped by politically motivated behaviours.

**Paradox: there has never been such a need for individual and collective commitment; discouragement and lassitude have never been so widespread.**

In the words of General de Gaulle: *"When the French believe in the greatness of France they do great things; when they feel abandoned they do small things".*

Political confrontations are fictitious because the split is no longer between Right and Left but between those who accept globalisation and those who refuse to face up to it. The quest for power push people to go into unnatural alliances: convictions wear off when interests clash but also when interests converge!

We are not racists but reluctant to share with have-nots. We are for a mixed society provided we are not bothered or troubled by our neighbours. We are for the free services we benefit from but not those we finance. We need to fight again for causes at a time when we are all thinking of defending our interests and preserving our comfort. Today, politicians follow rather than guide public opinions, whereas opinions, when motivated by emotions instead of convictions, are volatile. I find it appalling and worrying!

Our societies are characterised by three major feelings - fears, hopes and humiliations. Today hopes are empty and fragile while right-wing parties manage fears and left-wing parties cultivate humiliations. Each side may win alternatively in the euphoria of a one-day victory for a France which will be divided at each election and gradually tend towards populism and extremism.

Our social contract is not a service contract but a commitment. Nevertheless, today, citizenship is declining from both sides: those who pay taxes have lost the citizenship dimension of taxation and, although they still agree to pay, feel wronged. On the other hand, those who benefit from social solidarity have lost the sense of this solidarity and feel humiliated since they do not receive enough of it.

Education, which today has failed in terms of acquisition of knowledge, training and awakening of the sense of citizenship, is calling to question our general administrative system which is failing in its inclusion task and is becoming an exclusion machine.

## **We must regain this sense of commitment, solidarity, proximity and also of Human respect**

Each citizen should be able to participate in the effort to forge the future. Just like a child needs to be educated by showing him one's love through the sense of the forbidden, a people has to be educated not by meeting its desires but by inculcating in it a sense of responsibilities. Our society must regain its sense of values, otherwise its internal tensions will be suicidal. It will be completely turned upside down in the next fifteen years. Demography will change the political, economic and social situations, modify the economic balance between savings and activity, the territorial and sanitary balance between hospitals and homes, the financial balance between taxation and solidarity, and create an inter-generation implosion or new dynamics. Necessary immigration (the European Union has announced that from now to 2050, the active population in Europe would need the arrival of some fifty million foreigners in order to attain a balance) poses the problem of assimilation, integration, identity, multiculturalism, and secularity which, given our resistance against populism or extremism, will lead to intense conflicts or tremendous collective success.

France's competitiveness will either enable us to maintain our ranking in terms of economic might or force us to move down the ladder and risk the explosion of our solidarity policies.

The driving forces behind our success will be self-confidence and collective effort. We must abandon our care-free attitude in favour of lucidity, frankness and courage. We must move away from the culture of conflict, which only reflects and increases our weaknesses, to adopt a culture of permanent dialogue which will give some credit to players and some time to action. In fact, we have to change from seduction to conviction, from hatred to adhesion, from indignation to mobilisation for a project supported by values that merit commitment.

Today, hope must change side: the invisible hand of the market has slapped the weakest members of society, the iron hand of collectivists has crushed Human freedom; we need to find a new balance, with a mixture of collective performance and individual happiness.

It is good to be indignant, because it means that there is still enough energy to revolt. But it is still better to mobilise; for life is a struggle. *"The living are those who battle; the living battle on, ever holding a clear purpose in mind and spirit; their lofty destiny scales the jagged peak"*, Victor Hugo.

Everywhere in the field, isolation, tremendous initiatives are developing, based on the spirit of solidarity and proximity. Some men and women are uniting their efforts, recreating some link and giving meaning to life at the local level. It is all about citizenship in action, taking place outside administrative circles and sometimes against them. The Rio summit introduced the doctrine "think globally, act locally". Today, shouldn't we rather reverse this logic and think locally to act globally? What is the difference between a wise man and an intelligent man? An intelligent man knows how to solve a problem that a wise man has been able to avoid. Our world needs public moral. Our people will start trusting its elites again if they are exemplary.

2011 must be a year of ethics and transparency for all those who exercise power, especially with regard to financing and conflicts of interests. To be accepted, authority cannot be based on the justification of a title or election but will be based on the moral dimension of the one exercising it. Moreover, changes will only be accepted if leaders appropriate the stakes thereof.

These solutions will, of course, be linked to political decisions: politics must be restored. The force of change depends on the support of the opinion. We need to build on a pedestal of convictions and not on the sand of emotions. Let us know how to ask the right questions: this way, our problems will be half solved.

Crisis makes the collective epidermis more sensitive and more irritable; yet it favours a creativity, an inventiveness which ought to be freed and not impeded. Our nation must understand the fact that it is suffering from individual constraint and local innovation, that the law of the world is impacting its economy, and that of the citizen its ability to act.

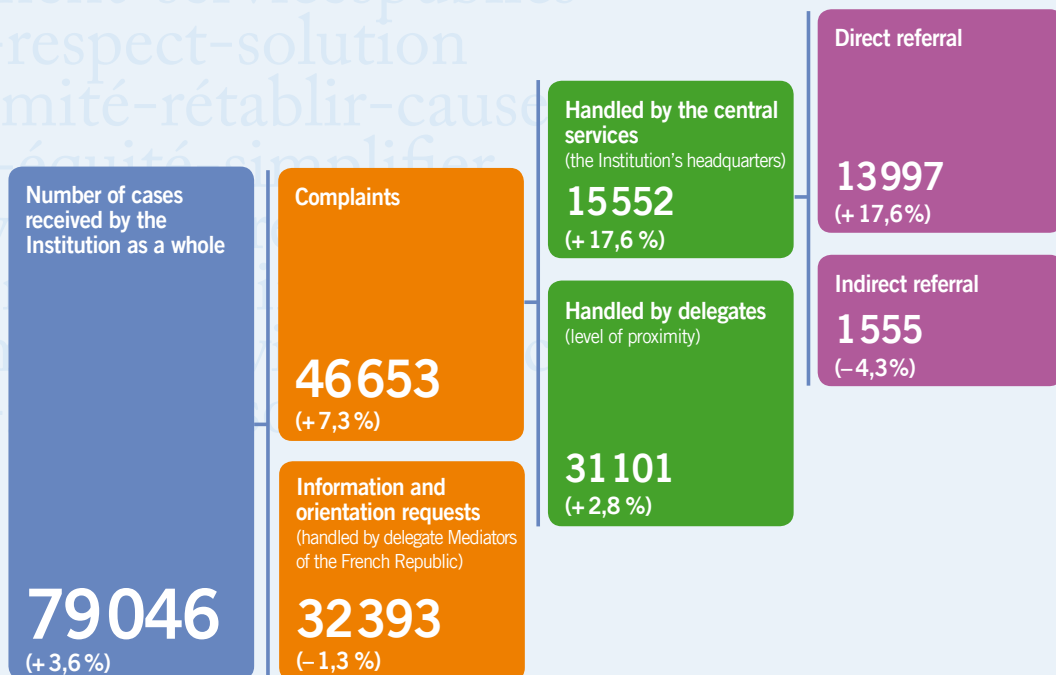
It can and must reconcile the two, because its success depends on a collective mobilisation nourished by a common project and a vision the values and hopes of which merit each person's commitment.

# THE YEAR IN FIGURES

## The Institution's overall results

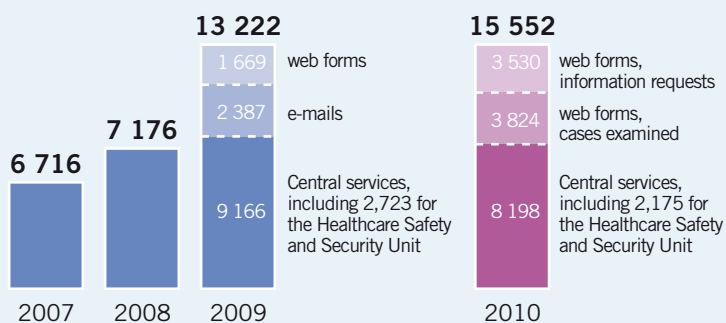
In 2010, the number of cases referred to the Mediator of the French Republic, the central services and delegates, increased by 3.6% compared to 2009, with a total of 79,046 cases received.

Information and orientation requests received by delegate Mediators of the French Republic decreased by 1.3 % compared to the previous year. The institution handled 46,653 complaints, 15,552 of which were handled via the central services of the Mediator of the French Republic, in Paris.



## Activities of the central services

### Number of complaints received



- About 20,620 phone calls were received on the Institution's switchboard.
- 11,880 calls were received by the Healthcare Security and Safety Unit.

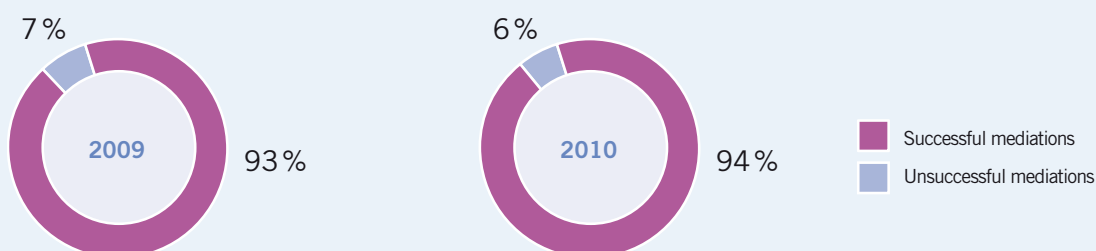
## The platform "The Mediator and you" ([www.lemediateuretvous.fr](http://www.lemediateuretvous.fr))



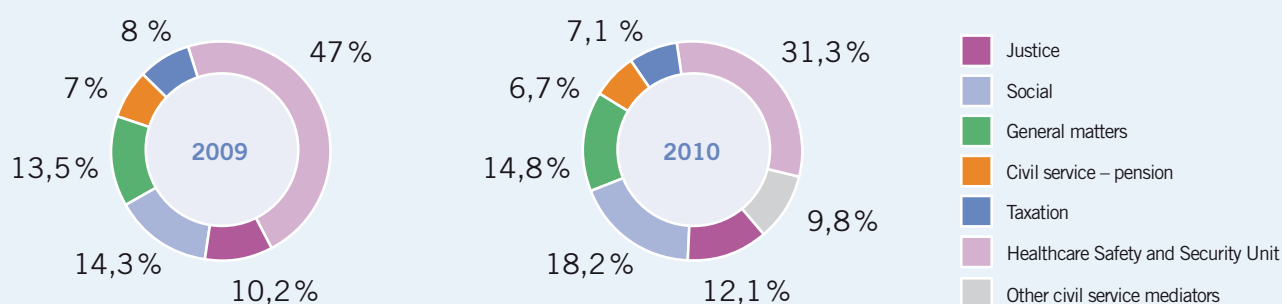
The platform of the Mediator of the French Republic – [www.lemediateuretvous.fr](http://www.lemediateuretvous.fr) –, launched in February 2010, is a tool for promoting democratic exchanges. This forum for dialogue and reflection on the defence of Human rights enables internet users to propose topics of reflection, react to already existing debates or make reform proposals. Twenty-four volunteer experts provide a technical answer to the questions raised.

With time, the platform has become a real observatory of the day-to-day problems encountered by citizens. Thus, the different debates have made it possible to identify the fact that the problems of unwarranted payments by CAF (the social security office) or even the issue of excessive debt are real problems of society. It is, therefore, a forum to express the field reality and thus show the practical consequences of some legal shortfalls or injustices in their application. Although this platform may not become a site for processing complaints on line, it offers a real advantage for citizens since the testimonies shared there are an important source of information for the reform sector and can support or even trigger the Mediator's action.

### Rate of successful mediations

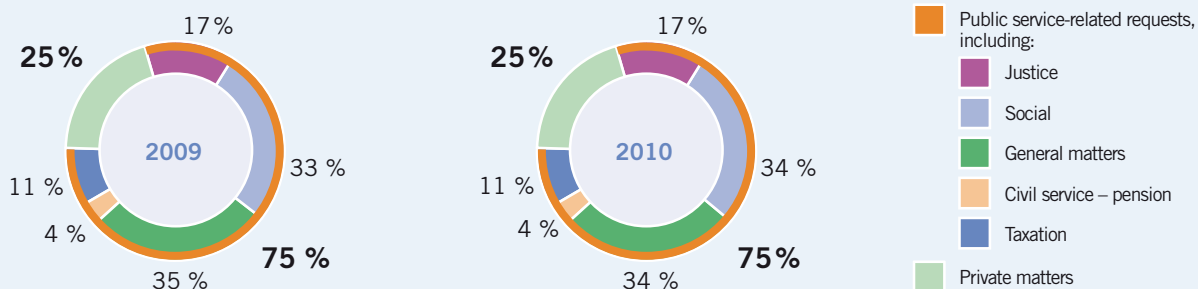


### Breakdown of cases closed, by field of intervention

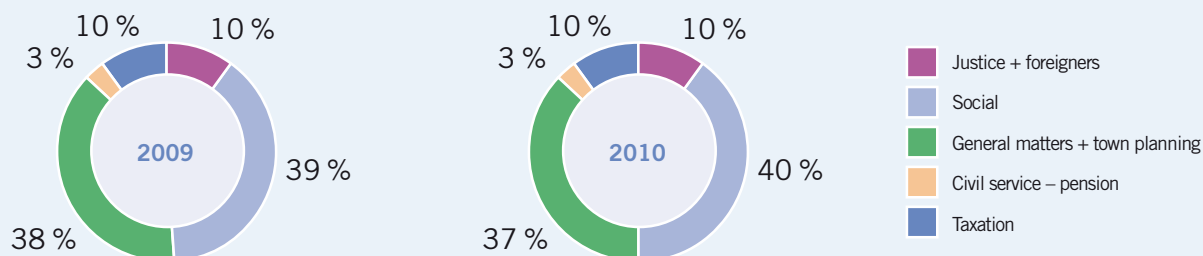


## Delegates' activities

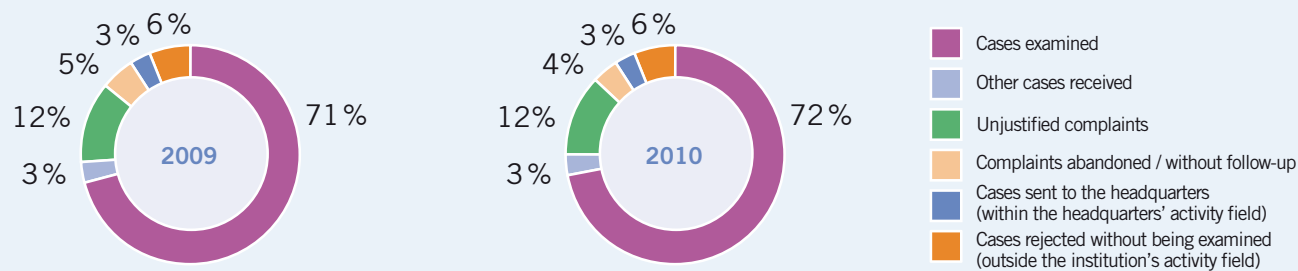
### Information – fields concerned



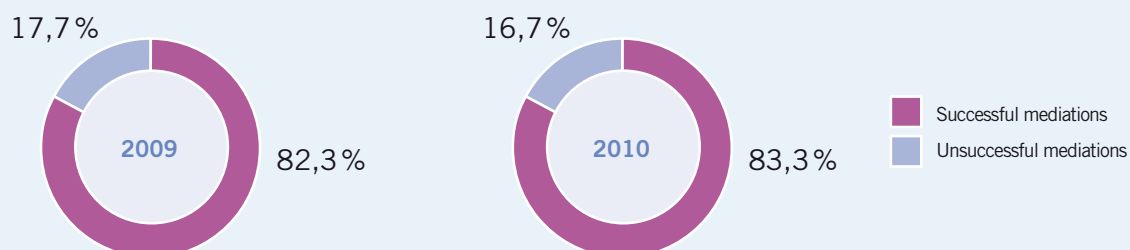
### Breakdown of complaints, by fields of intervention



### Handling of complaints



### Complaints – the delegates' success rate



# Table of reforms

## Reform proposals adopted in 2010

### Object

Recognising the training given in vocational colleges to allow accompanied driving
Indemnifying victims of French nuclear tests
Using an equivalent of the French income tax notice for EU citizens as a criterion for assigning council houses and for granting other social advantages
The right of physical persons to access the centralised data on the withdrawal of bank cards
Increasing the duration of old-age insurance for fathers who have raised their children alone
Reviewing the conditions for the validity of the general, theoretical driving test
Access to real-estate data
Collection of deferred income by persons not liable to tax
Renewing the ID cards and passports issued to French citizens born overseas or with one foreign parent
Making the light-good-transport business easily accessible
Possibility to take a motorcycle driving licence test on a scooter above 125 cm <sup>3</sup>
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
Modifying the attrition rate
Paying for recreation centres with Cesu (a cheque used to pay for services rendered by private persons in France)
Reviewing the situation of part-time hospital practitioners
Improving the working of FICP
Income tax and joint solidarity of couples in the legal sense of it
Taking over vacant homes abandoned by their tenants
Accumulating income from an unsalaried activity with a disability benefit
Jurisdictional court and enforcement fee during consumer right related litigation
Indemnifying fire-brigade officials infected after being vaccinated against hepatitis B
Scholarships from the Culture Ministry

## Reform proposals not adopted in 2010

### Object

Increasing the insurance benefit of parents of disabled children
Reforming the graduated employer aid in favour of senior-citizen employment and long-term job-seekers
Taking account of income reduction in farmers' taxation



# 1. Is the conception of government action in line with field reality?

The hitch-free working of French society does not only depend on laws governing it. Even at that, said laws still need to be designed to work well and to be easily understood, absorbed and applicable.

Now, from the law to the field, from the principle to actual application, there is sometimes more than one step, and often a huge gap. Absence of transversal vision, excessive ambition, lack of implementation resources, etc. Malfunctions in the conception of government action and policies are prejudicial to citizens. Thanks to the complaints he receives, the Mediator of the French Republic has a privileged observation post to point out the malfunctions, oversights, conflicting legal contradictions and unexpected situations which leave citizens destitute in the face of an administrative system that is still often impenetrable.



# Government policies clouded by stacking up laws

Every year, a lot of laws, circulars and decrees are added to and stacked up on already existing laws. How can administrations find their way around in this normative jungle?

Such an inflation in an already saturated legal context sometimes seems like an occasional response to the handling of new special cases whereas there are continuous doubts about the administration's ability to absorb this rise in special cases. The Mediator of the French Republic makes a daily observation in relation thereto: this regulatory profusion makes opaque citizens' access to information and complicates the tasks of administrations, which are faced with ever complex laws and expanding case law. Standards which become obsolete as soon as they are integrated, exceptional arrangements, decrees that contradict the law: is this inflation creating an illusion of protection whereas it is actually the cause of legal insecurity? This legal instability is worsened by an instability of practices when the confusion it creates within public services paves the way for inappropriate administrative behaviours, difficulties in interpreting laws, hardening of laws, and the addition of more conditions for granting some advantages.

## When the procedures for applying a special rule tends to harden the law

This is manifest, for instance, in the provisions on tax aid. Retroactive measures, changes in doctrine, succession and juxtaposition of laws that are sometimes unreadable, often complex and very technical result in the hardening of these tax regimes. Faced with this legal instability, taxpayers are helpless and may feel swindled. Destabilised, they waver between resignation and resistance against a fiscal policy they consider unjust or even arbitrary.

The example of tax credits instituted in favour of the environment and sustainable development illustrates this drift. Whereas they are supposed to serve as incentives and to be in line with the environmental principles of the Grenelle Environment Forum, their implemen-

tation sometimes produces a result to the contrary. This is illustrated by the increase in complaints pertaining to heat pumps: if a heat pump is purchased and installed through two different companies, the tax credit is subject to a subcontracting link between the heat pump supplier and installer. In the end, these particularly restrictive conditions for application deprive the taxpayer of an advantage for reasons he cannot fathom and which are beyond his control.

Concerning the tax advantage inherent in the acquisition of vehicles working with liquefied petroleum gas (LPG), the regulation, more or less unreadable in that when the tax credit was replaced with an ecology bonus deprives taxpayers of an advantage meant to be an incentive in the choice of energy-saving and non-polluting vehicles, did a disservice to the spirit of the law as shown in the example below.

...

...

In October 2007, Mr B. ordered an LPG vehicle which was delivered and billed to him in February 2008. He sought to benefit from the relevant tax credit for 2007.

He was refused this advantage due to the abrogation of the tax credit as from 2008, the year in which he ought to have benefited from this advantage considering the invoice date. After examining the case, the Mediator confirmed that the regulation had been properly applied but asked that the advantage be maintained considering the objective of the reform, which was to promote the acquisition of energy-saving vehicles and because he had been deprived of the ecology bonus as a result of a premature order.

### A unique system which creates some confusions

Similarly, when the criteria for certain tax advantages associate in one and the same system some elderly persons and some disabled persons, the application of the law becomes inconsistent. What are exactly the expenses inherent in installing and replacing some equipment specially designed for the elderly or disabled persons and which give right to a tax credit? A tax regulation which aligns the different equipment based on the same criteria whereas old age and disability are very different situations, or for which the mere use of a wheelchair implies disability, creates some difficulties in the application of the law.



### Wheelchair as criterion for old age and disability

After benefiting from a tax credit for installing a shower cubicle designed for the elderly, Mr G.'s request for this advantage was contested because his installation allegedly did not correspond to the definition of the equipment concerned.

After going through the articles of the General Tax Code, which did not mention any conditions restricting the equipment eligible for the tax credit, the Mediator contested the legality of an instruction published in 2005 which actually added several restricting criteria such as some dimensions allowing the use of a wheelchair in the shower cubicle. The Mediator underlined the fact that in the case of Mr G., aged 70 but disabled, the tax credit could be granted based solely on the expenses incurred in accordance with the criteria defined by law, namely "complete shower cubicle" and "tray and shower door".

The Mediator, therefore, asked for the existing system to be re-examined so that elderly persons would not be considered de facto as disabled persons.

### An ever complex law, subject to interpretation

Several cases show that when instructions are complex, their application is difficult and subject to interpretations, thus creating a risk of divergent appreciation depending on the departments.

In fact, sometimes there is one regulatory change after the other, which adds some conditions and criteria as new specifications are created and contributes to a general confusion. This was how the field of application of a tax advantage meant to boost youth employment in a sector that has known some recruitment problems, after being granted on some conditions (youth aged less than 26, six consecutive months of salaried work, start of activity between 1st July 2005 and 31 December 2007, sector with labour shortage), was restricted. In fact, the administration only granted it based solely on the condition of a first employment that meets the criterion defined by law, and taken up from 1st July 2005 to 31st December 2007. After the intervention of the Mediator of the French Republic, the administration recognised the restrictive character of its instruction.

In another area, regarding the 10% penalty provided for in Article 1758 A of the General Tax Code, the Mediator of the French Republic has noticed in some cases of tax investigations which had been referred to him that the administration was applying this penalty to standard taxation of tax return omissions whereas it was the integration of the 20% allowance into the income tax scale (finance law for 2006) that had led to the creation of Article 1758 A, so as not to favour

defaulting taxpayers subject to the income tax scale. The divergent reactions of tax authorities made the Mediator of the French Republic to refer the matter to the relevant minister.

### 10% penalty and proportional taxation: when the administration rules in favour of the Mediator of the French Republic

Mr V. was taxed as a result of a profit made in 2007 from the sale of the shares of his company, which he had failed to indicate in his tax return for the same year.

These reminders were accompanied by some lateness interests and a 10% penalty. After successively asking the ministries concerned to re-examine his tax situation, his request for waiver was rejected. Mr V. then referred the matter to the Mediator of the French Republic who observed that although the tax reminders seemed justified, the 10% increment applied to the profit was not proper since the penalty was not applicable to proportionally taxed incomes. Since a departmental directorate for public finances shared this opinion, its services made the corresponding reduction.

### Stacks of reforms: the taxpayer aggrieved

When incessant reforms and reorganisations lead to belated decisions, it destabilises the administrative services themselves and puts them in a situation of erring responsibilities between the different players.

### Ten years for a reparcelling procedure

Within the framework of a reparcelling that had taken place in the town of M., in Haute-Corse, in 2001, Mr V. and Mrs S. are still waiting for their land to be registered by the mortgage registry. Due to the different changes in law that have taken place in-between, the State authority in this respect has been transferred to the regional councils, as indicated in the letter dated 5 November 2008 from the sub-prefect of Calvi. In this connection, the departmental council of Haute-Corse was supposed to bear the expenses billed by the real-estate surveyor in charge of the survey document, an obligation confirmed by the letter of 9 December 2008 from the Regional Directorate for Equipment and Agriculture (DDEA)

Since they did not receive any replies, Mr V. and Mrs S. sought the help of the Mediator of the French Republic, who then simultaneously contacted the regional council chairman and the departmental director for the territories and sea. The department replied that it was the responsibility of the State to send out the mortgages for registration, considering the precedence of the case, and that the DDEA had been notified about that in a letter dated 2 November 2009. After many reminders, the delegate Mediator of the French Republic was informed in August 2010 that a prefectural order had been sent to the departmental council and to the mortgage registry. In a few weeks time, the parties concerned may finally have their land registered with the mortgage registry, and their survey-document-related expenses reimbursed.

...

## The Mediator's view

# The problem is not the inflation of laws but their application

« When personal or individual ethics decline, we tend to use laws to make up for them. The French population attaches excessive importance to the law, thinking that it can bring in a solution to every problem. In reality, the law, which is supposed to be a source of stability and weighting is becoming a real factor of instability due to the juxtaposition of laws. A citizen who decides to invest in renewable energies partly because

of the resulting tax advantages have these advantages revoked after one or more years. The emotion created by a news item precipitates the passing of a law without really reflecting on the possibilities of its implementation, as evidenced by the Dala law (opposable right to housing), which was well meant but inapplicable in reality. The law on foreigners and on Pôle Emploi (organisation in charge of unemployment benefits) are laws on

which the State's responsibility has a major impact. But those who enact laws do not take into consideration the difficulties the administration may encounter in their implementation. If those applying these laws are unable to follow, imagine the consequences for those on whom they are applied. If laws were better applied, they would not need so much to be increased. »

...

## Signs of general failure

Despite some remarkable improvements within the tax administration, some sporadic malfunctions still occur which raise some questions on the viability of certain operations. The section in charge of taxing non-residents is still finding it difficult to correct its errors and delays, sources of recurrent legal disputes. In those cases, the assessment turn out to be incorrect or unfounded and obliges taxpayers to prove themselves by sometimes taking some cumbersome steps.

General or even systematic malfunctions are demonstrated by the technical problems not solved due to inappropriate software solutions or incompatible computerised systems.

Moreover, without contesting the need for the tax administration to evaluate its operation, the choice of certain indicators raise some questions when they result in some malfunctions, which may be few but particularly serious and especially difficult to correct. These situations arise when an atypical error occurs, especially in the massive processing of tax cases (for instance a cheque cashed by a section of the Treasury that is not the one in charge of collecting the debt). The taxpayer then becomes the victim of the rigidity of an administrative system which is efficient when it comes to performing the general task entrusted to it, tax collection, but which, despite the documentary evidence produced, cannot correct the malfunction before double unwarranted payment and threatens to initiate unfounded proceedings.

## (Testimonies)

# "Taxes are one of the foundations of our republican pact."

"In the citizens' mind, tax is first of all a mandatory levy. But if consented to, i.e. regarded as just and equitable, it is understood and accepted by a majority and then becomes one of the bases of our republican pact. This is why any possible dislocation in the field of taxation between the citizens and public policies may lead to a feeling of social injustice.

Based on the complaints received and the answers thereto, the taxation section of the Mediator of the French Republic is an observation post for the changes in this link between tax payment and fiscal policies. It can determine whether or not the notion of consenting to tax is accepted or rejected by citizens.

Although the tax administration obtains a generally satisfactory result by improving its relations with taxpayers, through a better response time, for instance, or during the annual campaign on income tax, some administrative practices still result in incomprehension or even resistance among some taxpayers in good faith; such an impression may fuel a feeling of injustice. Taxpayers are contesting the legitimacy of the tax levy and its collection especially since they see themselves as victims of an unjust social system.

Therefore, in public actions, both in the conception and application of the tax law, we have to avoid anything that may affect consent to taxation and social cohesion.

The administration must, therefore, better take special situations into account in order to guarantee, in the general interest, the conditions for a general equality of citizens before taxation.

In this respect, we are already noticing a rising adequacy between financial administrations' decisions and the necessary measures in the field, especially pertaining to taxpayers in difficulty.

Individual mediation actions by the Mediator of the French Republic and tax law reform initiatives also contribute thereto."

Jean-Michel Rougié,  
*Adviser, Taxation Section of the Mediator of the French Republic*



# Collateral damage due to speedy reforms

All sections of the Institution is observing it: our country is being reformed too quickly without weighing sufficiently the resulting collateral damage. The constitutional amendment of 2008 stipulates that reforms must be preceded by impact studies, to measure the pernicious effects they may produce, but these studies are rarely conducted due to want of time and resources.

For instance, it would have been expected that the creation of RSI (the social security scheme for self-employed workers), Pôle Emploi, and Camieg (the health insurance office for electricity and gas industries), which have given rise to small revolutions in the administrative services of the social security organisations, be preceded by a gradual combination accompanied by attentive management and education, in a context of a test period and benchmarking. But the officials must have, while handling the dossiers of the two million RSI contributors and those of the three and half million job-seekers, absorbed and managed urgently some new practices without a specific framework, without appropriate assistance. Result: it is users that suffer this absence of education on the decision and managerial and/or technological malfunctions. Moreover, it is the officials that are unjustly stigmatised. Therefore, the Mediator of the French Republic has made it his duty to draw attention to the insufficiently expected risks of the negative consequences of certain reforms like those caused by the creation of the status of auto-entrepreneur.



## Access to the status of auto-entrepreneur more complicated than expected

Mrs A., a self-employed florist, wished to obtain the status of auto-entrepreneur. She never imagined that changing her status from the traditional self-employed worker to the more specific auto-entrepreneur would lead her into obscure meanderings. Without the intervention of the Mediator of the French Republic, the RSI would have continued to consider her as a self-employed worker and to ask her to pay provisional contributions in addition to the contributions she was already paying as an auto-entrepreneur.

The creation of the RSI, the social security scheme for self-employed workers, which brought together three organisations and three different management cultures, ...

- ... was immediately followed by the introduction of a single social security interlocutor which, although simplifies the procedure for most contributors, has also resulted in a lot of computer bugs. Thousands of files on retirees have been reactivated, for instance. Some people suddenly received official demands to pay some contributions they were not owing, with lateness penalties, whereas, on the other hand, contribution requests had not been sent at the right time to others. This ISU bug sometimes ushered in catastrophic situations.

#### An RSI file unduly reactivated

In July 2008, Mrs G. asked for her name to be removed from the special register of sales representatives, with effect from 7 April 2008. However, she remained the assisting spouse of her husband, a manager of a real-estate agency (a limited liability company), until 31st December 2008. The relevant contributions for this activity are paid through direct debit from the real-estate agency's account.

Without taking this new situation into account, the RSI asked Mrs G. to pay some contributions for her activity as a sales representative, an activity she had not exercised. Since she did not receive any reply to the several letters she had written to the RSI to denounce these calls for contributions, Mrs G. referred the matter to the Mediator of the French Republic, via a regional delegate. After this latter had intervened at the RSI of Limousin, Mrs G. finally received a letter from this organisation informing her that her request to have her name removed from the register had actually been registered on 7 April 2008.

The Mediator of the French Republic observed many such cases in 2010. He was touched that these distress calls, caused by malfunctions within the services of the RSI, often met with negligence or, even worse, the intervention of a bailiff. One issue of *Médiateur Actualités* (the Mediator's magazine) was devoted to these problems. The director general and the chairman of RSI were received by the Mediator of the French Republic to discuss the exceptional procedures put in place by the scheme (and by partner Urssafs of the ISU) to try to solve these problems. Up till now, the services of the Mediator of the French Republic have worked together with the RSI unit in charge of customer relations and have resolved a huge number of disputes, via a network of mobilised correspondents. However, the Mediator of the French Republic remains extremely vigilant concerning the solutions found for all the contributors who have suffered too much the repercussions of the initiated reforms. Massive processing, which works well for 99% of the people, should not become the club with which to knock out the remaining 1%, which is atypical.

## The Mediator's view

### A lot of reform proposals emerge from observations made by civil servants

« The lawmaker is not always aware of the application of the law he is voting and does not weigh the ability of the administrative system to absorb the laws. Now, a badly applied law is a bad law. In France, citizens' complaints are not sufficiently taken into account to correct

laws. Common sense and field reality must be used to make laws more just. In this sense, testimonies reaching us from civil servants themselves are very precious: today, 20% of the reform proposals stem from them. It should not be forgotten that civil servants only apply the law prepared

and voted by members of parliament: civil servants are the first to suffer from the law and from its inconsistencies. »

# When political ambitions come up against limited resources

Long waiting time, unending processing time, more and more steps to take... How is a citizen to react to what is presented as an improvement of the civil service but which in reality is a deteriorated, more complex and less accessible service? In prefectures, moderate-sized towns, the organisations in charge of a reinforced civil service are actually deeply weakened by budget restrictions. Several weeks of closure in the year, less opening hours, restriction of telephone, mail and internet access: the impacts are all the more striking in prefectures that they occur at a time when the progress targeted by law is particularly expected in terms of efficiency and services rendered to users.

## Anything wrong with the "Charte Marianne" (Marianne charter)?

You only need to go the prefecture to notice to what extent the principles of the Marianne charter, which advocates for easier access to services, or for attentive and courteous reception (*see box*), are disrespected in some administrations.

In one prefecture in the Paris region, the only way to obtain an appointment in order to submit an application for naturalisation is through a single number, "open" only one afternoon a week between 14:00 and 16:00. Most of the time, this number is unavailable since a lot of people do call during these short opening hours. When applicants finally succeed in getting an interactive voice response, an information message informs them that the schedule is full until a given date and that the voice-mail box is full, leaving them completely helpless. After some enquiries, delegate Mediators have learnt that only twenty-four appointments can be taken each week, based on a fully random access to the service. Such examples show how the lawmaker's wish, manifest especially within the framework of such charters, ends up being ridiculed due to a reduction in human and material resources.

In a report presented to the Senate on 13 October 2010, senator Michèle André made a convergent and alarming observation concerning the general review of public policies (RGPP), meant to achieve productive gains thanks to a more efficient organisation of services and increased use of new technologies. Despite its laudable objective, this reform sometimes deteriorates officials' working conditions and the quality of services rendered to citizens.

### The five principles of the Marianne charter

The Marianne Charter translates the undertaking made by each of the decentralised State services to:

- 1 – Facilitate citizens' access to services
- 2 – Receive citizens attentively and courteously
- 3 – Respond in an understandable manner and within a given time frame
- 4 – Process complaints systematically
- 5 – Record users' proposals to improve the quality of public service

It is also meant to be applied by government agencies and, beyond that, by any public player (local governments, etc.). It has been in effect since January 2005.



## From mediation to reform

# Reforms postponed because they are too costly or too complex

**Budgetary pressure and management constraints are fierce adversaries to legal reform. Dependent on the general review of public policies, government policymakers hesitate to reform laws with unjust consequences because these reforms are costly and pose management problems. Illustration with five unsuccessful reform proposals:**

### Common-law couples deprived of survivors' pensions benefits

It is agreed today that living together gives the right to social security and to health insurance benefits, but, and this is a French curiosity also denounced by Halde, the right to survivors' pension benefits (that is, the right of a surviving spouse to receive the retirement benefits of his or her deceased spouse) remains delimited within the framework of a marriage. Common-law spouses are still not entitled to them, despite the government interpellation by the Mediator of the French Republic, in 2010, especially during the debate on pension reform and the initiatives of certain members of parliament in this sense.

### No sharing of family allowances in case of alternating custody

The current rules on the payment of family allowances in case of divorce or separation are not suitable for parents who choose alternating custody for children. This method of custody, which concerns 15% of separating parents, is constantly growing since 2002. Now, the law has still not been reformed to introduce the principle of dividing family allowances between two parents who have

legal custody of their child/children. A first measure, voted within the framework of the law on the funding of the social security for 2007, allows only the sharing of family allowances. It is necessary to continue this reform with regard to other family benefits, which is being reflected upon with the relevant ministries and organisations.

### Occupational physicians and medical advisers: a glaring lack of coordination

Having succeeded in modifying the laws but not the administrative culture and practices: this is what the Mediator of the French Republic regrets about better collaboration between occupational physicians and medical advisers of the social security scheme. The poor coordination thereof is often a source of prejudice for employees whose work resumption after a sick leave is subject to the opinion of these physicians. The interruption of the payment of daily allowances ordered by the health insurance office, based on the opinion of its medical adviser, considering that the insured employee is fit to resume work, may go together with the decision of the occupational physician to start a procedure for unfitness for work, something that prevents the employee from resu-

ming his activity and thus deprives him of his payment. This is inconsistent and unjust! Moreover, the measures in principle that have emerged thanks to the Mediators efforts in this regard, by providing for a prior consultation between these two medical instances to facilitate work resumption by the employee concerned, are not yet followed by concrete effects. This is why the Mediator of the French Republic has again drawn the government's attention to this problem by calling for a reinforcement of the consultation system.

### Precarious situation of temporary secondary school teachers

The Education ministry is increasingly resorting to temporary or contract teachers, a growing population living under precarious conditions. They are often paid with several months delay and often find it difficult to receive a student follow-up and orientation pay, etc. Moreover, since they cannot work for more than two hundred hours a year, they are not entitled to any unemployment benefits or paid leave; contractual teachers are subject to service interruptions, which makes it difficult for them to obtain an open-ended contract or to be confirmed through internal competitive exams.

## → Ongoing reforms



In short, even though they work as full-fledged teachers, they do not have the corresponding rights.

In 2008, the Mediator of the French Republic made a reform proposal to the relevant ministers aimed at clarifying the rules and making certain practices more ethical. Some progress has been made. On 24 September 2008, the Education minister instructed regional education authorities to temporary teachers immediately and made available to them the student follow-up and orientation allowances. However, the introduction of mileage and end-of-contract allowances proposed by the Mediator of the French Republic was postponed. The introduction of a master's degree as criterion for teachers' recruitment competitive exams has led the Mediator of the French Republic to make this other proposal: allowing unconfirmed teachers wishing to take the competitive exams but who do not have a master's degree to validate their professional experience (VAE). The Education minister made some

reservations regarding the VAE related proposal. The Mediator of the French Republic hopes that the ongoing reform negotiations on the precarious situations in the civil service will fully apply to Education ministry employees.

### Family allowances and housing: working out another income-calculation method

Using presumptive income assessment to determine the right to family allowances and housing has some unjust consequences. In fact, some people who would be entitled to the maximum amount of benefits due to the lowness of their income in the reference year are granted less benefits or even deprived of their welfare payments, because of the application of presumptive income assessment resulting in a substitution of a fictitious income. Moreover, this system comprises some exceptions which increase the injustice of the general rule.

Therefore, the Mediator of the Republic has recommended a cancellation of this calculation method and a return to the application of the common law, i.e. calculating the amount of family and housing benefits based on the real income made in the reference year.

It should be noted that this cancellation is recommended by the social security offices which measure in the field the unjust consequences and disputes generated by the use of this method. It is also part of the recommendations of the Economic, Social and Environmental Council.

Unfortunately the meeting of 18 January 2010 by the inter-ministerial committee on proposals by the Mediator of the French Republic did not make any progress in relation thereto. The reason for this: the Budget minister underlined the cost of this reform, estimated at 65 million euros for housing benefits alone.

Therefore, the Mediator of the French Republic thinks that the Prime Minister's arbitration is necessary for this matter, considering the differences of opinion between the various ministries.

## From mediation to reform

### Reforming from a global view of problems

The Constitution of the V<sup>e</sup> Republic confers a lot of powers on the executive. Most of the laws voted originate from ministries. Subjected to public pressure and fuelled by the policy of emotion, many laws are passed and stacked up without harmonisation, without bothering about consistency and without taking account of reports from analysis and proposal instances such as the Economic, Social and Environment Council, the State Audit Office or other expert committees. The result is a lot of iniquities and loopholes.

#### Pruning the tangle of minimum welfare benefits

In the name of national solidarity, the community comes to the aid of the least privileged members of society, in form of social security benefits referred to as "minimum welfare benefits". Pursuant to our constitution, every human being not able to work has the right to obtain decent means of existence from society.

These minimum social welfare benefits have been diversified and comprise nine categories of benefits for the elderly (the solidarity grant for elderly people, equivalent of retirement pension), disabled

persons (additional disability benefits, disabled adult benefits), unemployed persons no longer entitled to unemployment benefits (special solidarity grant, active solidarity income [RSA]), isolated persons (single-parent allowance integrated into the RSA, widowhood allowance cancelled then restored) or for released prisoners (integration allowance), etc. This landscape of minimum social welfare benefits is so complex that it generates some disparity, especially with regard to the conditions for access, and some inequalities of the rights attached to the different benefits. Thus, for an identical illness or disability, the incomes of disabled adult allowance beneficiaries may be more than those

of the beneficiaries of the minimum pension or disability benefits.

Since such a difference in the treatment of beneficiaries of an allowance not subject to contributions is not legitimate, the Mediator of the French Republic has made two reform proposals: harmonising the methods of assessing the resources applicable to the minimum social welfare benefits and aligning them with the disabled adult benefits of the minimum pension and disability benefits, in such a way that their beneficiaries have more or less equal resources.

#### Reforming pension based on personal experiences

The purpose of the required pension reform is to reinforce the social pact between the active population and retirees, but also to correct existing iniquities. This was the focus of the proposal by the Mediator of the French Republic.

During the examination of the draft law on pension reform, which he deems necessary, the Mediator of the French Republic sent six reform proposals to the text draftsman.



## → Urgent reforms

These proposals were compiled based on the numerous individual complaints on this issue, but also on some recommendations by field observers (including regional delegate Mediators), as well as the proposals by national pensions fund. Their specificity? They all aim to correct some unjust and inequitable situations, the excessive rigidity of certain principles which result in the deprivation of legitimately expected rights or in some unequal treatments based on the contributors' affiliation scheme.

### Making more equitable the indemnity paid to victims of personal injury

There are more than ten systems of indemnifying victims of personal injury, with some conflicting rules, and prejudices which are not evaluated in the same manner according to the relevant jurisdictions or organisations and which in the end result in considerable inequities. Thus, two persons with a similar body injury may obtain a noticeably different compensation, depending on whether the compensation is decided upon by a court of law or amicably, but also through the same settlement channel, depending on the geographic location of the victims, the jurisdictional venue or even the assistance they had been given.

In the face of the prejudicial consequences of this situation, the Mediator of the French Republic has made some reform proposals aimed if not to merge these systems, at least to make them more consistent and just by proposing, first, to harmonise the methodological tools used to carry out this indemnification and then to improve and reinforce the rights of victims in the different systems. The first aspect is the subject-matter of a proposed law adopted during the first reading by the National Assembly in February 2010 but which is still waiting to be examined by the Senate.

## (Testimonies)

### « The Institution is trying to create more equity. »

"The Institution is an impartial and intransigent observatory of social realities and the impacts of the application of laws on individuals. Decision-makers - the parliament, government - issue general standards without even bothering to anticipate the effects on society. At the Institution we are lucky to be at the later stage of the application of these standards to observe their possible malfunction or unjust and pernicious effect, and identify the existing legal loopholes. Therefore, our work is to help improve social cohesion and the rule of law by rectifying the general standards in order to adapt them to some situations not taken into account. The lawmaker seems to have noticed the importance of this mission, since he has gradually reinforced the prerogatives of the Mediator of the French Republic. The successive Mediators involved themselves fully in their reform mission, which has thus gained much importance and growing visibility.

The institution itself strives to play its role, by making reform proposals on issues which do not encroach upon the partisan field and are then accepted by all political trends. I think, among others, of the reforms on excessive debts of families and on the control of consumer credits, on escheated life insurance policies, bank charges, indemnifying victims of French nuclear tests or asbestos-related diseases, etc. I am particularly proud of our action against domestic violence suffered by women, and against forced marriages. A huge amount of patience is needed to see a reform through. To avoid being discouraged, you must be convinced about the social and legal justice of what you are defending".

Martine Timsit,  
*Director of Studies and Reforms*



# Citizens' lack of knowledge of the law

On the one hand, more and more citizens are feeling helpless in the face of an opaque stack-up of laws since they neither have any reference points nor indicators to help them determine whether these laws apply to their particular situation. On the other hand, the administration also does feel completely helpless at times. Faced with some difficulties of absorbing this legislative inflation, and decoding an ever teeming and complex regulation, it sometimes finds it difficult to find concrete and understandable answers to citizens reaching out to it. The Mediator of the French Republic tries to restore dialogue and communication between both parties.

## Access to medical records still a problem

Accessing the medical record of a patient and his survivors is still a source of complications. First, the eight days deadline after which the required information must be communicated when it concerns a hospitalisation that dates back less than five years is too long and rarely respected. This causes disappointment among patients and their survivors, if they die. This year, the Mediator of the French Republic submitted a reform proposal at the Health Ministry.

Moreover, the information contained in the file and which may, especially after the death of a patient, enlighten his relatives are too often sibylline. Article L.1110-4 of the public health code stipulates that *"medical secrecy shall not prevent the delivery of information about a deceased person to his survivors"*. However, the law adds that only the information required to attain the objective pursued by the survivors may be communicated; but they too often clash with the medical authority in charge of determining the content to be communicated to them. This is followed by protests which will tend to worsen, especially as too often the grounds for rejecting the survivors' request are not stated, contrary to the specifications of the regulation.

To improve this situation, the Mediator of the French Republic recommends, on the one hand, that hospitals appoint a representative in charge of examining the complaints, or create a unit in charge of communicating medical records within a section dedicated to their centralisation, and, on the other hand, that the law

of 4 March 2002 be completed by specifying the content of a communication requested by the survivors.

## The right to "die": an unrecognised law

In 2010, the Healthcare Security and Safety Unit of the Mediator of the French Republic received about fifty testimonies about an issue that concerns both families and healthcare personnel: the main provisions of the 2005 Leonetti law on end of life are often ignored or misunderstood and are, therefore, insufficiently applied. For instance, users like healthcare professionals seem not to know the role or even the existence of a confidant whom a patient may appoint to collect the expression of his last wishes. The professionals are even often suspicious of instructions written in advance by a healthy patient who is not capable of planning towards the advanced phase of a serious illness.

## A delicate difference between "leaving someone to die" and "making someone die"

While the beneficial character of terminal care is incontestable, healthcare personnel still seem to find it difficult to identify the right time to put it in place. Moreover, it is still not easy to determine the real nature of a request "to allow someone die": a desire to avoid relentless treatment or a desire to get it over with and thus "make someone die"? Everything then seems to be a question of appreciation, perception, leaving

a large room for subjectivity. Several doctors have expressed their fear of being suspected of practising euthanasia. This fear is justified, especially if the decision to limit or stop a treatment stems from a deliberation by the nursing team taking into account the wish of the patient, the opinion of the patient's confidant and family, it is taken by the doctor in charge of the patient. The fact that the doctor has to take the final decision makes people to think that the patient has virtual rights: the doctor may take a decision contrary to his wish.

### A vital prognosis rejected by parents of a premature baby

The Mediator of the French Republic was contacted by the neonatal reanimation team of a hospital as well as its management to untangle in the most serene manner this complex and tragic situation.

Mrs B., put to bed prematurely, at the hospital of X after twenty-six weeks, a little boy, whose state was rapidly complicated by a particularly serious intraventricular cerebral haemorrhage. The medical team of the neonatal reanimation unit informed the parents several times that their child had very serious cerebral lesions and that although it continued its biological life with heartbeats, respiratory movements, sometimes deglutition movements, its brain no longer commanded anything.

In this dramatic situation in which the functional prognosis was very unfavourable, the idea to refrain from intensive care or to stop the treatment was suddenly put forward. Such a decision, if it had to be taken, was based on an argumentation discussed collectively with the nursing team and the family, specifying that investigative or nursing acts should not be continued out of unreasonable obstinacy. The family violently opposed this decision, considering it unbearable.

A joint mediation, at the initiative of the Healthcare Unit, with the head of the neonatal reanimation section of the hospital of X. and the family concluded that it was preferable "to export the problem" in order to calm the atmosphere. In other words, to transfer the child to the neonatal reanimation unit of another hospital. In fact, the objective was to create the conditions necessary to appease the family and get it to accept the situation.

### Prevented from bidding farewell to his relatives

The Mediator of the French Republic was contacted by a family which felt that the medical team of the hospital where one of its members had died had deprived it of its right to bid farewell to the deceased.

Mr C. was twice operated upon for brain tumour. The result was a partial but permanent paralysis of half of his body. After several years without any major event, Mr C. started having acute mental derangement. Intracerebral bleeding was diagnosed. After a multidisciplinary staff meeting, the surgical team decided that no intervention could be performed, and Mr C. was transferred to a re-education centre, whereas his neurological state was deteriorating. This transfer had been decided upon without the patient being informed about a possible end of life and without the doctor at the centre being informed about a possibly fatal prognosis. Mr C. died a few days after being admitted in this functional re-education centre. The absence of patient information by the healthcare professionals prevented the patient from having this last part of life and from having access to appropriate terminal care. The family, not informed either, was not prepared to face the suffering inflicted on relatives.

After analysing the patient's medical record, the Healthcare Safety and Security Unit detected a certain number of communication malfunctions between the medical teams and the family. First of all, he started by restoring dialogue between the parties.

### The principle of secularity difficult to enforce in hospitals

In 2010, the attention of the Healthcare Safety and Security Unit was drawn to a new and alarming issue: some nursing staff members were wearing conspicuous external religious signs whereas the freedom of expression and action according to staff members' religious beliefs is highly restricted by the circular dated 2 February 2005 on the secularity of hospitals.

Moreover, some patients' religious beliefs are sometimes difficult to reconcile with medical practices. Staff members are obliged to adapt to certain rites: postpone some treatments because the patient must say his prayers, postpone the taking of blood samples because the patient must observe Ramadan, refusal by certain patients to be examined by a man or to unveil or even to undress.

The Mediator of the French Republic recommends the introduction of referents between hospitals and the different allegiances, in order to create a balance between the convictions of one party and the regulations of the other parties.

# A law not always applicable

Unlike the principle of law which is applicable to all on the same conditions, the multiplication of regulations and circulars lead to contradictory situations in which there is a gap between the law and the objectives of government policies as well as the resources used in the field, thus making it both anachronistic and inapplicable.

## A law not applicable due to want of anticipation

When the modification of a regulation is not accompanied by transitory measures and does not anticipate the conditions necessary for its application, the law becomes inapplicable and gives rise to some strenuous and complicated procedures.

### The profession of dentist inaccessible to holders of diplomas obtained outside the European Union

The condition for exercising the profession of dentist is regulated in France. The exercise of the profession is subject to a ministerial authorisation. Holders of a diploma obtained outside the European Union may exercise their profession, provided they are proficient in French language and pass a knowledge exam. Since the amendment of Article L.4111-2 of the public health code through Law 2009-879 of 21 July 2009 on hospital reform, they are also required to work for one year in France, in an organisation authorised to train interns.

Miss K. and fifteen other persons are on the list of those that passed the French language proficiency exams in the 2009 session. Although this legal amendment was made after the exams had been taken and as no transitory measure had been planned for examining the files of the 2009 session laureates, the administration reproached them of not having exercised for one year in France.

In March 2010, the Ministry of Health rejected their application for authorisation to exercise their profession. This decision was suspended on 20 August 2010 by the interim injunction judge

of the administrative court of Paris, who asked the Ministry of Health to make it possible for Miss K. and her colleagues to work for one year in France or to take account of the functions exercised prior to the exams. The order of 20 August 2010 is enforceable despite the appeal filed by the Ministry of Health. The services of the Mediator of the French Republic immediately contacted the services of the Health Ministry so they can be proposed a venue for the exercise of this one-year function. Alerted by the Mediator of the French Republic to the complainants stay status, the ministry sent, on 4 October 2010, an individual attestation specifying the situation of each of them, in order to facilitate their procedures at the prefectures. Since the Council of State has confirmed the order issued by the administrative court, it is now necessary to check whether the functions exercised prior to the exams have been taken into account or, where applicable, whether the venues for the exercise of the one-year function have been found.

## A law unsuitable for the changes in society

The creation of new online services, the rapid changes in the field of new technologies, the networking outside the traditional channels are some of the many features that characterise the changes in our society. These changes have ushered in new cases which the law, designed according to old models, has not always expected. Without going into a known and identified framework, these cases cannot be analysed using the method applied by the administration, and the inadequate handling thereof is creating some malfunctions and inequalities.



### How to identify buying and selling on the internet?

The regular sale of second-hand clothes on the internet has resulted in a tax adjustment and a call for VAT. The tax authorities considered this a clandestine buying and selling activity between 2002 and 2005. When the matter was referred to him, the Mediator of the French Republic reminded the administration that it was obliged to prove the existence of an activity which had not been declared. Now, despite the legal and material resources at the disposal of the tax administration, the Mediator of the French Republic noticed that it could not produce any evidence of purchase proving that buying and selling had taken place.

He also pointed out that the legal and fiscal status of sales made on the internet was very unclear for the period in question and even for other periods, and asked that these uncertainties be taken into account while assessing the situation. After the Mediator of the French Republic had requested for a re-examination of the situation, the general directorate for public funds proposed a transactional settlement based on a best sales assessment. It retained for 2004 to 2005 a profit margin of 72% instead of the 20% estimated initially, and decided to grant an 80% reduction on the income tax and VAT for 2003 to 2005.

### A law which cannot be applied due to lack of resources

The law sometimes creates some expectations which opens up some rights without so much providing the means of satisfying them. In fact, there is a distortion between what the law says and the resources made available to meet its ambitions. This is, among others, the case of school life assistants (AVS), whose positions have been created to facilitate the integration of disabled children into the school system. Sometimes departmental disabled peoples' homes (MDPH) decide to bear the inherent costs, but will never do so due to lack of resources from the Education Ministry, a malfunction of which the children are the first victims.

### No school-life assistance (AVS) for disabled children

A delegate in Bouches-du-Rhône recently drew the attention of the Mediator of the French Republic to the problems encountered by parents of disabled children attending first-degree private schools under contract, for whom the MDPH had recognised the right to benefit from an AVS due to their disability but who cannot be recruited due to the absence of transfer of credits.

This is how family D., whose son had benefited from AVS assistance since 2008, was refused this aid for 2010, despite a decision in favour of renewing this aid, because the total annual credit

granted to private schools under contract had already been spent.

In a situation in which the decision-maker is not the payer, it is understandable that the parents concerned be increasingly indignant when they learn that their child will be deprived of the AVS the necessity of which had been recognised by the MDPH.

### Job cuts and failing system: malfunction in the registration of newly acquired vehicles

This gap is equally noticeable in the new vehicle registration system (SIV), started in April 2009 for new vehicles then in October 2009 for used vehicles. By authorising vehicle dealers to issue car ownership certificates, this new system was supposed to simplify the procedures and reduce the work load of prefecture officials. In reality, it continues to slow down the procedures, because prefects have reduced their staff without anticipating that most of the registrations of used vehicles will be made at the prefectures, and the failures of an undersized computer system which have hampered the processing of the documents.

### A law which cannot be applied homogeneously

The disparity in the resources available to regional authorities can lead to huge differences in the application of law in the various regions. Result: ministerial instructions are not identically applied in all the communities and institutions. Beyond the local specificities, this situation creates a breakdown in territorial equity and equality of treatment by the public service.

### An allowance which varies according to circumstances

The same request for disability benefits may be handled differently, depending on the region. A person living in the east of France had his level of disability recognised at 50% whereas the same clinical case with a member of his family was recognised at 80% in Corsica. The diversity of the departments' financial state and the huge part allocated to regional councils to finance these structures result in a huge territorial disparity: if the MDPH is active and sufficiently staffed, the files are better analysed and are not subjected to massive processing, which leads to lower rates. In this case, appealing against the commission's decision is the only way to see that an individual case is correctly examined and possibly have a level of disability re-evaluated. In other departments, it is the determination of disability criteria by expert doctors that is questioned.

## From mediation to reform

# Reforms necessary to fill in legal loopholes

The absence of an overview of the legal responses to social problem, coupled with the stacking-up of badly tallying laws, may lead to a legal no man's land. French society, so prompt in terms of producing laws, leaves some wide gaps. The users, who face them at the bend of a life hazard, feel abandoned or consider themselves victims of unjust and absurd discriminations.

### The need to reinforce the legal control of legal autopsies

The attention of the Mediator of the French Republic is drawn to the flaws in the legal status of legal autopsies and the malfunctions which these flaws might lead to.

A "legal" or "medico-legal" autopsy is an autopsy performed under legal mandate within the framework of an investigation, especially to determine the cause of death if it is unknown or suspicious. Now, there are no specifications in the Code of Criminal Procedure concerning legal autopsies which violate the integrity of a corpse, especially if the body is returned to its family in an inconvenient and shocking state. This lack of standardised control is all the more surprising since the legal status of medical autopsies (conducted for healthcare or scientific reasons) was clarified by the bioethics law of 6 August 2004.

In view of this situation, the Mediator of the French Republic has recommended the adoption of the following measures:

- Extending legal autopsies to the doctor's obligation to ensure that a body is returned in the best situation possible
- Implementing in French law the jurisprudence of the European

Convention on Human Rights pertaining to the right of relatives to obtain the return of a deceased person's body within an appropriate period

- Defining a special legal status for human samples.

This reform proposal has directly inspired two legal proposals. Thanks to an amendment adopted by the Senate law commission within the framework of the examination of the proposed law on the simplification and clarification of the right, it is now integrated into this text.

### Clarifying the status of stillborn babies

The Mediator of the French Republic has again drawn the attention of public authorities to the need to adapt the legal status of stillborn babies in order to specify the conditions for registering them in the civil status record and better assist the families of stillborn babies.

The Mediator of the French Republic has been worrying since 2005 about the weakness and iniquity of the legal status of "stillborn babies", i.e. babies who had died before their birth was declared to the civil status office. Although the system for obtaining a birth certificate for stillborn babies was changed

through a decree of August 2008, the notion of birth, to which the issuing of this certificate is subjected, remains vague. In particular, the notion of viability on which depends the recognition of the legal status granted to a child "born alive and viable" is no longer defined in any law! In other words it is subject to the fluctuating appreciation of medical authorities.

Deploping the existing legal insecurity surrounding this issue, the Mediator of the French Republic referred it to the mission in charge of reviewing bioethics laws, which has included these problems in their report.

### Allowing the dumb to establish an authentic will

The attention of the Mediator of the French Republic has been drawn to the existing impossibility of the dumb to resort to the authentic form in order to establish their will.

Pursuant to Article 972 of the Civil Code, a will is an official deed which must be dictated to the notary public by the testator in person. This condition is strictly interpreted by the Appeal court, which has decided that "the testator must express in person and verbally not through simple signs, regardless of whether they are expressive and unambiguous".

## → *planned reforms*

The result is that this provision deprives people who cannot make this verbal declaration of the possibility to establish this authentic will. Wishing to improve this situation which discriminates against people affected by this disability, the Mediator of the French Republic has sent to the Justice ministry some proposals aimed at allowing the persons concerned to be assisted by an authorised sign-language interpreter or interpreter in their native language, or to write this will in the presence of the notary public and witnesses. It is surprising to see that this legal loophole has still not been filled.

### Defining the rules on family reunification for refugees

When the attention of the Mediator of the French Republic is drawn to the procedural gaps which must enable refugees to be joined by their family members...

In June 2010, the Mediator of the French Republic made a reform proposal to the Foreign affaires ministry and to the immigration ministry. His wish? That the procedure for a family coming to join a refugee be finally defined clearly in the immigration and asylum code so that refugees can exercise their fundamental right to lead a normal family life, as prescribed by the European Court of Human Rights. This is not yet the case; the procedure for refugees' family reunification is not regulated at all. Although some administrative instructions have been issued by the ministries, this legal gap may result in too restrictive interpretations by some consular services which may be prejudicial to the parties concerned, especially in two aspects: the date on which the age of the refugees' children are taken

into account and the conception of the notion of "family". The position of the Mediator, on the first point, has been confirmed by a Council of State decision. In fact, in its decision of 25 May 2010, it stated that the age of a child which may benefit from family reunification (and who must be a minor) shall be based on the date on which this procedure was started, and not on the date on which the visa request was submitted, which may be several months later.

# Is the gap widening between government actions and citizens' expectations?

In its public service mission the administration has the duty to make the law accessible to a majority of citizens. Whereas its priority should be to adapt the system to the needs of users, the Mediator of the French Republic has noticed through the cases recorded in the field that reverse was too often the case. The public service is still characterised by excessive precaution by officials, administrative sluggishness and stubbornness, thus leading to situations of injustice and dehumanisation. In turn destabilised by a system that often gives priority to massive processing over individual situation, the officials themselves hide behind the formalism and security of a law applied without proper judgement. On the user's side, the emergence of social consumerism is increasingly pushing complainants to ask for the law to be changed in favour of individual interest to the detriment of collective interest. Therefore, it is this lack of dialogue and mutual attention that is creating the gap. By restoring the link between users and administrations, by promoting the generalisation of reception and local centres, the Mediator has revived the republican pact.

# Overzealousness and mechanistic application of law

Faced with the complexity of laws which are first imposed on the official before being imposed on the user, the official sometimes has no other solution than to be overcautious, an attitude that ends up being excessive and a source of iniquities. The huge number of laws tends to tense up the positions of the administration which, out of fear of the upper hierarchy, the process or even media lynching, prefers to abandon all sense of responsibility rather than expose itself to the risk of criticism, creating bottleneck situations and confrontations. Trivialising such infringements gives rise to mistrust and opportunism, fully contrary to the missions of a rule of law. By securing his decision, his own person or department, the official gives priority to the comfort of the system to the detriment of that of the individual. In this context, the Mediator of the French Republic is calling for a real change of culture in order to reverse these logics and focus the public service on the user, henceforth at the heart of the system.



## The procedures for renewing identity cards and passports relaxed at last

Since the introduction of secure national identity cards and passports, the administrative authority had been excessively cautious to renew the identity documents of French citizens born outside France or with one parent born outside France, in reality quite often French by birth. The administration required these persons to prove their nationality whereas they were holding a voter's card, an old national ID card or passport, or even had a job which required being a French citizen. The administration required the production of a French citizenship certificate, a document often hard to obtain after a long and tedious process.

Faced with dozens of complaints each year, the Mediator of the French Republic denounced this situation and asked for the creation of clear and applicable rules for all the administrations concerned. Decree 2010-506 of 18 May 2010, which replaced numerous unapplied circulars, has finally relaxed the conditions for issuing or renewing national ID cards or passports.

Therefore, in case of renewal, holders of a laminated national ID cards or electronic or biometric passports no longer need to produce further proof of nationality or ...



- ... civil status. If it becomes absolutely necessary, the nationality is first verified using the documentary evidence that is easiest to obtain by the user.

### Applying the law strictly without proper judgement

Social security organisations and administrations are dependent upon production logics which no longer let them handle anomalies, special cases, atypical life courses.

The caution of a civil servant asking for additional documentary evidence is then regarded as a suspicion or rigid formalism which defies common sense, considering the type of documents required and how hard they are to obtain. It is important for the administration to overcome this mistrust so as to leave this spiral of rejection a priori, of control a posteriori by adopting the policy of sanction in case of error. The power of the administration does not lie in its capacity to say yes or no but in its ability to explain how. For the civil servant, asking an applicant to produce numerous documents implies an extreme security of decisions meant first of all to protect his responsibility and comfort to the detriment of the rights of citizens.

### Visa request rejected even when all the criteria are met

Mr K., a French doctor, earns enough money to meet the needs of his family, especially his mother, Mrs K., a foreigner living in her home country. Mrs K. comes to France from time to time for a short visit to her son in her capacity as "a dependent ascendant". In 2009, she sent a visa application as usual to the consulate, as a dependent ascendant of a French citizen.

The consulate rejected her application, stating that she did not have enough personal income to be considered as an independent ascendant of a French citizen. It also refused to re-examine the situation of Mrs K. and recommended that she refer the matter to the appeal commission in charge of visa application rejection, which takes about fifteen months to examine such cases. After the intervention of the Mediator of the French Republic, the consulate accepted to re-examine Mrs K.'s application as a French citizen's dependent ascendant and issued her with the requested visa since she met the required conditions.

## The Mediator's view



## Changing from a culture of cases handled to a culture of services rendered

« Citizens' sufferings cannot be managed through the "almighty" technology. They are managed through an equation in which the heart, proximity and the human being balance the distance created by technology. Today, our services can no longer be summed up as administrative machines. What makes

the public service sustainable is not its status but the quality of service rendered. This requires the respect of public officials by public service management and the orientation of human resources towards a change in service culture. What characterises this service is not the handling of a file but the soothing of a person by

processing his case. Just like a doctor does not manage a heart but a soul that has heart problems, the administration should no longer manage just a file but must also take account of the human problems behind it. »

### An agricultural enterprise endangered by excessive formalism

After the death of her husband, a farmer, Mrs N. immediately expressed her wish to continue with the family business by taking the necessary steps at the administration. However, this latter required that the descent be determined through a court order, which was produced after the period fixed by the Community regulation to obtain the payment of the benefits which Mrs N. was entitled to. The enterprise was thus going to lose a big part of the benefits, that is the right to a one-time payment (DPU).

The Mediator of the French Republic intervened at the ministry of agriculture, arguing that the circulars issued in that respect should better take into account the transfer of these rights through inheritance by giving priority to undivided ownership. The minister accepted the arguments of the Mediator of the French Republic and the family enterprise was paid its DPU, back-dated to 2009, and thus has an annual profit of 29,175 euros.

## (Testimonies)

### "The General-matters section always handles different cases."

"The General-matters section must handle about twenty-four new cases a month concerning a large variety of litigation: a company contesting the code assigned to it by INSEE (a French statistics organisation), a private individual asking to be indemnified by the local government because he fell into a gully, a barkeeper wishing to organise a game of poker in his bar, a landlord whose land has been crossed by a ski trail, etc.

No matter the field or originality of the issue, the first step in the examination of a case is the search for laws applicable to the case. In case of particularly technical litigation, like the approval of a vehicle concept, we try to establish contact between the administration and the complainant in order to find a negotiated solution acceptable to all. However, we are not empowered to substitute our opinion for that of the administration.

When the examination does not highlight any error or malfunction, we help the citizens to understand the legal context and the reasons for the administration's decision, so that the decision is not perceived as an arbitrary position."

Anne-Gaëlle Mauclair,  
*Adviser, General-matters section*



# Decisions taken regardless of the law

Poor knowledge of the law, or even insistence in some cases to maintain a position against the opinion of the Mediator of the French Republic or court decisions, sometimes show the wish of some administrations and elected representatives to escape the law. In his appeasement role, the Mediator of the French Republic ensures that Human rights are respected and guides the decisions of administrations and local authorities in order to find a solution that offers legal security.

## Poor knowledge of the law by elected representatives

In 2010, this tendency was particularly noticed by the General-matters section of the Mediator of the French Republic. The Mediator of the French Republic had to make several reminders for the elected representatives to change their behaviour. This was, for instance, the case in this town council which, after deciding to pre-empt the selling price of a building on which it later noticed an imminent peril, officially asked the owners to take some measures for public safety, whereas it is the responsibility of the local authority, the owner of the property, to take this security measure once the transfer of property had been rightfully completed on the date of exercise of the right of pre-emption, due to the agreement thereon and on the price.

But sometimes, despite some reminders from the Mediator of the French Republic, some local authorities maintain their position, even if it means acting illegally. This was the problem encountered by an owner of a second home jointly owned with his brothers and sisters then alone as from 2009, whom the town council had refused to register on the town's electors lists. The Mediator of the French Republic argued that the fact that the property was jointly owned did not justify the refusal to register the owner on the electors list since the applicant had been paying one of the town's direct contribution for five years. Despite being reminded about the applicable law, the mayor maintained his decision, arguing that this registration on the town's roles only dated to 2009, a statement contested by the applicant who also produced the relevant documentary evidence. It was only on a second occasion that the mayor finally accepted to present the request to the relevant commission.

## Improper school map

A family wanted its two children to be registered at the school in their area. The town council refused and automatically registered the two children in another area, one kilometre away, citing its desire to create a balance between the number of pupils in both areas, since one of them might be forced to close due to a fall in the number of pupils, and also its desire to create a mixed society.

The town council agrees that it must reorganise the entire school map, bearing in mind the current and future demographic and urban changes. It has promised to submit this new organisation to the municipal council before the start of the 2011 school year. But the parents still do not understand this decision which they consider arbitrary, having partly given priority to their choice of residence in view of the existing school map.

## Some extensively interpreted criteria

In their application of regulations, some administrations make an interpretation of laws that go beyond their spirit and objective. On several occasions in 2010, the attention of the Mediator of the French Republic was drawn to family reunification requests made by foreign families and which had been rejected by different prefects based on some criteria not explicitly stipulated in the laws. These laws authorise family reunification on the following conditions: no violation of public order, regular stay for at least eighteen months, availability of minimum resources and accommodation according to criteria on surface area, habitability and comfort (heating

system, drinkable water, waste water disposal, etc.). Now, some prefectures have made an unusual interpretation of the criteria of accommodation and of the manner in which a family must be lodged there.

### A debatable rejection of family reunification request

In a first case, a father and X national wanted to receive his two pre-teenage sons in a 40 m<sup>2</sup> flat by making available to them a 15 m<sup>2</sup> room and reserving for himself a couch in the living room. Although the flat met all the required criteria, the prefect rejected his request for family reunification, arguing that *"the flat, which only consisted of one room for an adult and two children, did not meet the minimum conditions for comfort and habitability"*.

In a second case, a couple and X national wanted to receive two children aged 3 and 5 in its flat which equally met the afore-mentioned criteria. Both children were to share the same 10 m<sup>2</sup> room. The prefect rejected the family reunification request stating that *"the presence of two children of opposite sex in one and the same room with limited surface area did not meet the normal reception criteria for a similar family in the same geographic area"*.

The assessment seems all the more atypical that it concerns some densely populated departments in which it is often frequent for two very young children of opposite sex to share the same room while their parents sleep in the living room, thus leaving one room for their children. Following the intervention of the services of the Mediator of the French Republic, the prefect

reversed his decision for the first case, but maintained his decision for the second case.

### Absence of legal watchdog

Some administrative services have a poor knowledge of changes in law. Rules and procedures change but they do not adapt to them. The absence of legal monitoring work can complicate or even disrupt citizens' life.

Mrs A. was declared at least 80% disabled in October 1975. As a result, she has been receiving her early retirement benefits and her old-age pension within the farmers' scheme since 1st July 2006, at the age of 57.

On 29 June 2007, she asked Mutualité sociale agricole (MSA) - the farmers' pension scheme - to pay her the pension increment payable to people going on early retirement due to disability, in accordance with Article L 351-1-3 of the Social Security Code resulting from Law 2005-102 of 11 February 2005.

MSA informed her that her request could not be granted because it was awaiting some specifications from the Ministry of Agriculture concerning the modalities for implementing these additional pension benefits. Mrs A. had to wait until August 2009, when the document expected by the local organisation would be received, to be paid the pension benefits she was entitled to!

## The Mediator's view

# An elected representative is a guarantee of responsibility and not of superiority

« We often talk of what people do with power but never enough about what power makes of them. A certain number of elected representatives, including local ones, are not aware of the fact that they are vested with the power to respect and enforce the law but never the power to impose their own law. In our society today, what is actually important is that all those

vested with power must understand that it is not a guarantee of superiority but of responsibility. Today, the statutory dimension of their authority does not make this authority acceptable. It is rather the moral, exemplary, and ethical dimension of this authority that makes people to accept them. It is only when elected representatives themselves respect

the law that the citizens agree to comply with the law. For both the elected representative and the citizen, this constitutes a challenge of mutual respect which can only be taken up if a superior law is respected by all. »

# Too quick and too slow procedures

With too speedy and too sluggish procedures, the notion of administrative time often seems to be out of line with that of the citizens. The administration imposes implacable rigour and respect of deadlines on citizens. These are actually the guarantee of equal treatment, since the same deadlines are imposed on all. Nevertheless, the least delay is most often sanctioned through penalising procedures (suspension of rights, penalties or payment increments, etc.).

On the other hand, users, always obliged to adapt to injunctions and to the rhythm of an economic world under pressure, are often helpless in the face of the sluggishness and rigidity of the administration which nobody requires to justify its delays or sluggishness and which is unable to impose on itself the rigour it knows very well how to impose on citizens.



## A penalty for one-minute delay

On 2 March 2010, Mrs M. was fined for the absence of a ticket while she was actually going to obtain a ticket from the ticket machine, as was confirmed by the fine issued at 11:53 and the payment ticket obtained at 11:54. Mrs M. regularised her situation on the spot, with the official noting at the stub of his notebook that Mrs M. was about to obtain a ticket when he arrived. However, the official asked her to write a letter explaining the situation and asking for the fine to be cancelled. She did but received a rejection letter asking her to pay the fine. When the matter was referred to the delegate Mediator of Pyrénées-Atlantiques, he asked the public prosecutor's office to re-examine the issue; this latter then accepted to grant Mrs M.'s request.

## Excessive administrative inertia

The sluggishness of administrative procedures and complexity of tasks sometimes hamper the dynamism of administrative officials and their desire to render services to users. As a result, citizens cannot always rely on them to find solutions to their problems and to obtain their entitlements.

### Each organisation denies its responsibility

Miss A. was indemnified several times by Crous (a social security organisation), following her activity in the public sector. At the same time she continued to work in a private company.

At the end of her last employment contract, she registered as a job-seeker and submitted a new application for unemployment benefits, which was rejected by Pôle Emploi and Crous (organisations in charge of unemployment benefits). In fact, this organisation claimed that she had more rights with Pôle Emploi, while this latter thought that she was receiving old benefits for her activity in the public sector, above the new entitlements resulting from her activity in the private sector.

Since she had not received any payments since December 2008, she sought the help of the local delegate Mediator, who, unable to settle this matter, referred it to the Institution's headquarters. After exchanging ideas and re-examining the case, the Mediator of the French Republic convinced the Crous to indemnify Miss A. until she resumed work.

### Difficult to integrate users' new status

The importance of professional mobility is emphasised during discussions. The new heroes of the professional world are said to be those who can bounce back, change orientation, and imagine a professional future different from the ones they are used to. The tendency is neither to remain rigid in a function nor to be attached to a status. In reality, however, it is difficult to change

from one status to the other. This is particularly the case for civil servants, who enjoy a specific social protection. When they leave the civil service to work in private companies, because insecurity is also gaining grounds in their area, they are faced with all sorts of administrative setbacks.

### Bad coordination of social welfare schemes

Mrs K. had to seek the help of the Mediator of the French Republic in order to be paid her maternity allowance. Until the end of January 2009, Mrs K. was affiliated to Caisse nationale militaire de Sécurité sociale (CNMSS) - the social security scheme for the army - in her capacity as a finance officer at a rifle regiment. When she left the army, she immediately started working with a financial company. She declared her new situation to the CPAM (social security office) of Hautes-Alpes on 20 April 2009. Then after declaring her pregnancy to this organisation, applied for the maternity leave allowance as from 5 May 2009.

However, CPAM refused to pay her the daily allowance payable within the framework of the maternity insurance arguing that she had not been affiliated to the national scheme for a minimum period of ten months on the presumed date of delivery.

She contested this decision at the amicable settlement board, based on her previous military activity. Since this decision was confirmed by the board, Mrs K. referred the matter to the social security tribunal (Tass) of Hautes-Alpes. ...

## The Mediator's view



## The administration should emulate the citizens' good examples

« The administration must impose on itself what it imposes on citizens. When the citizen pays late, tax authorities require him to pay a fine, or local authorities to pay lateness interests. I very much believe in the exemplarity of virtue. If the administration wants to be respected, it must be virtuous and be sanctioned in case of error. Why should the one

waiting be penalised for a bad payer's behaviour? There is here a double-penalty effect. The problem of the bad-payer State compounds that of the bad-employer State: it is unacceptable that a temporary employee recruited in September be paid only in February. »

...

However, since she had moved during the procedure, this court declared itself not empowered to handle the case and forwarded her request to the Tass in charge of her new place of residence. It was then that the services of the Mediator of the French Republic intervened to help her out of this administrative bottleneck and enable her obtain the benefits to which she was entitled.

### When the bad-payer State destabilises the health of companies

In a situation in which economic life is increasingly demanding and difficult as a result of the impact of the crisis, the administration often sticks to its own rhythm, quite far from reality. It is unable to adapt to the economic rhythm imposed on all the companies. Thus, when the administration is late in the payment of indemnities or invoices a company's funds may be endangered.

#### An SME endangered due to the State's failure to pay

A moving company regularly working for the State or public organisations sought the help of the Mediator of the French Republic because of the excessive delay in the payment of its invoices. This default in payment is causing a serious financial problem, especially for the payment of future salaries, a particularly penalising situation in this period of crisis. The Mediator of the French Republic reminds companies that, concerning public orders, the amounts payable to companies must be paid within a maximum of thirty

days for the State and its non-industrial and non-commercial public organisations; where this payment deadline is not respected, said companies are entitled to late payment penalties. Part of the invoices concerning INSEE (a statistics organisation) was finally paid while the rest took several months due to lack of funds.

### Lack of coordination between administrations

When a case is deadlocked due to lack of coordination between administrations, it is not rare to notice that some of the public services concerned do not take any initiative to eliminate the misunderstandings, even when explicitly requested for by a third party. Thus, a treasurer which regularly received the documents and proofs required to debit the bank account of a taxpaying couple had never forwarded these documents to the relevant collection service. The result was that every year the payment was rejected, and the tax amount increased.

#### Six years to register some bank details

Mr and Mrs K., living abroad, own a residence in France since 2003. Since they are required to pay a property tax, they took all the necessary steps to pay said tax right from the onset through bank transfer. Now, every year, the collection centre in Creteil rejected this payment, stating that the bank details were not useable and imposed a 10% increment. However, every year Mr and Mrs K. asked the local treasury of S. to remedy this situation, by sending valid bank details. They paid their tax by cheque, and each time the treasury of S. included the 10% increase,

## The Mediator's view

**It is not the users that must adapt to the administration's comfort rather the administration must adapt to the users' comfort**



How to create a balance between administrative offer and the citizens needs? The administration must educate the citizens. This does not mean working more but reviewing its working methods. In the logic of administrative management in

which only the useful time counts, an account is kept of the time spent on a case considering that the time spent listening to or trying to understand the citizens is deemed wasted. Now, it is clear in a lot of areas like the medical field that the time spent

with a patient is vital to security. This excessive recording of useful time which is technically justifiable is humanly unjustifiable.





assuring them that their tax account had been regularised.

But in 2009, like in the past six years, Mr and Mrs K. received a rejection of bank transfer due to "unexploitable bank details". Exasperated by the Treasury's inability to correct its error, the couple sought the help of the Mediator of the French Republic, who intervened at the Treasury. The Treasury replied that the bank details of Mr and Mrs K. could only be rectified by sending them again, this time, to the collection centre in Creteil.

### Critical situation: sluggishness that may become tragic

Certain situations show how difficult it is for a public-service organisation to fulfil its responsibilities and symmetrically highlight the obstacles encountered by citizens, sometimes the most needy, to have their most fundamental rights recognised.

The bottlenecks, generalised delays noticed in certain administrations show that the negligence of the citizen by the public authorities may have particularly serious consequences on the most fragile and vulnerable citizens. A pension benefit beneficiary in a delicate financial situation was unable to obtain his upgrade and was obliged to produce three times the same document to meet the demand for some documentary evidence wrongly declared missing. Despite repeated requests by the delegate Mediator of the Var, his letters were not replied to. It was only eight months after the first request that the office of Cram (now Carsat since the beginning of July 2010) recognised owing the sum of 9,358.49 euros and

agreed to pay him the sum of 532.68 euros every month. In a society characterised more than ever by insecurity, a lot of cases confirm the alarming impacts of these excesses.

### Renewing a blocked allowance

Mrs D., a visually impaired person, submitted a request for the renewal of the disabled adult benefits as well as the third-party compensation allowance. She was paid the first allowance without interruption, but the second one remained unpaid as at 9 April 2010 whereas the file had been declared complete upon reception, on 8 July 2009, and the request for compensatory allowance was to leave on 11 May 2009.

The services of the department, the paying organisation, approached by Mrs D., confirmed that it was awaiting the MDPH notification for any payment. 90% disabled, with a school-aged child, Mrs D. desperately contacted the delegate Mediator of Seine-Saint-Denis, who asked the services of the MDPH to re-examine this case again and accelerate the procedures in order to put an end to this unbearable situation. On 22 April, the MDPH informed Mrs D. and the delegate Mediator that the commission had met on 6 April 2010 and that the notification allowed a speedy and retroactive payment of the allowance.



# Dehumanised procedures

The standardisation of procedures, which encourage massive processing, leads to dehumanisation. The administration can sometimes be likened to a machine that crushes anything outside standard procedures. Subjected to a logic of performance and economy of resources, it is no longer able to make out special cases in the large number of cases it is handling. It does not try to detect any possible flaw either; an individual case may turn into a tragedy.

It is often thanks to the services of the Mediator of the French Republic, which act as filters, that administrative officials accept to re-examine certain cases.

## When recovery of funds becomes relentless

Mr H., a civil servant at the Education Ministry, was sent to teach under an expatriate employment contract at a French school in an African country. During a sick leave which ended on 30 November 1992, he was paid the full monthly expatriation allowance instead of half of it. This resulted in an excess payment of which he was notified in a letter dated 26 November 1992. He was also informed that a formal demand to pay would soon be sent to him and he was bound to pay the excess amount upon receiving the demand.

After returning to France and reporting to his original administration on 1st December 1992, Mr H. died on 27 March 1993.

The official demand to reimburse was only sent on 22 September 1995 but was returned with the note "no longer lives at the address indicated".

In January then in May 1998, reminders were sent to the address of Mr H.'s mother asking her to refund the sum in question or face a legal action with a fine. Mr D., Mr H.'s brother, asked for some explanations, among others, about the existence of this debt and the administration's right to ask for a refund, five years after the succession had been settled, of a sum which he was not even sure had not already been reimbursed.

It was only in September 2006 that he received the beginning of a reply and then in October 2006 the entire documentary evidence for the debt. A legal action was started in October 2007 via a bailiff while official demands to pay were sent to him and his mother in April 2008, plus the bailiff's fees!

After the intervention of the Mediator of the French Republic and considering the modest amount claimed, the moral prejudice suffered by the family since the start of this procedure, as well as the mother's old age and low income, a remission of the debt in favour of family H. was requested for. At the end of 2010, the financial controller finally agreed to cancel this debt and stop the legal actions.





## Inaction despite repeated malfunctions

The malfunction of telephone platforms, especially that of the naturalisation department of the prefecture remains a point of tension between the administration and citizens. In some prefectures, despite several interventions by delegate Mediators on several cases, the problems still persist. The problems are only sorted out sporadically and nobody plans to generally review the working of the service.

### The naturalisation department fails to answer a call

Mrs N. had filled in a naturalisation application on 25 August 2005 and tried to obtain an appointment by phone to submit it at the prefecture of Hauts-de-Seine. Since she was unable to obtain an appointment due to the difficulty in reaching the telephone platform, she thought that by getting a new form in 2006 then in 2007 she had more chances of obtaining it. In reality, Mrs N. continued to find it difficult to talk to someone on the phone. Finally, she collected a new naturalisation application on 19 February 2009 and sent her request for appointment by mail. When the problem was referred to him, the delegate Mediator contacted his referent at the prefecture. After a few days, Mrs N. received an invitation to submit her application for the acquisition of French citizenship by decree.

## Extreme situations evaded

Sometimes procedural blindness makes certain officials to be disconnected from reality, by overshadowing certain realities or denying the social and financial destitution or incapacity of some users to fulfil the conditions stipulated by law. The administration has thus lost its ability to pay special attention to people in difficulty. When they come to seek the help of the Mediator of the French Republic, it is often because they have neither been listened to nor heeded elsewhere and expect him to re-create this link.

### Proceedings against a 97 year-old person with 80% disability

A delegate Mediator is contacted about the situation of a person required to pay unwarranted specific disability benefits (APA) amounting to 7,811.88 euros. Aged 97, 80% disabled, living in an old-people's home since 14 January 2004, apparently without any inheritance and with very low income, this person is represented by his niece and does not have enough faculties to follow-up his affaires. The intervention of the delegate Mediator was in vain despite some new arguments taken from the social work and family code as well as from the Civil Code showing that

there is non-compliance with specifications if done in full knowledge of the facts and intentionally. In the same manner, the usefulness of continuing to seek to recover this type of debt considering the profile of the requestor, very old and without resources, had not been examined.

The case was, however, examined free of charge after long deliberations by the departmental council, but gives reason to reflect on the intention of the authority when it persists on its action without fully taking account of the situation of the debtors.

## It is costly to stand out

Wrong deployment of computer tools, lack of system flexibility - some cases reveal the failures that continue to characterise the services' image of negligence. Once a user is in a particular situation that does not fall within the normal massive processing, he is prone to the risk of malfunction and thus of more significant excesses.

### Outstanding payments caused by system failures

On 1st June 2010 Mr A., general manager of a company, alerted the delegate Mediator of the Puy-de-Dôme to some outstanding payments of invoices amounting to 587,000 euros, a large part of which concerns 2009. This company had done some work for Atelier industriel de l'aéronautique, an organisation belonging to the Defence Ministry, based in the Puy-de-Dôme. The problems were said to be due to the installation of the State's accounting and financial information system "Chorus". After he was contacted, the regional director of public finances informed the delegate Mediator that the outstanding payment was going to be effected on 18 June 2010.

# Explaining, communicating: a missing link

50% of users' request for the Mediator's intervention are not admissible. This is what the Admissibility section has noticed via some sixty complaints it receives everyday, at any time of the day.

In fact, since the Mediator of the French Republic introduced the online referral form, users can very easily contact him at any time. However, it seems that half of these forms do not concern the Mediator of the French Republic. Users contact the Institution even when they could sort out their problems with a single phone call, by contacting the existing aid organisations or the ad hoc administrative service. Unfortunately, that is exactly where the shoe pinches.

## A public service that no longer lives up to its name

Contacting the administrations has become complicated. Most of them are equipped with modern communication tools, to adapt them to changes in society. An example is all these interactive voice servers which prompt you to press 1, 2 or 3, before waiting a few minutes to, perhaps, if the line is not cut, be connected to an operator, a telephone platform, or to be forwarded to a virtual desk or an online service. Although they make

it possible to perform administrative tasks without going to the administrative offices, these means of communication help dehumanise the public service. In fact, reception remains a user's entry point in an administrative circuit. It determines the user's next steps. Without any relations between public service officials and users, there is no longer any possible visibility for special cases. In that case, administrations can no longer detect exceptional situations in the large number of cases they handle.

### When an orientation failure leads to an inextricable situation

In 2009, one young man changed his address on the site of Pôle Emploi. He followed strictly the required procedure in all confidence. Nevertheless, his new address was not registered. The result was that he no longer received his unemployment benefits. Worse still: he discovered that since he had failed to reply to an important letter, his registration with Pôle Emploi had been cancelled.

This said, when a user succeeds in talking to an official on phone it is not all that reassuring! Complaints about problems of incomplete, partial or incorrect responses from the administration attest to the administration's shortcomings in terms of communication. The administration does not inform constituents enough about its decisions, both upstream and downstream. Sometimes, the information sent is complex and formulated in such a way that the citizen in good faith ends up paralysed, which creates a new type of incomprehension that often

#### REGIONAL DELEGATES

### Profile of remarkable voluntary delegates

- 75 % are pensioners (80 % of whom are from the public sector).
- 30 % of them are below 60 and 56 % below 65 years.
- 30 % are women.

### Field work all over France

- 286 delegate Mediators all over France
- 428 reception centres (with more than half in sensitive areas)
- 95 corresponding delegates at the MDPHs
- 63 regular delegate-mediator offices opened in prisons
- 101 other prisons served on a case-by-case basis
- All detainees have access to a delegate Mediator of the French Republic since April 2010.

### A voluntary activity

They are paid 350 euros a month for two half-work-days a week and at least an equivalent time for examination work.

results in additional misunderstandings with the administration. Delegate Mediators of the French Republic notice in the field the extent to which this lack of orientation and dialogue obliges them to perform the information and orientation task which every public service is supposed to perform vis-à-vis the citizens.

### Delegate Mediators of the French Republic: educating citizens in the field

The field work done by the 289 regional delegate Mediators is one of the assets of the Institution which, thanks to this regional network, plays its role fully in all the French regions. With more than 63,000 requests a year, delegates Mediators handle between 85 % and 90 % of the Institution's work. There is nothing better than a direct exchange or a visit on site in the presence of the parties concerned to defuse tensions. Their presence as third parties, whose neutrality cannot be doubted, has often ended deadlock situations in local conflicts. The common sense and listening capabilities of these field workers are assets regularly underlined by those who seek their help.

#### One year of mediation to regularise the situation of a young Pakistani

Miss R., born in Pakistan in October 1981 (of a British father and a Pakistani mother) arrived in France a few months later, in May 1982.

She sent a file to the delegate Mediator of the Gard, highlighting her difficulties - within the framework of family reunification - to have her birth certificate registered in the civil status register of foreigners in France, in Nantes - a precondition for applying for the French citizenship through naturalisation. She did not know how to obtain a document that would finally regularise her situation because her father had acquired British citizenship after being "regularised" as the son of a family friend; when Miss R. was born, her parents had made some false declarations to cover up the deception of the previous generation. Since she had always lived in France (her brothers and sisters are French citizens born in France), was engaged to a French, she considered herself fully French and wished to become a French citizen in the eyes of the law.

Given the complexity of this case, the delegate Mediator helped Miss R. to compile a complaint for the attention of the Mediator of the French Republic, via a member of parliament. A few weeks later, the Justice section of the Mediator of the French Republic advised the young lady to refer the matter again to the public prosecutor at the court of first instance of Nîmes, whom the matter had initially been referred to.

Miss R., desperate to obtain a positive response, asked the delegate Mediator to help her. This latter decided to contact the prosecutor by mail. In the absence of a response, he called the prosecutor's office and was told that

## (Testimonies)

"We create some links again where they no longer exist."

"We are neither the administration's prosecutor nor the citizens' advocate; we are conciliators charged with ending deadlock situations and, above all, finding solutions. You have to examine the cases, know all the wheels of bureaucracy and the good referent networks to activate the right levers. We do not intervene in the same way at the office of a prefect, an EDF mediator or social security conciliator. This implies fighting relentlessly, sending reminders relentlessly, knowing how to identify the problem, understanding when the public service has failed in its mission and when a law has not been complied with. 90% of the cases are settled when the administration accepts to re-open the file. Our intervention may also be a source of appeasement for officials when it helps them to correctly close a file which, when wrongly handled, remains a point of conflict. As mediation does not create jurisprudence, officials may accept to follow our proposal exceptionally.

Delegate Mediator since 1994, I have noticed the extent to which requests have changed: on the one hand, we see a pauperisation of a society faced with excessive debts and insecurity. At the same time, access to information and to law has become commonplace among the citizens. Some citizens come to see us with legal documents found on the internet, which they use to back up their complaint. They are often more demanding; motivated by a consumerist logic, they expect the delegate Mediator to handle their complaint based on this same logic, expecting a speedy and effective response.

I also play the role of coordinator and organise in this connection some meetings with about ten delegate Mediators in the region (the Gard, the Vaucluse) on a given topic in the morning with some public service representatives. We exchange ideas on how to improve the way we handle the cases referred to us. In the afternoon, we combine our know-how and strive for the homogeneity of our practices."

Patrick Bellet,  
*Delegate Mediator of the French Republic, in the Gard*

his intervention had produced some effects: the file had been transferred to the civil prosecutor's office and a substitute birth certificate had been created by the court of first instance of Nîmes on 24 May 2010 and sent to Nantes on 4 June 2010 for transcription.

# General interest relegated to the background, and individual sufferings not identified

**Bitter observation of the Mediator of the French Republic in 2010: the notion of "community life" has again been weakened. More than ever, people are defending their personal interest to the detriment of other people's interest, regardless of the interest of the community.**

**The result is an atmosphere of aggressiveness: lack of respect for each other and lack of dialogue favours tensions, conflicts and obviously withdrawal. Now, when the unbearable, the unacceptable is not denounced, pointed out, the system can neither call itself to question nor regenerate.**

## Rising violence in hospitals against healthcare professionals

Violence has gained ground in hospitals and is regularly directed at healthcare as well as medical/social professionals. According to insurers of these orga-



nisations, physical violence (80%) and threats (13%) increased by 25% between 2008 and 2009.

At the initiative of the national observatory of hospital violence (ONVH), the health and security agreement signed by the Health Ministry and the Interior Ministry and which aims to improve cooperation between hospitals and the police was updated in June 2010: the Justice Ministry is now also a party to the agreement. Referents have thus been appointed in hospitals and complaints from professionals victims of violence are easier to file.

The judicial authority is more frequently taking account of these aggressions, including injuries and threats.

Moreover, these organisations' perception of this judicial authority has a positive impact on people's mind and on the working of the services. These equally preventive procedures closely associate, often in collaboration with external authorities - justice and the police - occupational medicine and staff representatives, inside groups devoted to these problems and working within the framework of the CHSCT (committee on hygiene, security and conditions of work).

## Insult at the emergency unit

A woman arrived at the obstetric emergency unit, accompanied by her husband. The husband



lost his temper when he saw that other patients were received before her wife. Although the nurses at the reception had explained to him that the situation of the two women was so critical that their lives were in danger, the man failed to calm down. On the contrary: he threatened them, accused them of inefficiency and promised them that they would no longer be able to exercise their profession.

### Too much silence concerning the issue of maltreatment

Users may still not be aware of this: hospitals are now assessed based on their ability to promote good-treatment, which tends to be a standard. Moreover, there is a legal system that enables them to report any maltreatment. But the relative complexity of this system, the modalities of which varies according to whether it concerns minors, adults, elderly or disable persons, does not encourage it to be employed by users or hospitals.

### Accused of being too much of a burden to society

Disabled by birth, Mr F. died in a clinic due to belated treatment of intestinal occlusion.

Mr F.'s mother was constantly alerting the medical team to his intense pains. But she was not heeded. The only thing heard by Mr F.'s mother was: *"Your son has already cost the social security a lot, since he was born..." "he is a condemned man, anyway..." "the doctor knows what he is doing..."*

### Professionals are worn out: hospitals under high tension

In June 2010, the Healthcare Safety and Security Unit (P3S) created a section in charge of assisting healthcare professionals. The objective? Taking care of the post-traumatic stress suffered by anaesthetist / resuscitation doctors faced with complex and sensitive situations. Moreover, the P3S calls for the development, in hospitals, of systems of listening to healthcare professionals and preventing their exhaustion as it exists already. Apart from some specially dedicated work groups, the committees on hygiene, security and conditions of work (CHSCT) are active in this field, especially within the CHUs. In fact, healthcare professionals are faced with a permanently growing exponential work load which can be overwhelming with time.

This workload is worsened by the conditions of work. They are characterised by relations with patients and their relatives rendered more difficult by their general requirement. The Emergency units are often faced with this situation in which the existing circular relationship between stress and workload contributes to the exhaustion of healthcare professionals.

### Death threats against an anaesthetist

Miss K, aged 16, had a road accident in 2006. After a speedy intervention by the emergency service on site, she was admitted at the medical/surgical emergency unit of the nearest hospital for the treatment of a complex thoraco-abdominal trauma. It was decided to perform a surgery immediately, considering the patient's severe injuries. Unfortunately, Miss K. suffered from a rare but dreadful anaesthesia-related complication, which resulted in a serious respiratory distress that required immediate reanimation. The consequences are long and sometimes complicated, but Miss K. survived without any damages except those with a direct link with the accident.

Nevertheless, Miss K.'s parents, extremely shocked by the occurrence of this complication that had threatened their daughter's life, thought that the anaesthetist must be held liable. Therefore, they became aggressive against the medical corps and the hospital management, even making death threats. Since Miss K.'s parents had rejected all attempts to meet for explanations, the hospital management sought the help of the Mediator of the Healthcare Safety and Security Unit of the Mediator of the French Republic.

First of all, the medical team of this unit met with the mediator doctor of the hospital as well as the anaesthetist in question, in order to analyse the circumstances surrounding the occurrence of this complication and the contributing factors. Then the unit approached Miss K.'s parents to try to establish a dispassionate dialogue with the hospital and organise a meeting with the mediator doctor, requested by the management.

After several discussions with the parents, these latter accepted to meet the mediator doctor of the hospital. The mediator doctor succeeded in making them understand the inevitable character of the medical event.

### No protection for the most fragile population

In 2010, the Healthcare Security and Safety Unit of the Mediator of the French Republic often received requests and testimonies concerning the rights and protection of persons hospitalised due to mental problems and their conditions of hospitalisation.

The main requests made by users concerned:

- The lack of information on the health status and rights of patients during forced hospitalisation
- The difficulties encountered to access the medical record or administrative record
- The problems encountered to communicate with the authorities (prefect, judge, state prosecutor) in charge of visiting the hospitals receiving persons hospitalised without their consent
- The lack of attention to somatic complaints and ...



... complaints about access to good-quality healthcare.

Concerning access to medical records, the situation obviously varies from one hospital to the other. A good number of psychiatric hospitals think that considering the special nature of psychiatry, this request to access a medical record can be handled as split into illness and psychiatric treatment itself. The somatic treatment of psychiatric patients, on the other hand, is gradually improving given the increasing presence of a psychiatrist in emergency units. Despite that, the quality of this treatment varies because there are still few doctors willing to make some efforts regarding mental illness. Several cases were referred to the Healthcare Safety and Security Unit concerning a possible underestimation of urgent illnesses among psychiatric patients and mentally impaired persons. In 2010, it made several medical mediations to obtain from the hospitals concerned that these patients be treated globally, independently of their psychiatric illness.

#### Discriminatory treatment

Mr D., aged 46, had been suffering from chronic schizophrenic psychosis and had been subjected to heavy antipsychotic treatment which had been causing him some digestive problems. He was hospitalised in a psychiatric unit closed several years back.

One morning, he complained once again of constipation for which the doctor on duty ought to have prescribed a laxative. In the afternoon, his general condition deteriorated quickly justifying his transfer at 17:00 to the emergency unit of the general hospital which was used to receiving psychiatric patients.

When he was admitted, Mr D. was visibly in a state of septic shock and was having serious haematodiarrhoea. After a summary medical examination and a minimalist biological test, Mr D. was hospitalised at the emergency unit, without medical scanning or having his digestive system thoroughly examined. Only a surveillance of the usual vital parameters was required. No scope was installed.

At night the emergency physician noticed a deterioration in his health status and an agitation, for which he ordered a physical restraint. At 6:00, Mr D. was in a coma and died at 11:00.

This patient ought to have been transferred without delay to a reanimation unit upon arriving at the hospital.

#### Overwhelmed emergency units: some problems still need to be solved

A growing number of elderly persons are directed to emergency units in the absence of upstream responses from the hospital. Such a situation is bound to affect the organisation of reception at emergency units. In fact, for people who are sometimes difficult to question, who do not always have their medical records with them, this often results in a significant increase in the workload of the medical personnel, possibly leading to belated treatments with potentially serious consequences.

Generally, the fact that more and more destitute patients (isolated elderly persons, alcoholic patients, homeless patients, etc.) are resorting to emergency units is having a serious impact on the time the nursing staff

## The Mediator's view

### We have to abandon the logic of confrontation

« The rise in mediation and increasing demand by the French for this method of settling conflicts is not just a sign of failure of the State but also of society as a whole. We have entered a new era of human relations. We want everything immediately. We find it hard to abide by

collective rules. The result is binary tensions everywhere: teachers/pupils, magistrates/litigants, doctors/patients. We need a decompression phase, to develop mutual respect between the parties. Mediation as a means of listening to and understanding individual weaknesses is more

than ever necessary. Taking some time out to relax before continuing is what mediation is proposing and is absolutely necessary to regain the desire "to live together with one another". »

should devote to nursing. In some cases, this population is more aggressive and less compliant with treatments. Such a situation is particularly hard to cope with by certain healthcare professionals and may lead to real psychological exhaustion.

Moreover, the Healthcare Safety and Security Unit has noticed that for another part of the population that has to consult a doctor, going to the emergency unit is first a consumerist behaviour. This is reflected by a need to be treated immediately, enabling them, on the one hand, to defer a too long waiting time (proposed by the general practitioner often overworked) and, on the other hand, to obtain free medical care.

Creating the medical observation centres, called for by the Health Minister, in hospitals with emergency units should meet this need to "decongest emergency units" filled with patients whose health status would have justified an ambulatory treatment.

### **The spread of unconventional practices have negative impacts on patients and/or their relatives**

The Healthcare Safety and Security unit is worried that a lot of patients and their relatives, who are psychologically fragile, are receptive to fanciful proposals supposedly capable of bringing in an "immediate" solution to their illness and distress. Some unconventional

"therapeutic" practices (biological decoding, kinesiology, etc.) may have some tragic consequences for patients (belated diagnosis, interruption of treatments) and for healthcare professionals, who are destabilised.

To avoid this type of diversion and protect patients, the Healthcare Safety and Security Unit is encouraging hospitals to coordinate the presence of associations of volunteers through contracts.

### **A new trend in 2010: abuse of "healthcare" information on line**

The Healthcare Safety and Security Unit has noticed that the new information technologies which claim to facilitate communication sometimes end up creating some confusion. They are no longer a tool but a further obstacle to the doctor/patient relationship. This is illustrated by a search for medical information on the internet: from bits of information from forums, blogs, etc. the patient makes for himself a diagnosis based on an unreliable knowledge and may endanger his health. Thus, according to a study conducted by Ipsos-Mori, 59% of internet users seek medical advice via the internet, but only 1/4 of them check the reliability of the information. Moreover, according to the information exchanged on some discussion forums or social networks, some citizens reveal some personal medical data which may be spirited away or retrieved by insurers or potential employers. Total internet security does not exist.



## From mediation to reform

### Some changes to adapt to new situations

The Mediator of the French Republic is empowered to make reform proposals. Therefore, when he notices, especially via the citizens' complaints and testimonies he receives, that a problem does not result from the singular behaviour of an administration but from the standard applied by the administration, he may deem it necessary to propose a general corrective measure involving a change of law and regulation. This is what he did in 2010 via the twenty-two reform proposals, aimed, in particular, at preventing new situations of insecurity. The social safety nets are no longer playing their role; insecurity is gaining ground. Those whose insecurity is linked to the exercise of their function are suffering particularly, which requires a change of law.

#### A growth of seasonal workers to be controlled

The seasonal work market comprises about 1.3 million declared employees, including 800,000 workers in the agricultural sector and 400,000 workers in the tourism sector (cafés, hotels, restaurants) - 2 million according to trade unions if undeclared employees are included. The financial and economic crisis is pushing more and more people to resort to seasonal workers, in the absence of a better solution (25% increase in the number of people seeking seasonal work, compared to 2009).

This growth is accompanied by a deterioration of the conditions of seasonal work and a tendency by employers to excessively resort to this type of precarious employment, characterised, among others, by the absence of job-loss indemnity paid to an employee at the end of a fixed-term employment contract.

The Mediator of the French Republic conducted a study, with a view to proposing a reform of the seasonal work scheme in three

ways: providing a legal definition of seasonal work, legally providing for the renewal of seasonal work contracts in all the activity sectors concerned, providing for the payment of a job termination indemnity when the seasonal work contract does not include a renewal clause or is not renewed for a reason other than the one stipulated by the law on common-law fixed-term contracts.

#### Discriminatory and unconstitutional scheme for sailors

The Mediator of the French Republic made a reform proposal to end the inequality of treatment suffered by sailors affiliated to the Enim social security scheme (a scheme for disabled sailors) in case of illness or professional accident.

The reason for this: sailors who have had an accident or occupational disease are paid some benefits in kind enabling them to bear the cost of their medical treatments, and a fixed daily allowance which is, however,

not paid if the professional accident or illness is due to an event intentionally caused by the person concerned. Moreover, if the accident is caused by any person other than the employer or the employer's representative, the victim or his relatives have the right to claim damages in accordance with the common law.

If the victim is, thus, able to obtain through litigation full compensation for an accident or illness caused by a third party, this is not possible when the cause of the accident or illness is attributable to the employer or the employer's representatives. So, sailors affiliated to Enim are not entitled to the additional compensation paid to other employees.

Professional sailors are thus deprived of a right entrenched in the constitution by the "Constitutional Council". In its Ruling 2010-8 of 18 June 2010, based on a question of constitutional supremacy, the Council stated that Article 4 of the 1789 Declaration of Human and Citizens' rights ("*Freedom means being able to do what does not violate another person's freedom*") provides for a prin-

## → Necessary reforms

ciple according to which any human action that causes a loss to another human being must be compensated for by the one that caused the loss; moreover, *"the ability to act in full responsibility makes this constitutional requirement applicable"*.

It also seems shocking and non-dissuasive that the employer's fault is not at all taken into account or sanctioned, whereas any intentional act by the employee may result in this employee being deprived of some daily allowances.

## (Testimonies)

### "Families ought to be relived of their sufferings."

"The Healthcare Safety and Security Unit has introduced a totally new notion in the relations between doctors and patients: dialogue. In fact, most of the complaints we receive mention the problem of access to information. Users tell us that they have tried to know but they have not been given the right answers.

We also hear more and more healthcare professionals complain about the aggressiveness of patients when a treatment does not move the way they want it. Patients expect "zero risk" such that they quickly threaten to take a legal action. Therefore, our work consists in re-injecting some know-how between patients and healthcare professionals, promoting among healthcare professionals some relationship practices that include more empathy, attention and kindness towards patients and, on among patients, daring to ask doctors questions to avoid taboos, a source of misunderstandings.

The entire team of the Healthcare Safety and Security Unit has noticed that a "simple" and appropriate attention to a particular issue referred to it helps defuse tensions, rancour or even the desire for vengeance among patients. Moreover, the management of some hospitals are increasingly entrusting us with establishing dialogue with medical teams around the problems that are arising. The mediation actions we are taking are helping to solve a large number of disputes between patients and healthcare professionals. This feeling we all share that we are helping to spread new practices in the healthcare sector is very gratifying."

**Bruno Landi,**  
*Special assistant, medical coordinator  
at the Healthcare Security and Safety unit*

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# How can the Mediator of the French Republic help to strengthen the link between citizens and the administration?

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2010 has confirmed it: at a time when social cohesion is rendered fragile by a fragmented society, by a defensive view of citizen rights in which interests clash more than they converge, the need for dialogue and social link is more acute than never. The growing success recorded by the Mediator of the French Republic every year is double-edged. This is because it shows both the trust the citizens have in him but also the lack of response they are faced with among the public service. Therefore, the role of the Mediator of the French Republic in this respect is to create a link between the parties not only in order to restore dialogue but also to give a sense of responsibility to the parties involved and enable each of them to regain trust in the other by adapting the solution. Beyond the dignity it helps to restore and the hope it re-inspires, it also revives a sense of "community life" through a more solidarity-oriented and peaceful approach to society.

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# The Mediator of the French Republic, at times the citizens' last resort

The legal framework within which the French are living is increasingly complex and difficult to decode. To find their way through these laws they would sometimes need to be assisted locally. In the absence of this assistance, they contact the services of the Mediator of the French Republic, in which they have immense trust but from which they at times expect some solutions outside their field of activity.

## A trusted interlocutor

Citizens are right in trusting the Institution of the Mediator of the French Republic: each of the sixty complaints reaching the Admissibility section everyday is read and analysed in order to find the most appropriate solution. Through the referral form, the officials are charged with determining whether or not the special case falls within the powers of the Mediator of the

French Republic, or whether it needs to be completed, whether a file needs to be opened in relation thereto, and the emergency nature thereof.

However, in view of this flow, it was striking that in 2010 the Institution of the Mediator of the French Republic had become an information and orientation point for citizens who did not know all or part of the internal working of the administration, the steps to take, and their rights, or who knew the general rule but did ...

## The Mediator's view

### Isolation: one of the most terrible curses of our society

« Lack of dialogue and empathy is becoming an absolutely unbearable factor of exclusion, discrimination or inequalities! Our entire administrative system assumes that the French know what to do in case of problem. But this is not the case. A lot of people do not know whom to turn to for help. In case of fire, they would have the reflex to dial

18, but they do not know what to do if they lose their job, quarrel with a doctor, a spouse, or landlord. Since I arrived at the Institution, I have incessantly underlined the fact that access to right and information is one of the major political stakes because it is a very important factor of appeasement in our society. If you cry for help and nobody

listens to you, you end up taking it out on the civil servant who does not answer you or on yourself through alcohol or suicide. We have to restore dialogue with one another. »

- ... not understand how it applied to their particular case. This is alarming, because those who can be given some orientation is only a minute proportion of those who need to be directed. People who lodge complaints with the Mediator of the French Republic are people who know the Institution and how to express their problems in writing.

### The Mediator of the French Republic gets increasingly dynamic

The Mediator of the French Republic has developed some new procedures, with a view to speeding up more his response to users. In addition to the online service, which enables citizens to contact him very easily and at any moment, he has encouraged his special assistants to communicate with citizens by mail: asking them for further information required to understand their case, or giving them a definite answer.

Moreover, the emergency unit created a few years back is working very well: it detects situations that need speedy intervention and sometimes succeeds in solving complex situations within one day.

To study in France, this young man from Morocco is obliged to work. He found a small job, but his student visa was about to expire. Now, the appointment fixed for him by the prefecture of police to examine his situation would force him to live for three months without a valid stay permit, and his employer refused to keep him on these conditions. The young man contacted the Mediator of the French Republic, who succeeded in obtaining a quicker appointment with the prefecture of police and thus enabled him to keep his job.

### The Mediator of the French Republic also contacted by civil servants

A situation surprised the Mediator very much in 2010: he was sometimes contacted by administrative officials to solve some problems they could not solve at their own level. This says a lot about administrative sluggishness, the rigidity of procedures and isolation of certain officials. If they have to seek the help of the Mediator of the French Republic, it means that their hierarchy has not been listening enough to them.

Given certain cases of non-payment of legitimate social welfare entitlements, some of the Institution's special assistants sometimes wonder if the administration is not intentionally trying to gain some time to sort out its financial problems.

## (Testimonies)

## "We shall restore the link between citizens and the administration."

"Working with the Mediator of the French Republic makes you feel like you are serving a purpose, like you are making the human being the focus of administrative services and like you are providing tailor-made solutions. But some of the cases we receive daily make us feel dizzy: some letters to the Mediator of the French Republic are nothing but a bottle in the sea from people wishing, at least, that their letter be read till the end. There are many organisations that help and accompany people in difficulty but they do not know them. Our role is often to show people that there is a solution to their problem but they do not know.

We have noticed that the popularity of the Mediator of the French Republic is basically based on the word of the mouth. This is evidenced by these cases from people living in the same street in a provincial town. This means that people in difficulty discuss among themselves and give each other some tips. The Mediator of the French Republic is part of these tips!

This work at the institution helps us to highlight the activities and malfunctions mostly felt by constituents. This is, for instance, the case of the multiplication of voice servers, which do not take into account people whose situation does not correspond to any of the keys proposed.

By drawing the attention of the Mediator of the French Republic to them, first, and then that of public decision-makers, it is possible to make positive changes and improve the image the administration and citizens have of each other.

I am really very proud to be part of the effort to help people in unjust situations, which make them vulnerable for no reason."

Christine Jeannin,  
Adviser, Admissibility section

# Preventing rather than curing

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The Mediator of the French Republic is not just a complaints office. The problems referred to him are an opportunity for him to identify abnormalities in society and administrative malfunctions, to reflect on some strategies to prevent them, and work out some reforms to contain or even eradicate them.

Today, the Mediator of the French Republic looks like a politicians' partner. Since he has considerable freedom of observation and analysis, he can shed light on their choices and help them fulfil their mission in the interest of the general public. In 2010, the Mediator of the French Republic expanded his network of partners and correspondents. He set up new bridges between the administrations. His ambition is being realised: he is developing a culture of dialogue upstream to avoid excesses and neutralise conflicts.

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## Promoting democratic exchanges

A fantastic achievement in 2010: the platform of the Mediator of the French Republic, [www.lemediateur-retvours.fr](http://www.lemediateur-retvours.fr), won the e-democracy trophy. The international jury has thus rewarded the originality of the system, its reproducibility and impact on citizens' engagement in public life. The Institution merits the prize. Started in February 2010, the platform "The Mediator and you" is a forum for exchange and reflection on the defence of Human rights. It enables internet users to start a debate, seek the opinion of any of the Mediator's twenty-four experts, and also to make a reform proposal. Thus, the reform proposal on the definition of persons living under the same roof to determine a rent supplement, made by the Mediator of the French Republic in 2010, stemmed directly from a contribution published on the platform "The Mediator and you".

Since it was created, the platform has become a real tool at the service of citizen engagement, and the growing number of visitors shows everyday the citizens' ever rising interest in public life.

## Creating some links with some correspondents within the administrations

The number of cases referred to the Mediator of the French Republic and which fall within his field of activity increased in 2010. This is both a positive development - the Institution is recognised by the citizens as capable of playing a necessary role -, but also a source

of worry for the special assistants working there. In fact, how can you become victim of success without being overwhelmed by work? To make the problem of admissibility easy to handle, the Mediator of the French Republic has decided to create a network of correspondents in the different social organisations and administrations.

Thus, the Mediator's special assistants easily find the right contacts and obtain more effectively the necessary information. Thanks to this network created on the basis of trust and mutual respect, it is sometimes the mediators of the organisations concerned that resolve conflicts directly.

At the end of 2009, the Mediator of the French Republic signed a new agreement with Pôle Emploi, which inherited the contract with Unedic, to promote exchanges between delegate Mediators and the national and regional Mediators of Pôle Emploi.

## Agreements with social welfare organisations

Another achievement in 2010: hitch-free implementation of agreements with social welfare organisations.

The agreement with the national health insurance scheme for employees (CNAMTS), reviewed in 2009 through the intervention of the Mediator of the French Republic and the director general of CNAMTS before the assembly of conciliators, has become fully effective thanks to the permanent links maintained both at the national level with the conciliation mission ...

- ... of CNAMTS, and locally through regular contacts between delegate Mediators and health insurance conciliators.

Moreover, relations between delegate Mediators and the mediation services of the social security offices are improving the handling of the recurrent problems of unwarranted payments and help speed up the resolution of certain disputes by quickly channelling them to the national level where dialogue with the national social security office (Cnaf) is regular and constructive.

2010 also offered the opportunity to strengthen the link resulting from the agreement signed with the national pensions fund (Cnav), both through the organisation, by several pensions and health insurance schemes (Carsat), of regional information meetings of delegates, and through the intervention of the director general of Cnav during the annual meeting of customer services in which the services of the Mediator of the French Republic participate every year.

Concerning Pôle Emploi, the new agreement signed by the end of 2009 has solidified the links with regional Mediators, enabling here again, the speedy resolution of sometimes very complex conflicts. At the national level, the nomination of Mr Jean-Louis Walter, the new national Mediator of Pôle Emploi, was an opportunity to meet directly with the Mediator of the French Republic in order to turn to good account the achievements of the previous agreement with Unedic and examine a possibility of cooperating on the reform proposals that may be made to social partners in charge of managing the pensions scheme.

Regarding the farmers' scheme, it is important to underline the excellent relations existing with the Mediator of the central farmers' insurance scheme (CCSMA).

Finally, although the draft agreement has not yet been signed, the special relations created with RSI and the regional correspondent networks, managed by the unit in charge of customer relations has made it possible, in the context of a crisis linked to ISU's hesitations, to directly highlight the most serious problems and find, in most cases, quick solutions.

These agreements are also an opportunity to exchange ideas on reforms required by and/or adopted by ministries, to anticipate the problems and, above all, bring back the citizens at the heart of ever immaterial procedures.

Furthermore, some privileged relations have also been established with supplementary pensions organisations, especially with the management of Arrco and Agirc, which facilitates and harmonises the handling of disputes involving a myriad of supplementary schemes.

Apart from solving problems together, this network, created bit by bit by the Mediator of the French Republic, has also made it possible to raise awareness among social security organisation about the importance of mediation and has led them, in certain situations, to correct and extend their internal operations, thus improving their own quality of service.

### Agreements signed with the healthcare sector

In 2010, three partnership agreements were signed with the national council of the medical association (Cnom), the French anaesthesia and reanimation company (Sfar), and the regional health office (ARS) in



the Rhône-Alpes. They mark the mutual commitment of these partners and the Mediator of the French Republic to improve access to rights and the quality of service rendered to users of the healthcare system and healthcare professionals. They define the terms of a cooperation which aims to put in place mutual exchange of information in order to identify the most appropriate preventive and corrective measures to improve the quality and safety of healthcare. They reaffirm the action of the Mediator of the French Republic and his partners to promote the common values of listening to and respecting users of the healthcare systems and healthcare professionals.

### Waiting for support from regional healthcare offices (ARS)

It is a thing of joy: mediation is increasingly being used to solve disputes between a hospital and its patients. The commission in charge of relations between patients and the quality of treatments (CRUQPC) is regarded as a first settlement venue by both parties. However, activity reports, including those from the biggest hospitals, reveal a difference between the actual handling of the complaints and the fundamental corrective measures they ought to lead to.

Moreover, the Healthcare Safety and Security Unit has noticed the hesitation of some hospitals to send to a complainant or claimant the report of the mediation made in relation thereto. Therefore, public authorities, via the ARS, have to work towards harmonising hospital practices regarding the respect of patients' rights.

## (Testimonies)

# "The Institution must have an exemplary function."

"We are trying at our own level to practice what the Mediator of the French Republic is advocating for concerning the management of administrations: more transversality between the sections and more homogeneous handling of cases. In 2010, we merged two sections: the Civil Servants/Pension Benefits section and the Social section. Thanks to this internal reorganisation, we can understand better the logic behind the various citizen statuses. In fact, there are some huge differences and some very distinct reflection methods for civil servants and employees. This reorganisation also enables us to better solve the resulting problems. Moreover, we are trying to adopt a faster and direct method of communicating with users: more exchanges by phone and by mail.

The encouraging thing this year is that despite the influx of cases and a staff faced with multiple constraints, we have succeeded in maintaining a good quality of case processing and of pertinence in our responses. I am also satisfied to see our reform proposal on the accumulation of disability/resumption of non-salaried work reflected in the draft law on the funding of social security for 2011. This shows that our meticulous work is making some impacts."

Hervé Rose,  
*Adviser, at the Labour, Solidarity, and Civil Service section  
(previously the Civil Servants/Pension Benefits-Social section)*



# Fundamental awareness

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As a result of the reports of the Mediator of the French Republic and the High Authority on Health, maltreatment in hospitals is no longer denied. Better still: the Healthcare Safety and Security unit has noticed that a good number of hospitals now strive to promote good-treatment. The Ministry of Health has even declared 2011 the year of patients and their rights. As a result, a mission devoted to good-treatment has been asked to make some recommendations on how to improve the quality of service to patients and their relatives, to promote dialogue and help in spreading good practices. Moreover, the new version of certification proposed by the High Authority on Health contains some references and criteria which reinforce the dimension of respect for patients, humanity in treatments and respect of the right to information.




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## Evaluating the needs of elderly patients

The Mediator of the French Republic is happy that the HPST (hospital, patient, healthcare, and territory) law has generated regional healthcare offices (ARS), whose mission is especially to become driving forces behind decompartmentalisation between the healthcare sector and the medical/social sector. He hopes that ARS, together with regional councils, will be able to make the necessary coordination. In fact, it seems urgent to better assess the healthcare and social needs of the elderly and organise a good-quality treatment all over France. It also seems important for dependent old-peoples' homes (Ehpad) to be less isolated and collaborate more with partner authorities - regional councils, the Health Ministry, etc.

To ensure the respect of the rights of elderly persons in hospitals, the Mediator of the French Republic has launched a mission of enquiry on "financial maltreatment" (theft, extortion of money, fraudulent letter of attorney, forced signature). The report was submitted on 9 February 2011.

# Changes in a more attentive administration

Social security, tax administration, legal administration and a lot of public services have recently known some changes or even some cultural revolutions to bring back the citizen to the heart of administration. Obviously, the French administration is making much efforts, both in terms of new technologies, which bring in new services to the citizens, and in terms of organisations to make flexible the procedures of public action at the service of the general interest.

In 2010, some crisis situations like the earthquake in Haiti was an opportunity to restructure some more formal links between the Mediator of the French Republic and the relevant consular authorities around a common objective: giving priority to the wellbeing and security of children in a particularly chaotic environment

## The importance of structured links with the administration

After the earthquake in Haiti in January 2010, the Justice and Foreigners' Rights section of the Mediator of the French Republic intervened in a context characterised by emergency and heavy emotional load for families already engaged in an adoption procedure prior to the disaster.

Between January and April 2010, the Institution was closely associated with the transfer of some children, playing a major role as interface between the families and the international adoption service (SAI) of the Foreign Affairs Ministry, and acting as gateway for families which were no longer able to obtain information from saturated emergency numbers. In more concrete terms, the services of the Mediator of the French Republic intervened in two ways for about fifteen cases which sometimes concerned several dozens of families.

## An exceptional situation, special assistance

When the couples had obtained an approval for adoption from Haitian authorities prior to the disaster, the services of the Mediator of the French Republic

had tried to push through their file within the French administration, by speeding up the issuing of a visa at the French consulate under the guidance of SAI.

But in a lot of cases, the ruling on adoption had not yet been made by the Haitian authorities before the disaster; so it was impossible for the Mediator of the French Republic to speed up the procedures or to ask the French authorities to substitute for the Haitian judge, since the Haitian authorities wished to take their time to rebuild their court in good conditions. Faced with helpless parents, the services of the Mediator of the French Republic thus had to play a listening or even assistance role, setting up connections to obtain information about the children or about the progress of the files by sending their request to the relevant authorities thanks to the links set up on site by the SAI correspondent.

## Accelerated repatriation to France

P. had just turned 4 when Haiti was hit by the earthquake, which destroyed part of the nursery in which he was living. Since P. and her little sister had been abandoned, Mr and Mrs X., from the Loire-Atlantique, filed for their adoption.

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In January 2010, during the earthquake, the couple obtained its approval; it is "related" to the children they had already seen and with whom they had already created some links. Injured, P. had to be evacuated to Martinique to be operated upon and treated. Thanks to a first intervention by the Mediator of the French Republic, Mrs and Mrs X. went to see him at the hospital. As he was gradually getting better, the question of the child's future was raised. It was out of the question to send him back to Haiti, but he could not yet be entrusted to his future parents since the adoption ruling had not yet been made by the Haitian authorities.

Alone in Martinique, he did not have any status. First of all, he was placed under the guardianship of the services of the child welfare (ASE) in Martinique, at a crèche. The French authorities refused to entrust the child to Mr and Mrs X., considering the lack of legal link between them and the child. They again sought the help of the Mediator of the French Republic.

After the matter was referred to the international adoption service, some negotiations were started with the ASE of Martinique and the ASE of the Loire-Atlantique. Finally, the guardianship judge of Fort-de-France, when alerted to the situation, decided to transfer P.'s guardianship to the ASE of the Loire-Atlantique, which signed a reception contract with Mr and Mrs X., thus authorised to take care of P. in their family while waiting for the ruling on adoption.

P. entered a nursery school in the Loire-Atlantique in September 2010.

### When a tax administration meets the citizens' needs better

The tax administration has developed a set of notions, guarantees and initiatives, which, by adapting its behaviour and culture to taxpayers, meet their expectations better.

In accordance with the spirit of law, a reasoned application of law allows the maintenance of a tax advantage despite a formal tax return omission, a situation often seen in the application of favourable tax regimes. It is first all about excluding all formal tax adjustments, especially when certain tax payers have fulfilled their obligations in terms of content but have omitted a condition of form. In this case, the tax administration tends more and more to take account of the situation and often recommends a reasoned application of the law.

#### An omission corrected at last

The tax office of Toulon questions the tax deduction Mr G. may be granted for new-housing amortissement ("Robien" law) pertaining to income tax. Mr G. had forgotten in his

tax return to ask to benefit from the advantage granted by the "Robien" law. On noticing this omission, he left a corrected tax return in the tax office's letterbox. However, the tax administration denied ever receiving this document.

Despite several complaints both at the tax administration and with the tax conciliator, Mr G. was still unable to prove his good faith and sought the help of the Mediator of the French Republic. Although the tax administration seemed to have correctly applied the law, Mr G.'s situation allowed a reasoned application of the tax law. The Mediator of the French Republic asked the tax administration to benevolently re-examine Mr G.'s case. The administration then decided to grant Mr G. the deduction he was entitled to.

Deferred income or unwarranted payments are often a source of prejudice for modest taxpayers and people not liable to tax, who are unjustly penalised through a tax surplus but also through the loss of certain tax advantages or welfare benefits. In view of the increasingly critical situation often aggravated by the crisis, both for private individuals and financially fragile businesses, the Mediator of the French Republic is more and more obliged to ask for humane and proper exercise of the free-remission power.

### When hardship justifies debt remission

Mr V. was required to pay an additional income and value-added tax assessment following a tax investigation, whereas he was facing some financial problems and indicated that he was homeless. When contacted, the Mediator of the French Republic, considering the precarious situation of Mr V., asked for his entire tax situation to be re-examined.

The tax administration decided in favour of granting a relief for all the outstanding tax amount, except the outstanding VAT. The absence of durable resources and assets and the personal problems Mr V. was having were taken into consideration by the administration, despite the fraudulent character of his behaviour.

The tax administration can be very receptive to recommendations in equity that only the Mediator of the French Republic can make when a taxpayer's personal situation calls for a decision that is an exception to the law; it is, nevertheless, regrettable that it does not deem it necessary to extend the field of equity to indirect rights, especially VAT.

### Qualification for a professional activity questioned

Mr K. had worked abroad for an oil company under a five-year contract, for which he was exempted from income tax as an expatriate employee. The tax authority, based on the stipula-

tions of his contract and the freedom with which he exercised his function, considered this activity as self-employment subject to value-added tax and income tax on non-commercial profits. Since the position of the administration had been confirmed by a court decision, Mrs K. solely liable to the tax after the death of her husband, sought the help of the Mediator of the French Republic. A closer look at the file made it possible to notice, up to the ruling, some hesitations and a legal uncertainty about the fiscal consequences of this type of employment contract. Therefore, several of Mr K.'s colleagues, in a similar situation both contractually and in the exercise of their functions at the same period and the same place, benefited from the same tax relief claimed by his widow. The Mediator of the French Republic, therefore, asked the Budget Ministry, despite the ruling made, for a measure in equity aimed at abandoning the contested taxes, in accordance with decisions already made by its services in similar cases. After a long mediation, the minister decided *"in equity not to maintain the additional tax assessment issued against Mr and Mrs K."*

Another guarantee for the taxpayer is the rescript procedure which enables him to know the tax laws applicable to him in a given situation which he presents to the administration. The responses which are a commitment by the administration offers a non-negligible guarantee, especially in case of professional project or future activity (creating a company, real-estate investment, for instance). By formalising the position of the administration on a given question, the procedure limits imprecision and prevents some errors.

### Giving weight to the tax administration's word

There are some circumstances under which the user has to ask the tax services for information or help to make his tax return. Sometimes, this information is incorrect and results to a correction and to additional assessment as well as late payment penalties. Such was the misadventure experienced by Mr. N., who contacted the Mediator of the French Republic to obtain a remission of the increments, legally applied to the recovery of a tax credit. Without denying the soundness of the rectifications made, the Mediator of the French Republic thought that this administrative assistance, without being equated with a formal position, could be taken into consideration within the framework of an amicable settlement, based on the improvement of relations between the administration and taxpayers. In fact, it is desirable that for the purpose of appeasement, when acknowledged, a statement by the administration should not be without any impact. In this particular case, Mr N. obtained a remission of his lateness penalties.

### Procedures beneficial to taxpayers

Through amicable settlement with the finance Mediator and departmental conciliators, through the new technologies in favour of citizens, which facilitate taxpayers' access to their tax-related information, or even through the merger of the general tax directorate and the Treasury, relations between taxpayers and the administration have been significantly facilitated in the past few years, resulting in the elimination of previously recurrent sources of tension.

# The Mediator's facilitator role

The Institution's second major role is to facilitate the acceptance of administrative decisions. All its sections are faced with the role of educating the citizens or supporting them in certain critical situations. This is especially the case in the Justice section in which a lot of requests concern the exclusive powers of the judiciary and in which the Mediator of the French Republic cannot intervene, except to inform the claimant about the progress status of the procedure. In fact, pursuant to Article 11 of the law of 3 January 1973, the Mediator of the French Republic may not intervene in proceedings brought before a court, nor question the legitimacy of a court's decision. Moreover, regarding citizens' relations with the administration, nothing prevents a claimant who has already referred a dispute with the administration to a judge, from also referring the matter at the same time to the Mediator of the French Republic. Although the Mediator of the French Republic may not intervene before the judge to influence the course of the proceeding or the decision that will be taken later, he may persuade the parties to settle the dispute amicably.

## Directing citizens to the relevant authorities

Without directly solving the problem referred to them, the services of the Mediator of the French Republic, by analysing the potential impediments and recommending certain procedures to follow, or even directing a claimant to the relevant authorities, prevent the claimant from being left in a situation of failure and sometimes help him to find a solution to his problem himself.

### A naturalisation on the right track

Born in France of two Portuguese parents, Mrs D. wished to apply for naturalisation at the prefecture of Créteil in September 2009. Since she was finding it difficult to have her application registered, Mrs D. sought the intervention of the Mediator of the French Republic. A close look at Mrs D.'s personal situation showed that she could obtain French citizenship without going through the French citizenship acquisi-

tion procedure provided for in Article 44 of the old French citizenship code. This article, now Article 21-7 of the Civil Code, stipulates that any child born in France of foreign parents may become French at the age of 18 if he or she had lived in France for the preceding five years. Mrs D. was asked, before continuing the naturalisation procedure, to apply for a French citizenship certificate at the office of the clerk of the court of her place of residence. Her application is currently being examined at this court.

## Restoring a link

Even if it does not change the direction of the decision, the intervention of the Mediator of the French Republic often helps in pacifying relations between conflicting parties and in establishing a dialogue between the claimant and the parties concerned.



### Conflict with notaries public defused

Mrs R. called the attention of the Mediator of the French Republic to the problems she was having with the notaries public who had successively handled the sale of a building that had belonged to her and her mother. At the beginning of 2009, Mrs R. had noticed that this sale, completed on 27 May 2004, had not been published and that, as a result, her mother continued to receive property tax and furnished accommodation tax notifications for this property.

She then contacted the notary public that had succeeded the one who had handled the sale so he would sort out the problem, and also sought the help of the departmental chamber of notaries public in the Eure. In the absence of information concerning these procedures, Mrs R. contacted the Mediator of the French Republic who, although relations between a notary public and his client stem from private law and thus fall outside his powers, contacted the departmental chamber of notaries public and the notaries public concerned. Without intervening in the fundamental issue, the exceptional intervention of the Mediator of the French Republic is justified by the fact that the notary public is a ministerial public officer.

Mrs R. could thus be informed about the progress status of the publication operations. Moreover, the buyers' notary public undertook to approach his clients to find an arrangement on the issue of payment of property tax and furnished accommodation tax. Finally the correspondent at the mortgage registry promised the Mediator of the French Republic to provide Mrs R. with all the explanations on the sale publication procedure. The intervention of the Mediator of the French Republic also enabled Mrs R. to restore contact with the notaries public in charge of this file, which had been cut due to the atmosphere of conflict which had arisen from the handling of the case.



### EDF and GDF (electricity and gas companies): partnering to handle malfunctions better

After noticing the increasing litigation between clients of the two major energy suppliers, complaints resulting from the liberalisation of the electricity and gas market, the Mediator of the French Republic issued a series of alerts to the companies concerned. In fact, there were heaps of invoicing errors, bad contact, unanswered letters, whereas debt collection proceedings continued to be instituted by the collection services making more and more users to seek the help of delegate Mediators. In accordance with the recommendations of the delegate Mediators, the companies GDF Suez and EDF created in the first semester of 2010 a network of correspondents in each region, responsible for handling customer complaints and information.

Thanks to the relations created by the Institution with the mediator of GDF and, more recently with that of EDF, the delegates have been able to restore between energy suppliers and their customers a contact, sometimes cut for several months.

### The importance of a network of correspondents to act quickly in case of emergency

On 6 January 2010, Mr P. a disabled 80 years old man, sought the help of the delegate Mediator of Moselle because water supply had been cut without prior notification the previous day in the building in which he was a tenant, by an employee of the company Veolia. Now, Mr P. and the other tenants had been regularly paying their water bills to the landlord within the framework of charges. After enquiries, it was discovered that the landlord was owing Veolia several hundreds of euros. On the same day, and with the help of a lawyer and leader of a consumer association, the water supply was restored, since Veolia had decided to sort out the problem with the defaulting landlord.

On 11 January, at the coldest period of the year, the same similar situation occurred with GDF. The occupants of a building were deprived of heating without prior notice whereas the temperature had fallen to -6°. Informed on 15 January, the eve of a weekend, the delegate Mediator contacted the GDF correspondent in the department and explained the situation to him, warning him against the possible consequences of such a decision. Despite a big debt, the gas supply was restored at 13:30 since GDF had decided to recover the debt from the landlord.

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### The multiple effects of certain delegate Mediators' interventions

The Mediator has noticed that when he finds a solution to a particular problem, the impact of this solution is felt by other people facing the same situation.

#### A snowball effect for more than three hundred students

The attention of the delegate Mediator of Val-de-Marne was drawn in March 2010 to the situation of two students at ENS Cachan. In September, the students had applied for housing allowance at the Caf. They were paid a low monthly allowance of 55.99 euros despite the rehabilitation of their building by Crous, because the Caf was waiting for a document from Crous to re-evaluate the amount of this allowance. They underlined the fact that they were many in this situation. The delegate Mediator promised to examine the case. Apparently, the word of mouth had worked because on as early as Monday, the delegate Mediator received about thirty requests and e-mails from students in building G also asking her to intervene on their behalf.

On Monday, she contacted her correspondent at the Caf in order to alert her to the urgency of the situation. By the end of the day, this latter informed her that a management meeting would be held the next day to discuss the issue: the delegate Mediator learned that all the students in building G (about one hundred and thirty of them) were affected as well as those in building M (about one hundred and seventy of them).

According to the Caf, Crous had never notified it about the rehabilitation of these buildings. Nevertheless the management of Caf declared its intention to regularise these three hundred cases. The same student procedures were renewed in April. On 5 May, the delegate Mediator was informed that all the situation of all the students in building G had been regularised. Some other complaints about calculation errors continued to reach the delegate Mediator until the summer holidays.

## (Testimonies)

**"We always try to help out a claimant."**

"In 75% of the cases, if it is unable to "succeed" in a mediation, that is change the decision, the Justice section explains to the requestors the reasons why it, if applicable, identified the obstacle to be removed but, above all, helped them to reconsider their situation from a different angle. By promoting dialogue, we help ease tensions.

Through our support and explanatory role, we help them to understand the levers of the decision, and to accept it even if it is not always favourable, which helps attenuate the helplessness caused by the decision itself. In terms of access to nationality, a lot of people are annoyed to learn while renewing their identity documents that they are not French citizens. Their family history and their origins are touched. We explain, we listen to them and we support them.

Even when their requests are not met, we always try to direct the claimants to other authorities which may help them find another solution. In the face of questions full of human and personal stakes, one of the difficulties also consists in being able to remain in our role, without substituting the complainant in the steps he must take, possibly with his lawyer."

**Hélène Brémeau-Manesme,**  
*Special assistant, Justice and Foreigners' Rights section*

# Relations with ministries: contrasting changes

In his 2009 annual report, the Mediator of the French Republic pointed out the problems encountered by his services in the absence of response from some ministries or public services contacted. What was the situation in 2010?

## Progress

Relations with the "labour, social affairs and healthcare" administrations improved significantly, and the Mediator of the French Republic wishes to thank the various services which particularly buckled down not only to restore contact, but also to ensure that his signals were well followed. Regular work meetings could thus be organised, making it possible to handle cases smoothly.

The Mediator also noticed a rise in the number of meetings held with various institutions, especially with regional health offices, throughout 2010 to directly process the huge number of cases. He wishes to thank the officials of the social security scheme of self-employed professional, who despite some recurrent and persistent problems, are trying their best to improve some at times difficult situations.

## Persistent problem

Although in general, the ministries have made some progress in terms of deadlines and quality of responses, the Mediator of the French Republic continues to notice some insufficient reactions from several ministries:

- Ministry of Agriculture
- Ministry of Ecology
- Ministry of Budget – a lot of letters, especially concerning pensions rights, have remained unanswered.

It is important to underline the positive role played by ministerial correspondents to improve the management of complaints. On the other hand, inaction, as well as reluctance in terms of mediation still exists in a good number of public organisations entrusted with a public service mission. This is, for instance, the case for the problems encountered with the health insurance scheme of electricity and gas industries (Camieg) and the national organisation of disabled sailors (Énim).

In addition to the absence of response, you also have the problem of late responses. This is especially the case for a lot of public prosecutors and very many "big" prefectures (particularly in the Paris region), sailors and various jurisdictions from which it is very rare to receive an acknowledgement of receipt or which often reply six months later.

## Reminding people of the powers of the Mediator of the French Republic

The Mediator of the French Republic too often has to remind these various organisations or institutions about the powers vested on him by Law 73-6 of January 1973, which instituted a Mediator, and in particular the specifications of its Article 9: *"When he considers that a claim is justified, the Mediator of the French Republic shall make such recommendations as he deems necessary to resolve the difficulties referred to him and, where appropriate, shall make any proposals which may improve the working of the organisation or body concerned."*

*When it appears to the Mediator of the French Republic that an organisation mentioned in Article 1 has failed to act according to the public service mission entrusted to it, he may propose to the relevant authority such measures as he deems appropriate to remedy this situation.*

*The Mediator of the French Republic shall be kept informed about the outcome of his interventions. In the absence of a satisfactory reply within the stipulated deadline, the Mediator of the French Republic may make public his recommendations and proposals. The body or organisation concerned may also publicly disclose its reply and, where applicable, the decision it has taken in response to the intervention of the Mediator of the French Republic."*

# Delegate Mediators defend the rights of detainees

Because the deprivation of detainees' freedom should not be accompanied with the deprivation of access to the law, delegate Mediators in prisons have regular office hours or visiting hours on a case-by-case basis inside prisons. Providing care, managing personal belongings or renewing stay permits: the cases handled by the one hundred and fifty delegate Mediators have improved detainees' access to law by making it possible to settle disputes with public services - including disputes with the prison administration - which, in the past did not necessarily have any outlet. Crowned with success, the generalisation of the experience started in 2005 and sanctioned in 2009 by the prison law now offers more than sixty thousand detainees direct access to a delegate Mediator.

## A factor of appeasement

Many prison directors have observed that the intervention of delegates, beyond the handling of cases, helps to calm situations and defuse tensions because of their availability and readiness to listen to detainees. No question is insignificant in the prison, no matter how small. Prison directors have understood that a delegate's intervention could settle latent conflicts, and calm a detainee who regains confidence because he is listened to and heeded.

Beyond these measurable elements, it is also a sign of mutual recognition between the prison administration and the Institution of the Mediator of the French Republic. For a good number of them, the delegates have observed that the prison administration has made considerable renewal efforts, especially pertaining to human resources and its working methods for several years now. Reciprocally, the delegates have made themselves accepted by prison administrations and have people recognise the added value of their intervention. Today, this mutual recognition facilitates the conditions for a better dialogue between administrations and detainees.

Only two bottleneck situations actually remained by the end of 2010: the absence of legal access points in a certain number of establishments and the persisting problems of relations with prefectures for renewing the stay permits of detainees.

## Detainees' access to healthcare

Although it is agreed that detainees have the same rights as any other patient, in terms of dignity, non-discrimination, information, agreement, secrecy and confidentiality, or access to medical record, they find it difficult to gain access to specialised consultations or to medico-technical exams meant for diagnostic investigations. Moreover, they must exercise a lot of patience before they are given some devices (glasses or dental prostheses, in particular) which they are entitled to. The Healthcare Safety and Security Unit is hoping on the imminent signature of specific agreements that will bring closer local hospitals and prisons as well as some professionals, opticians, and dentists.

### Towards a better defence of prisoners' rights

- **164 prisons** out of which 63 have regular office hours while 101 others have access on a case-by-case basis
- **150 delegates** (i.e. half of the total members of the network) are currently involved in the programme.
- **61,300 detainees** (including 3,645 in the overseas territories) have access to a delegated Mediator.
- **3,595 requests handled by delegate Mediators in 2010.**



### A vital treatment interrupted

During an information meeting at prison X., an insulin-dependent inmate informed the delegate of the problems he encountered while in prison. His health conditions required that his blood sugar level be checked with an appropriate equipment and noted in order to adjust the quantity of insulin according to changes in this level. During his incarceration he neither had his medical device nor his insulin.

He went to the doctor attached to the prison the day following his incarceration but had to wait several days before obtaining these doses of insulin, whereas he was bound to suffer a major diabetic coma if he stayed without treatment.

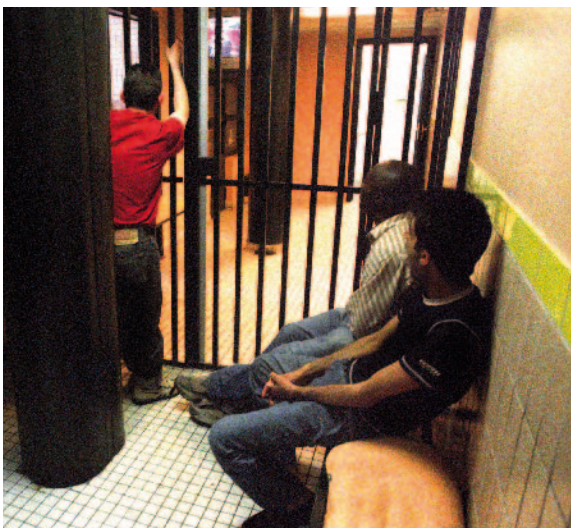
### Effects of double penalty

Pension, payment of an entitlement or a benefit, contesting a tax; detainees often face the same administrative hurdles as non-prisoners, except that they do not have the freedom to act, the power to follow the procedures or to obtain the documents they need to exercise their rights.

### The right to fatherhood

A prisoner at Baumettes, the biological father of a little girl, had been trying for one year to recognise her. The case had been referred to the family judge and a hearing was looming when he contacted the delegate Mediator.

After taking a quick inventory of the "ongoing" administrative procedure, the delegate Mediator contacted the prosecutor's office and the relevant town council, which turned out to be the one in which he had one of his offices. With the consent of the civil status director a date is fixed for intervention at the prison. In January 2010, this detainee, with a lot of emotion, was finally going to recognise his daughter.



## (Testimonies)

### "I have become the one who oils the machinery."

"I have office hours in two prisons in Poissy for five years now, for criminals serving long prison sentences, and in Bois-d'Arcy, among a population of youths. When I arrived at the prisons, I did not know anything about the world of prisons, except certain clichés shown on television. I discovered that beyond the deprivation of freedom, everything becomes an ordeal when you are detained. Problems of social security, pension, family allowances, etc.: administrative procedures already laborious for a simple user become an obstacle course. We have to examine the files and gather pieces of evidence to be able to evaluate the situation. The frequent lack of written documents makes us to be prudent: impossible to be peremptory vis-à-vis the administration when the claim is solely based on a detainee's word; we have to be cautious to avoid being instrumentalised.

But we remain fully independent. We listen to both the detainee and the administration, then we evaluate the situation by trying to identify a compromise situation acceptable by law. Initially, the role of delegate Mediators was not necessarily clear for prison administrations; each party was not circumspect. In barely one year our prudence gave way to trust. With detainees, you have to establish your authority both by being calm and firm, two factors of trust. Prison administrations play along. In Poissy, after listening to requests received either through mediations or directly, all internal processes have been reviewed: searches, new arrivals, external purchases, post clerk, visiting rooms. These are small changes which are important in this closed circle of prisons, a real sounding board in which, if it is not defused, the slightest incident becomes a very serious problem."

Pierre Maurice,  
*Delegate Mediator in prisons*



## From mediation to reform

# Major successful reforms in 2010

**A lot of reform proposals made by the Mediator of the French Republic in 2010 were received favourably. This new legislative and regulatory situation puts an end to legal loopholes, unequal treatments, and aims to improve "community life". Here are some of the successful reforms.**

### Law on the reform of consumer credit

The Parliament has adopted a reform proposal concerning consumer credit which the Mediator of the French Republic has been advocating for over the past five years. Introduced by the law of 1st July 2010, it will make all the parties involved more responsible: rationalisation of adverts, new categorisation of interest rates by loan amount and no longer by credit type, obligation to check the borrower's solvency (obligation to consult the FICP, the national register for incidents of payment, and to ask for proof of charges and income as from a certain credit amount), etc.

Moreover, private card and renewable loans will be better coordinated: require the consumer's express consent to use the loan linked to a loyalty card or to activate its "credit" function, consulting annually the FICP and checking the solvency of all holders of a renewable credit every three years and automatically closing these loans if they are inactive for two years.

In accordance with the demands of the Mediator of the French Republic concerning bank charges, the penalties paid to the Treasury in return for having one's name removed from the central cheque file in case of suspension of banking privilege have now been done away with.

Finally, the excessive debt management procedures have been modified, especially with a reduction in the maximum duration of recovery

plans from ten to eight years and a registration in the FICP for beneficiaries of the personal recovery plan reduced from eight to five years.

### Unclaimed life insurance: a positive result

It is three years since the publication of the law of 17 December 2007 allowing the search for beneficiaries of unclaimed life insurance contracts. The Mediator of the French Republic had on several occasions denounced the inaction of public authorities concerning this problem. The report on the processing of unclaimed life insurance entitlements recently published by the government is very delightful: over 550 million euros have already been recovered in one year. Nevertheless, it is important not to produce new unclaimed contracts; this is why the Mediator of the French Republic is following with interest a new legal proposal submitted to the Senate, which aims to reinforce the insurers' obligation to search for beneficiaries by annually consulting the national directory of physical persons (RNIPP) for all contracts involving more than 2,000 euros.

### Some positive developments in terms of bank charges

Several of the announcements made about bank charges by the Economic Minister, Mrs Christine Lagarde, at the end of the meeting of

the consultative council of the finance sector on 21 September 2010 are in line with the recommendations made by the Mediator of the French Republic in 2009 on bank charges.

Prime among them are the development of a system of SMS or e-mail alert to enable consumers to react and avoid incidents, fixing a ceiling for the amount and number of service commissions a bank may charge in case of payment incident, the creation of a "fixed security amount" for which the incident-related charges will be divided by two and which would include an anti-overdraft card, and the creation of a glossary of bank charges applicable to all banks.

### Fruitful participation in legislative work

Thanks to his observer position, the Mediator of the French Republic detects bad administrative practices, the inconsistencies and malfunctions of our legal system, as well as injustices resulting sometimes from the application of the rule of law. Vested with the power to push for reforms, he is a real driving force for legal enhancements, as shown by the table of reforms. But this is based on a long field and persuasion work among members of parliament. The Mediator the French Republic has developed a system of networking with field workers, but also with ministerial correspondents. In fact, in each ministry he has an official correspondent charged with transmitting and following the exami-

## → *successful reforms*

nation of reform proposals by the services of the ministry, and pushing forward the information requested by the Mediator of the French Republic. Moreover, he organises round tables, and work groups to examine complex problems, create awareness among partners and federate some support. This approach enables those who find it hard to exist to exist: a transversal communication between ministries or even dialogue between civil society players with totally different interests. The Mediator of the French Republic creates communication channels for administrations.

### Work groups organised in 2010 by ministries in which the Institution was involved

- Working group on the improvement of control and organisation of police and gendarmerie records;
- Interministerial work group on the sharing of family allowances in case of alternating residence (two meetings in 2010, 5/7 and 13/10).

### Work groups organised by the Institution in 2010 at the initiative of the Reform section

- Compensating for physical injuries – meeting on the legal proposal by Mr Guy Lefrand – 20/10/10 (PR 10-R01 and 10-R02);
- Access by mentally impaired persons or people suffering from chronic infections to job-related assistance, on 19/3/10 (PR 00-R004);
- Workers' payment at Esat, on 7/5/10 (09-P108);
- Introduction of a contradictory phase during the administrative investigation made before some recruitment decisions concerning certain security jobs;

- Negative effects of the intrinsic regime provided for in Article R.261-18 of the building and lodging code for sales in the future state of completion (Vefa) – 9/11/10.

### Round tables organised in 2010 under the chairmanship of the Mediator of the French Republic

- Round table on the situation and perspectives of the reform on third-party payers' subrogation right;
- Round table on the situation of children received in France through kafala (three meetings, on 17/9/09, 25/2/10 and on 17/3/10). This meeting was attended by representatives of the ministries concerned (Justice, Interior, Immigration, Foreign Affairs, Social Affairs), members of parliament, representatives of parents' associations, (Assembly of French Departments) French adoption agency, magistrates and legal practitioners. It resulted in a proposal to reform the legal status of kafala.

### The Mediator's auditions and meetings in 2010

- 20/1/10: meeting of the Mediator of the French Republic with Mrs Cohen-Branche, appeal court magistrate charged by the Economic Minister to make some proposals on the relations between excessively indebted persons and banks;
- 20/1/10: meeting with Mr Lamanda, first chairman of the appeal court, on the application of the reform on third payers' subrogation right;
- 17/6/10: meeting of the Mediator of the French Republic with Mr Emmanuel Constans, charged by the Economic Minister to write a report on bank charges.

### Relations with the Parliament

- 3/2/10: audition of the Mediator of the French Republic by the draftsman of the Senate law commission (Mr Patrice Gelard) on the draft organic law on the Human rights defender;
- 28/4/10: meeting of the Mediator of the French Republic with members of Parliament, André Flajolet and Guy Lefrand, within the framework of their meeting on legal medicine and legal autopsies, and the preparation of their legal proposal (No. 2615) on this issue;
- 31/8/10: audition of the Mediator of the French Republic by the Senate's social affairs commission within the framework of the examination of the draft law on pension reform (draftsman: Mr Dominique Leclerc);
- 7/9/10: audition of the Mediator of the French Republic by the draftsman of the National Assembly's law commission (Mr Pierre Morel-à-l'Huissier) on the draft organic law on the Human rights defender;
- 7/10/10: audition of the Mediator of the French Republic by the National Assembly's law commission within the framework of the information mission created by this commission in order to improve access to law and justice;
- 24/11/10: audition of the Mediator of the French Republic by the National Assembly's social affairs commission on the reform of the French model of social security.

# The Mediator of the French Republic, an international reference

In 2010, the Mediator of the French Republic continued to bring mediation values to the international scene. In a world full of tension, in which the call for global regulation is becoming increasingly striking, mediation is more and more important, and mediators and ombudsmen are bound to be at the heart of deliberation forums. Although he is convinced about the indisputable universality of Human rights, the Mediator of the French Republic still strives to open up debates, maintain dialogue and enhance his proposals in order to advance the bases of mediation across the world.

Most of the time, paid for by the requesting organisations, the meetings and conferences abroad with which the Mediator of the French Republic is associated are focused on a programme exclusively dedicated to efficiency based on a transparent organisation. This involvement has made it possible to contribute effectively to the development of international relations between institutions of different countries and create a model which now inspires respect for foreign mediators.

## Francophone mediators reaffirm their attachment to democratic values

At the tenth anniversary of the Bamako Declaration, Jean-Paul Delevoye, secretary general of the Association of Francophone Ombudsmen and Mediators (AOMF), and the Mediator of the Republic of Mali organised, on 7 May 2010, with the support of the International Organisation of Francophone Countries (OIF), a conference which brought together, around the President of the Republic of Mali and West and Central African mediators, on the topic "The Bamako Declaration, status and perspective".

Organised in form of around tables, the meeting was an opportunity to assess the application of the Bamako Declaration, the reference text of the Francophone organisation for its action in favour of democracy, Human rights and freedom, ten years after its adoption. These themes enabled the different participants to present their expe-

rience, exchange good practices and define a common action programme for Francophone mediators.

## Two training sessions in Rabat in May and December 2010

The fifth session of the AOMF training, organised in Rabat in May 2010, was held around the theme "The role of the Mediator in administrative reform".

Objective: training mediators' officials and giving them the methodological tools and references for good mediation practices and, especially, consolidating the achievements of the previous sessions. Twenty-five officials of the AOMF-member institutions participated in this session, as well as mediation experts from different institutions (France, Luxembourg, Burkina Faso, Quebec and Morocco). The sixth session was held in December on the topic "Managing complaint-related data: comparative experiences".

## Creation of the AOMF website

The creation of a website in November 2010 was an important step for the association. The tool enables AOMF to be known to the general public. By facilitating the members' participation in the life of the association and communication with one another, it also gives some

sense and continuity to the association's work. A public portal presents the role and activities of as well as news about the association and detailed information about each association, which helps to create more awareness about the institutions among their citizens.

The extranet, reserved for members, is used to publish documents and promote the sharing of experiences and exchange of good practices ([www.aomf-ombudsmans-francophonie.org](http://www.aomf-ombudsmans-francophonie.org)).

### Mediators, an important lever for Human rights

To promote the rapprochement of the ombudsmen of countries for which political dialogue has been broken, the Mediterranean mediators met again in Madrid on 14 and 15 June within the framework of the fourth meeting of the Association of Mediterranean Ombudsmen (AOM), organised by the Spanish People's Defender, the Diwan Al Madhalim of Morocco and Jean-Paul Delevoye, on the topic "Immigration and Human rights, which challenge for ombudsmen?". During this meeting the Madrid resolution in favour of respecting Human dignity and better integration of immigrants was adopted.

The meeting was an opportunity for all the Mediators present to position themselves as important levers for the respect of Human rights in terms of immigration, social integration and protection of migrants. The Mediterranean Mediators emphasised on their status of independence and their ability to be at equidistance from political decision-makers and associations, thus helping them to play their look-out role concerning the protec-

tion of Human beings, no matter their status. This event was also marked by the audience given by the king of Spain, Juan Carlos, to members of the AOM administrative board.

### The ombudsmen of members countries of League of Arab States engage in a dialogue with the ombudsmen of member countries of the Council of Europe.

The Mediator of the French Republic organised, in Paris on 1st February 2010, an international conference entitled "Human rights today: universal principles, regional guarantees, in collaboration with The Protection Project of Johns Hopkins University, Washington, and Université Paris II Panthéon-Assas.

Institutions and organisations from about fifty countries participated in the debates, including the ombudsmen, Mediators, national Human Rights institutions and institutions working in the field of mediation and Human rights in member countries of the Council of Europe and League of Arab States. Also represented were the United Nations High Commission for Human rights, International Organisation of Francophone Countries, League of Arab States, Council of Europe, the European Mediator and the Sharjah University, United Arab emirates.

How are Human rights actually exercised? The participants highlighted the importance of the role of ombudsmen, mediators, national Human rights institutions, international and national jurisdictions, as well as NGOs as real guarantees of Human rights. ...

## The Mediator's view

# Circularity is an opportunity to protect oneself against excesses

« Internationally, the oppression of minorities, still striking, remains alarming in a lot of countries. This also raises the issue of the relations between temporal power and spiritual power, especially when the temporal power preaches intolerance or rejection of the other, contrary to the foundations of religion which

are supposed to give meaning to life. As can be seen in the United States, for instance, all forms of secular or religious fundamentalism are problematic because they fuel discrimination. The separation of spiritual and temporal powers is an asset which France is fighting to regain, because the neutrality of public

spaces guaranteed by secularism is an opportunity to protect oneself against excesses. In the XXI<sup>e</sup> century, so much wealth has never been created, but there has never been so low reflection on the meaning it gives to life. »

...

### A debate devoid of political ulterior motives

This meeting, which brought together for the first time representatives of Arab and European Human rights defenders and was officially opened by Robert Badinter on the issue of death sentence, was relatively symbolic because it was a forum to speak without taboo or political pressure about major issues in a non-political environment, and to discuss calmly and serenely on the differences of interpretation, without ever raising one's voice. On the contrary, all the participants defended constructively and calmly their points of view on such sensitive issues like women's rights, death sentence, domestic violence or freedom of expression. At the end of an open debate, the participants adopted a resolution on the creation of a permanent forum to develop and reinforce dialogue between Europeans and Arabs in the Human rights field, to continue the dialogue on the sharing and exchanging of experience between the Arab and European worlds, and to encourage the promotion of Human rights.

### Cooperation agreements for a French-style mediation

The Mediator of the French Republic continued to perceive the interest of mediation institutions in Middle-East countries for the French conception of Human rights and the experience of the Mediator of the French Republic. Thus, in 2010 cooperation agreements in the field of Human rights were maintained with several countries: Israel and the Palestinian territory, Qatar, Egypt, Jordan and Iraq. Their objectives: creating a French-style ombudsman or improving the pursuit of the missions fixed by each institution by exchanging good practices. These cooperation agreements are also based on some

### Agenda of meetings and symposiums

As an important observer of society, the Mediator of the French Republic, throughout 2010, made some lucid observations on the changes in our society and the ills affecting it, while proposing some solutions to restore the sense of citizenship.

The independent and qualified observation of the Mediator of the French Republic was reflected in the one hundred and eight events in which he participated in 2010.

For example:

- 19 January 2010: second annual congress of public and private mediation, entitled "The Mediator, a necessity or alibi?" in collaboration with the Paris mediation and arbitration centre
- 1<sup>st</sup> February 2010: Human rights today, universal principles and regional guarantees
- 19-21 June 2010: General situation of revival, to invent a world in search of meaning
- 25 June 2010: congress of Education league
- 7 July 2010: meeting on State modernisation, in collaboration with Acteurs publics
- 19 August 2010: Congress of the Greens
- 22 September 2010: towns conference 2010, on the issue of social cohesion, in collaboration with the Association of Mayors of big cities in France
- 14 October 2010: symposium on "civil disorganisation", in collaboration with Revue civique.
- 26 October 2010: first annual congress on social dialogue in the civil service
- 6 November 2011: symposium entitled "Better community life", in collaboration with The Grand Orient de France.

training modules, the organisation of studies and seminars on specific mediation issues: handling of complaints, communication strategy, mediation philosophy, etc.

## The Mediator's view

# Respecting Human rights: no matter the rhythm or progress in some countries if the course is right

« I am convinced that the power of words is stronger than the power of arms. The problem is to find some forums for dialogue, where people can listen to one another. What we are building is bound to succeed if we take the necessary time to listen to and understand what the other

person is saying. When you bring together in Paris fifty-four countries and half of the Arab world with half of the European world, to talk about Human rights with Robert Badinter, for one full day, each participant can understand the other participant's difference, without turning

into a prosecutor. Human rights are universal, intangible and non-negotiable, but may take different directions or find different stages, depending on the state of progress in societies. »



## Reinforcing the role of mediation in Eastern Europe

The mediator of the French Republic has implemented institutional twinning with two countries, to reinforce the role and structure of national mediation institutions: in Armenia and former Republic of Macedonian Yugoslavia. Moreover, he is into partnerships with a lot of his counterparts: thus, the French and Polish Mediators prepared in Warsaw a project of creating a cooperation network within the framework of the Eastern European partnership, with a view to supporting the mediation institutions in Armenia, Azerbaijan, Byelorussia, Georgia, Moldavia and Ukraine from 2009 to 2013. The main purpose of this agreement is to reinforce the powers of ombudsmen and help build a democratic society, by attaching much importance to individual rights. In fact, several seminars were held in 2010 with representatives of these institutions on various themes, such as the Mediators' powers and fields of intervention, Human rights, prisons or discriminations.

## (Testimonies)

**"We are a defender of public freedom, not a lesson-giver."**

"France is considered as the country of Human rights, a player in the defence and reinforcement of public freedoms. The working of the Institution of the Mediator of the French Republic is increasingly taken as an example abroad. Thanks to his active communication and activity in the area of State reforms, the Institution has become a reference model for many countries. Spontaneously contacted by our foreign counterparts for assistance and cooperation, we get involved in bilateral and multilateral cooperation. The power to reflect on and make State reform proposals based on an observation of society and its shortcomings, all the more sophisticated as it is based on the regional delegate network, constitutes an expertise that also interests our counterparts.

Over the past few years, we have revitalised the Francophone network, created a Mediterranean network, established close links with Arab countries, and gained international credibility. At the same time, our diplomatic network is regularly contacting us for expertise from the structures which have been created or to receive delegations from around the world (China, Philippines, Brazil, Malaysia, etc.).

Our priority is to ensure a real sharing of experiences from a diagnosis, to see the exchange of good practices without arrogance but by inspiring one another to define some points of improvements and reinforce the foundation of our institutions".

Christian Le Roux,  
*Director of Cabinet, Mediator of the French Republic*

# Human rights in France, a reaffirmed priority

In 2010 the Mediator of the French Republic confirmed his commitment to Human rights, not only at the international level but also everywhere and in all situations in France where compliance with the law is still an issue, to make it more easily accessible to all those who are far from it. By participating in public debates on important issues brought to the political scene, he also helps to open up dialogue on fundamental Human rights in order to restore equity between the strongest and the weakest.

## Strong commitment in favour of Human rights

The only member by right of the National Human Rights Commission (CNCDH), the Mediator of the French Republic advises and makes proposals to the government pertaining to Human rights, participates actively in the commission's work and expresses his opinions on proposals.



Therefore, real collaboration has emerged at the CNCDH, made up of associations, trade unions, professional federations and qualified personalities. The Mediator of the French Republic brings in, among others, the experience of his institution in citizens' relations with the various national and local administrations, and collaborates in the writing of notices and studies, searching for a consensus on projects.

In 2010, thanks to his expertise, which stems from the handling of complaints about several topical issues, he contributed to all the work done by the commission, especially major issues like the draft law on immigration, the law on the wearing of full veil or the implementation of the convention against torture.

Concerning the law on full veil, the Mediator of the French Republic has declared his opposition to a general prohibition of the wearing of full veil in public areas. Doubtful about the effectiveness of such a measure, he has declared himself in favour of a law that strives for a restriction in certain places and at certain moments.

## Body search among detainees contested

Although the European Court of Human rights agrees that body search is sometimes necessary to ensure security in a prison, it specifies that the modalities for this search provided for in the circular of 14 March 1986 are not, from a general point of view, inhuman or degrading. After recommending in 2009 that the French government adopt new measures on body search, the Mediator of the French Republic and the CNCDH issued a state-

ment alluding to shortfalls in the legal framework of body search.

At this stage, some information is expected on the manner in which the implementation of the new law will prevent similar violations, by also taking into account some observations made by the Mediator of the French Republic and the CNCDH, as well as other measures possibly taken or planned to avoid the repetition of the violation noticed, such as instruction, circular, awareness creation measures.

### Visit to a home for minors in Nantes

On 8 April 2010, the Mediator of the French Republic visited the detention centre for minors (EPM) in Orvault, close to Nantes. This EPM is one of the new homes meant to promote the assistance of youths by a multidisciplinary team in charge of catering for youths aged 13 to 18. The aim of Mr Jean-Paul Delevoye's visit was to take account of all the activities conducted and initiatives taken within the field of re-integration. During this visit, the Mediator of the French Republic underlined the importance of offering appropriate structures in order to create decompartmentalisation between all the people involved in re-integration. In fact, thanks to a transversal effort between educators, teachers, legal protection and the prison administration, these homes make it possible to find educative solutions that will improve relations with the law, bring in educative assistance to prepare the youths when they are released and help prevent repeat offences.

### End of antagonism in the Calais "jungle"

The Calais "jungle" is one of the most emblematic Human rights issues. Since January 2009, Jean-Paul Delevoye has been working on the case of migrants and has gone several times to the reception centre for minors in Vitry-sur-Orne to use his expertise to help find a humanitarian solution to the problem and eliminate the last obstacles in relation thereto. After the dismantling of the illegal migrants' camp on 22 September 2009, the number of migrants dropped from one thousand two hundred to two hundred, and three hundred in the town of Calais itself. There was a conflict between the associations deeply involved in the defence of the rights of the migrants and the town council of Calais which, due to the number of complaints from residents, had recommended the closure of the day reception centre and the opening of a real reception centre for vulnerable persons. Thanks to the intervention of the Mediator of the French Republic, the town council and Secours Catholique (a catholic charity) were able to restore dialogue and sign an agreement to open a sanitary area, accessible to the migrants, and a day reception centre for vulnerable persons.

The showers were used for the first time on 24 December 2009 allowing an average of seventy showers a day. Open five to six days a week, the reception centre became

operational in the middle of September 2010, thanks to the provision by the town of modular buildings, furnished by Secours Catholique to accommodate the most vulnerable persons: women, minors, injured, fragile or sick men. Four employees cater for asylum-seekers, meetings with migrants, alphabetisation workshops organised twice a week, and laundry.

# From Mediator of the French Republic to Human Rights Defender

On 8 March 2011, the National Assembly adopted in a second reading, the draft organic law and draft ordinary law on the Human rights defender, which aim to specify the status, missions, powers and resources available to this new institution.

An independent constitutional authority, the Human rights defender may be contacted free of charge. At the current stage of the examination of the laws, the future institution will bring together the functions of the Mediator of the French Republic, the Défenseur des enfants (children's defender), the High authority on the fight against discriminations and equality (Halde) and National commission on security deontology (CNDS). The Senate has rejected the initially planned integration of the Controller general of prisons.

Appointed by decree of the Council of Ministers, the Human rights defender may not receive instructions from anybody whatsoever and shall have immunity from prosecution in the exercise of his functions. His functions are not compatible with any public post, election mandate or professional activity.

Within the framework of the extension of the powers of the Mediator of the French Republic, the Human Rights Defender is mandated to receive complaints

## The Mediator's view



## The Human Rights Defender, just like the Mediator of the French Republic, will not be a super man!

« Although I strongly advocated for the creation of the Human Rights Defender and his inclusion in the Constitution, I find it unfortunate that the lawmaker has deemed it necessary to change its name to make it sound like the Spanish Human rights defender. The expression "Human Rights Defender" gives the impression of defending yourself, that you are attacked, that you are fighting against something, in this case against the administration. Now, the Human

Rights Defender is neither a prosecutor nor an advocate. I am also afraid that this name might reinforce further people's expectation about his mission. Having said that, I confess that I am particularly attached to the word "Mediator". It suggested that in the relations between an administration, a bit abrupt, and an individual feeling isolated, an institution set itself up as a place of rapprochement and humanisation. »

from any physical person or corporate body who feels that his or its rights and freedom have been violated by the working of an administration. He may also know the actions of a public or private figure if said actions hamper the protection of a child's rights, violate the rules of deontology in the field of security, or result in a discrimination prohibited by law.

Pursuant to Article 71-1 of the Constitution, the draft organic law provides for the creation of three colleges - a college in charge of matters pertaining to security deontology, a college in charge of defending and promoting children's rights and a college in charge of the fight against discriminations and the promotion of equality-, which the Human Rights Defender may consult when the complexity of his cases requires their expertise. The vice-presidents of these colleges shall be three deputy Human rights defenders to whom the Human Rights Defender may delegate some of his powers, in their respective activity fields.

The Human Rights Defender shall have considerable powers which will enable him, for instance, to propose a mediation or a transaction, to pronounce an injunction if his recommendations are not complied with, and to be heard by any jurisdiction. He shall have wide investigative powers, especially in terms of information communication and on-site visits. Like the Mediator of the French Republic, the Human Rights Defender may propose some legislative or regulatory modifications within the framework of his reform proposal powers. He may also make some recommendations, including in equity, and fix a response deadline for the authorities concerned.

A French-style Ombudsman, the Human Rights Defender will play an undeniable institutional role. An easily identifiable interlocutor for the citizens, with reinforced resources for action, the Human Rights Defender will bring in more consistency and clarity to all the institutions in charge of protecting Human rights and freedom.

### **L'Article 71-1 of the Constitution of the V<sup>th</sup> French Republic creates a Human Rights Defender**

"The Human rights defender shall see to it that Human rights and liberties are respected by State administrations, regional authorities, public organisations and any other bodies vested with a public service mission or in respect of which he may exercise some powers pursuant to the organic law.

Complaints may be sent to him, on the conditions stipulated by the organic law, by any person who deems himself wronged by the working of any public service or organisation mentioned in the first paragraph. He may also intervene at his own initiative.

The organic law defines the powers and intervention modalities of the Human rights defender. It specifies the conditions on which he may be assisted by a college in pursuit of some of his functions.

The Human rights defender shall be appointed by the French President for a non-renewable six-year term, after application of the procedure provided for in the last paragraph of Article 13. His functions shall not be compatible with those of the Government and members of Parliament. Other incompatibilities are fixed by the organic law.

The Human rights defender shall be answerable to the President and Parliament, regarding his activity."



# 4. About the Institution

The purpose of the Institution is more than ever to bring in a quick response to citizens feeling lost or even forgotten in the administrative labyrinth. The direct referral method on the website of the Mediator of the French Republic, which allows a speedy access to the Institution, continues to have an impact on the volume of complaints but also on their content. Apparently more and more users, weakened by the crisis which was intensified in 2010, are also asking for information. Therefore, the different sections of the Institution are increasingly playing an educational role. To facilitate exchanges with users and promote a transversal visibility of the citizens' different professional status, a new section has been renamed Labour, Solidarity and Civil Service (TSFP). It is all about bringing closer the Social section and the Civil Servants-pensions section (AGP). Increasingly recognised as a proposal force for improving the legislative framework, the Institution's sections have also contributed to the creation of the Human Rights Defender.

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## THE REGIONAL DEVELOPMENT SECTION

# A network of 303 voluntary delegates at the citizens' service

**Thanks to the 428 reception centres and 303 delegate Mediators, including 286 regional delegates, distributed all over France, a larger public has every year a point of access to the Mediator. Increasingly sought after, delegate Mediators handle close to 90% of the cases referred to the Institution, settling disputes, developing dialogue and proximity.**

Fully in keeping with its mission, the Institution always tries to be closer to our most needy citizens: residents of sensitive neighbourhoods for whom administrative mysteries are incomprehensible, but also people whose situation does not allow easy access to law, such as disabled persons or detainees. More than half of the delegates (214) now receive the general public in local structures, such as legal-information centres, legal-access points or public-service centres, while in the past they had their office hours in prefectures or sub-prefectures. Today, most of the new structures are due to the delegates' desire to be as close as possible to citizens: they accept to have office hours to receive the general public in two or even three different locations. This is how five delegates in the Gard are receiving the general public in twelve different reception points while some other delegates have split their reception centres like in Troyes in the Aube, Noyon in the Oise, Saverne in the Bas-Rhin, or in Lomme in the North. Moreover, the availability of legal access points in all prisons has led the Institution to create new delegations in Albertville and in the Mans.

### Presence in all prisons

Since April 2010, the promise made by Jean-Paul Delevoye has been fulfilled: the 61,000 detainees in Metropolitan France and overseas territories now have access to a delegate Mediator of the French Republic. One hundred and sixty-four prisons are concerned; 70 of them have regular office hours while 94 of them have office hours on a case-by-case basis. Close to 150 of the 286 delegate Mediators of the French Republic are involved in this action.

Of course, the system put in place by the Mediator of the French Republic must always be adapted to changes in the prison map: thus, the new prisons opened in 2009 and 2010 such as those in Corbas, Mont-de-Marsan, Béziers or Rennes now have access to the services of delegate Mediators. Moreover, an action has been taken to take account of the specificities of the new detention centre for minors (EPM). Special attention is paid to the follow-up of this programme: in each prison region every year, delegate Mediators meet with prison directors as well as integration and probation services to make a quantitative and qualitative evaluation of the difficulties encountered, for instance, pertaining to detainee information which is a permanent source of anxiety.

### A harmonious development thanks to mutual efforts

Such a high growth should not be at the detriment of quality of interventions. The delegates are given continuous training by the Institution (167 days per delegate in 2010). All the delegates have access to the Institution's information system (messaging system and intranet portal), which is a means of documentation and exchanges within the network.

Finally, the delegates are also encouraged to combine their know-how through team work. Today, in Metropolitan France, 262 delegates from 89 departments, i.e. more nearly 90% of the network, meet regularly at work meetings which favour cohesion in the approach to issues and offer them additional support by bringing about regular exchanges between them. A reflection is being made on how to adapt this working technique to delegate Mediators in the overseas territories.

These delegates now meet four or five times a year, within an interdepartmental framework, for some work meetings involving about ten participants. The meetings are held according to some geographic criteria, or ease of transport. After the Centre, Bretagne, Limousin and Champagne-Ardenne regions, which discovered this working method in 2009, the Bourgogne, Franche-Comté and Lorraine regions experimented on it in 2010.

- 303 delegates, including 286 regional territories and 17 theme-oriented delegates (healthcare security, CEDH, CJUE, civil service, etc.).
- 428 reception centres.
- 100% of the detainees have access to a delegate Mediator.

## THE ADMISSIBILITY SECTION

# Directing, informing and handling emergency situations

**The admissibility section is the reception and orientation platform for complaints arriving at the Institution. Any detected emergency is handled by a dedicated unit. Inadmissible complaints are replied to in detail, with arguments in support of the reply, and the complainant is directed to the relevant organisations.**

The admissibility section plays two basic roles. First, it receives all the requests sent to the Mediator of the French Republic, directly or via a member of Parliament. It then examines the requests, forwards those that are admissible to any of the examination units of the Mediator of the French Republic and, if applicable, to the Healthcare Security and Safety Unit, or to the regional delegates.

### Growing number of complaints

In 2010, the number of complaints handled by the section more than doubled. The impact of the economic crisis is very striking. Although a lot of complaints do not highlight an administrative malfunction, they show the fragility of the complainants' economic situation.

2010 was characterised by a significant rise in the use of this referral method: the form accessible on the website. This referral method has not replaced mail-based referral, but it has helped to develop new methods of dialogue with complainants. Referrals made online are replied to by e-mail.

### More information requests

The second task of the Admissibility unit corresponds to another mission of the Mediator of the French Republic: serving as a legal-information access point and local interlocutor. For the Admissibility section, a golden rule is never to leave a request without a reply. So, it is all about processing all complaints not admissible because they are not within its activity fields in the sense of the law of 3 January 1973. Such requests represent nearly half of the requests sent to the Mediator of the French Republic and basically concern private litigation: family problems, relations between tenants and landlords, consumer law, on-going legal proceedings, etc. The complainants receive, after their requests are processed by the unit, a clear, complete and useful reply which explains why the Mediator of the French Republic is not empowered to handle such a matter, which steps they ought to have taken or could still take, and the addresses of the organisations to contact if necessary. The Admissibility section thus solves the problem of lack of knowledge of administrative procedures on the part of the general public.

Sometimes, the Admissibility section does detect the urgency of a complaint upon reception: threat of expulsion, blocked bank accounts, loss of minimum income entitlement, etc. The very short time the complainant sometimes has to file an appeal may also increase the need for immediate reply. One hundred and ten cases were thus handled by its emergency unit in 2010.

- 9,848 claims received (excluding P3S)  
110 cases handled by the emergency unit;  
12 of them resulted from processing forms.
- 42,3% of the complaints sent to the Institution were not admissible, i.e. 5,087 cases examined by the Admissibility section.
- 7,354 forms were received online and processed; a file was created for 3,824 of them, i.e. 51.9%.
- 682 cases were opened, 524 cases were closed by the other public service mediators.

# THE GENERAL-MATTERS SECTION

## Specialised expertise for several special cases

**The General-Matters section of the Mediator of the French Republic is in charge of examining all public-law related claims not assigned to any of the specialised sections of the Institution.**

### A large variety of litigation

The General Matters section basically examines disputes pertaining to fines and road traffic and is facing, more especially in this field (except in the specific cases where fixed fine increments are contested), some problems concerning the sale of vehicles, identity theft and the introduction of the vehicle registration system (SIV).

Complaints about town planning, roads and public works represent the second largest number of complaints handled by the section.

The rest of the multi-disciplinary activities of the General Matters section concerns branches of law such as agriculture and regional authorities, culture, defence, public domain economic, public services in charge of distributing electricity and gas, education and vocational training, environment, expropriation, public works contracts, administrative police, regulated professions and public transport.

### High-level technicality to grasp complex situations

Due to the variety of the cases it handles, the general-matters section has a lot of interlocutors at the local level (regional authorities, prefectures, DDT, DREAL, etc.) and national level, especially in ministries (correspondents of the Mediator of the French Republic).

The General-Matters section is, thus, characterised by the generality and diversity of disputes referred to it and which require so much specialised skills.

It is staffed by officials drawn from the legal services of the central administrations, regional authorities or public organisations who combine their perfect knowledge of the wheels of administration and their negotiation skills as well as their wish to usefully support the complaints that merit a mediation.

Faced with sometimes inextricable situations, the intervention of the Mediator of the French Republic requires considerable conviction powers allowing him, at the end of an agreed examination, to propose a solution which closes the past and opens up the present. This requires some listening skill and a lot of time.

**Within the services of the Mediator of the French Republic, the General-matters section examines complaints covering 35 different areas.**

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 – Domainality – Public works –  
Transport and road traffic – Tourism – Healthcare –  
Administrative responsibility –  
Administrative police – Execution of legal decisions  
taken by the administrative jurisdiction, etc.

- 874 cases were closed in 2010.
- 1,031 cases were opened in 2010; 39% of them concerned road traffic related fines, and 29% town planning, environment, public domain, roads and public works contracts.

## THE JUSTICE SECTION

# Smoothing the relations between the legal system and citizens

**The justice section basically handles issues pertaining to foreigners' rights, citizenship and civil status. Without ever intervening on a court decision, it settles disputes with the court administration and explains the law to make it more acceptable.**

The Justice section handles disputes between natural persons or corporate bodies and the public service of the judiciary. This activity covers the three components of the Justice ministry: courts, prisons and judicial means of protecting 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 jurisdictional procedures: lawyers, solicitors, notaries public, sworn experts. The Justice section also handles cases concerning civil status or foreigners' rights.

### Providing assistance

With nearly 36 % of the cases handled, foreigners' rights represent the majority of the activity and concern the persons all along their life: visa, stay permit and family reunification. In this particular area, the Justice section does an important educational work, in order to inform the complainants better, among others, about the administration's "power of assessment", often considered as unjust.

In terms of volume, questions pertaining to citizenship (15 %) and civil status (15.5 %) are two other most important sources of the complaints handled. The rest of the section's activity consists in handling requests concerning the public service of the judiciary and legal proceedings as well as court officers. Although the examination periods rarely exceed a few months, certain issues, despite their complexity, may sometimes be resolved within 48 hours.

### A permanent link with the judicial authority

The Justice section generally works with the foreigners' office of prefectures, the central civil status office of the Foreign and European ministry, public prosecutors, clerks at the citizenship department of the Justice ministry.

Efforts to generalise the creation of offices of delegate Mediators of the French Republic in prisons were continued, crowning with success the experiment started in 2005 in order to increase detainees' access to mediation. Fully in keeping with the Institution's pedagogical missions, it continued its action to improve prisoners' access to law.

**846 cases were opened in 2010, out of which:**

- 36 % concerned foreigners' rights
- 15 % concerned citizenship related questions
- 15.5 % concerned civil status issues

**818 cases were closed in 2010.**



## THE TAXATION SECTION

# Towards citizen-oriented education of taxpayers

**Given the conditions for applying tax regulations, often considered as unstable and too restrictive – thus unjust –, the taxation section helps the taxpayer obtain clear information and have real guarantees.**

Almost all the cases examined by the Taxation section concern State or council tax. These very diverse cases, with a lot of financial and social implications, are presented at all stages of the administrative and litigation procedures, from the contestation of the basis for taxation or its collection up to appeal to the judge and even after judgement. Personal taxation issues occupy a major position and concern family situations (divorce, dependents' allowance, alimonies), professional situations (allowable expenses, employment bonus, unemployment benefits), patrimonial situations (inheritance, donations, monetary values, added values) as well as exceptional and deferred incomes, or exemptions on tax credits and various advantages ("tax niches").

### Serious consequences for the private individual and well as for companies

Questions of inland revenue inspection (procedure, legal interpretation of facts, tax collection difficulties) in companies, some of which stake their survival and their employees' jobs, concern about 20% of the complaints received. Inland revenue inspection of private persons generally results from that of companies in which they are managers or partners, or in case of identity theft. Finally, complaints against regional authorities mainly concern increments, deemed excessive, in council taxes, especially for the funding of the collection of household refuse, as well as their real estate valuations and cases of exemption.

Among these complaints, it seems that in addition to the solutions of compromise, tax relief or deduction obtained or time given to the complainants, the request for information in view of the complex taxation system is increasingly high. Clarifying the laws and explaining the resulting decisions, like the decisions taken by administrations, occupy a predominant place in the activity of the Institution. Thus, the Mediator of the French Republic also helps the citizens to exercise their rights.

### The need to facilitate the entire procedures

The Taxation section has also noticed that cases based on a specific and particular legal point are no longer a majority. Henceforth, most of the complaints concern an entire issue or procedure. For the citizens, this means that they consider the administration's attitude and the complexity of the entire legal framework as the reason for what they regard as general malfunctions, and think that only an independent authority, the Mediator of the French Republic, can clarify the situation.

**494 cases opened in 2010, out of which:**

- 26 % concern a derogatory or favourable tax scheme
  - 12 % concern inland revenue inspection in companies
  - 8 % concern the transfer of property
  - 15 % of the cases, related to the economic crisis, concern free reviews
- 468 cases were closed in 2010.**

## THE REFORM SECTION

# Proposing some reforms for more equity and better quality of rights

**Thanks to his position as a privileged observer of the conditions for applying laws, the Mediator of the French Republic helps to improve the law through his reform proposal powers.**

Provided for in Article 9 of Law 73-6 dated 3 January 1973, this power may be exercised to correct public service malfunctions and put an end to the iniquities caused by laws and regulations. It was reinforced by Law 2000-321 of 12 April 2000 pertaining to the rights of citizens in their relations with administrations. Since then, not only can cases be referred to the Mediator of the French Republic by members of parliament, he also has a self-referral power. Moreover, he may examine reform requests emanating directly from citizens or any other member of civil society.

### Interventions on social problems

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 his reflection, with a view to improving our laws or regulations. Beyond that, the Mediator of the French Republic intervenes on some social issues: changes in the family, pensions reform, protection of citizens, consumers and fragile populations, children's rights, indemnifying victims of healthcare tragedies, working of justice and the healthcare system, etc.

The Mediator of the French Republic strives to develop this reform mission which he considers important to improve legal equity and the working of the State and organisations entrusted with a public service mission.

### Twenty-two reform proposals adopted

In 2010, twenty-two new reform proposals were made on various issues such as the indemnification of victims of physical injuries, financial assistance to students in difficulty, protection of children received within the framework of Kafala or the situation of refugees' families, the excessive cost of phone calls to hospital patients, paying the transport costs of children received in medical/psychological/educational centres, or even improving the contradictory character of the investigation procedure for employees participating in private security activities. Moreover, twenty-two reform proposals were adopted through the publication of legal and regulatory measures corresponding to the recommendations of the Mediator of the French Republic.

Within the services of the Mediator of the French Republic, the Reform Examination section reviews reform requests and, if need be, makes proposals for the attention of the ministers concerned and members of parliament.

- 22 reform proposals made.
- 22 reform proposals closed successfully, 3 closed by being abandoned.
- 56 reform proposals awaiting adoption.
- 107 reform requests received.
- 129 reform requests examined and closed.

# THE HEALTHCARE SAFETY AND SECURITY UNIT

## Understanding, intervening, alerting, restoring trust

**Humanism, equity, respect, impartiality are the values of the Healthcare Safety and Security Unit (P3S). Its action is taken in all confidentiality with each user or healthcare professional who needs its services.**

The Healthcare Unit works as a network and deploys a system suited to the complexity and diversity of requests: from informing to simply "channelling" citizens to local mediation structures: assisting a healthcare professional in difficulty, examining the case thoroughly in the event of a conflict, mediating between conflicting parties and making a reform proposal.

With more than ten thousand requests recorded in 2010, the Healthcare Safety and Security Unit has shown its usefulness and the pertinence of its action in the field as diversified as the maltreatment of the elderly, end of life, violation of the rights of psychiatric patients, the application of the principle of secularity in hospitals, problem of prisoners' access to healthcare, overwhelmed emergency units, ethics, burnout of professionals, etc. These issues are presented in form of articles and testimonies in the monthly newsletter of P3S, published on its website ([www.securitesoins.fr](http://www.securitesoins.fr)).

### Listening platform for more proximity

More often contacted via its listening platform, the Healthcare Safety and Security Unit has made some innovations concerning the means of contacting the Institution. Although it remains possible to refer cases to it through members of parliament, delegate Mediators of the French Republic in the field or by mail, more than 80% of the requests reach it directly via the phone number 0810 455 455. It is noteworthy that for 2010 close to 18% of requests came from professionals with no possibility of dialogue with a patient, or professionals suffering from professional isolation after a medical accident. This is why the Healthcare Unit created, in the course of the year, a professional assistance and support section in charge of taking care of the post-traumatic stress of professionals in complex situations.

### Success of the mediation unit

A huge number of complex cases require an in-depth examination on the part of the P3S. To have a common and shared view of each case, a monthly and multi-disciplinary staff meeting is held at the P3S with a resident doctor, a nurse, a legal counsellor and five temporary doctors (also working in a hospital or clinic). They analyse the medical documentary evidence together with twelve delegates from different fields: reference persons, professors, magistrate, hospital doctor, psychiatrist, etc.

This work enables the Unit to understand better the proceedings of serious undesirable events submitted to it and to identify possible malfunctions or errors, an indispensable condition for improving the practices.

The mission of the Healthcare Security and Safety Unit does not end there. Its mediator role in matters pertaining to damage which may result in disciplinary measures or criminal, civil or administrative liability makes it a privileged observer of serious undesirable events and some wrong or unethical practices.

These situations which may endanger other people's life or threaten vulnerable persons (children, elderly persons) sometimes require triggering the alert system of the authority concerned.

- **39 % of the cases concern undesirable medical or surgical events.**
- **20 % of the complaints concern maltreatment or acts of violence.**
- **14 % of the cases concern patient or family dissatisfaction.**
- **14 % of the cases concern healthcare induced infections.**
- **9 % of the requests concern Human rights violations and discriminations.**
- **4 % of the cases concern accidents relating to the use of a healthcare product.**
- **75 physical mediations in 2010.**
- **2175 cases required an in-depth analysis.**
- **11,880 contacts were recorded at the call centre.**

## THE LABOUR, SOLIDARITY AND CIVIL SERVICE SECTION

# Promoting case-by-case handling of situations in the face of compartmentalised statutes and standardised social welfare

Some welfare organisations which are efficient but which work according to their own almost industrial production logic; welfare management organisations whose assistance is increasingly sought after and which are finding it difficult to provide the right answer to the growing gap in professional and family situations; administrations whose human resources management is characterised by increasingly varying individual backgrounds; polymorphous personal situations which require special attention by several organisations: these are the major issues facing the Social section and civil servants section (AGP). Moreover, since the economic crisis started in 2008, its impact in terms of the number of cases, already considerable in the last quarter of 2009, grew in 2010.

### A social Section with an ever increasing call for assistance

The Social section's activity field, which covers the entire French social welfare scheme, except that of civil servants, was again in 2010 the subject-matter of a heated debate, especially the debate on pensions reform, the impact of rising unemployment on Pôle Emploi and, of course, the difficulties encountered by liberal professionals affiliated to the RSI (the self-employed workers' social security scheme) in the face of ISU's hesitations.

1,267 files were created and 991 closed in 2010 (compared respectively to the 829 files opened and 521 files closed in 2009).

- 25% of the cases concerned old-age insurance.
- 20% concerned affiliation and problems of ISU.
- 18% concerned unemployment - employment support and vocational training.
- 14% concerned health insurance.
- 43% of the cases resulted in the provision of information.
- 41% concerned requests met and successful mediations (i.e. 91% of the attempted mediations).

### The Civil Servants section also made headlines

The effects of the general review of public policies (RGPP), the fluctuations in the number of temporary workers and contract workers employed by the administrations leading to uncertainties in the status and unemployment benefits of civil servants, especially when their ex-employer is self-insured, the still sensitive effects of the 2003 pensions reform, coupled with the debates on the 2010 reform, the changes in the indemnification and control of sick leave and,

441 files were created and 333 closed in 2010 (compared respectively to the 406 opened and 302 closed in 2009).

- 51% concerned professional hazards (unemployment, illness, industrial accident, temporary disability, etc.).
- 31% concerned old-age insurance.
- 9% concerned veterans and war victims.
- 6% concerned recruitment problems.
- 40% of the cases resulted in the provision of information.
- 24% concerned requests met and successful mediations (i.e. 74% of the attempted mediations).

in the new "decrystallisation" of pension benefits paid abroad: these are some of the issues handled by the section in 2010. Although their number remained relatively stable after the rise by the end of 2009, it is the typology of the cases that is changing with an increasing complexity, especially with regard to professional mobility.

### **Supporting French people's professional mobility**

French people's professional life is less and less linear. The fear of unemployment is pushing people to accept professional mobility with, sometimes, some changes in status. Now, in France, each status is linked to a different social security scheme, but it is all Greek to the administrative services of social security organisations and the administrative machineries of the civil service. It is true that the differences are many and complex.

### **The new Labour, Solidarity, and Civil Service section**

It is one of the latest developments in the Institution's internal operations in 2010: bringing closer the Social section and the Civil Servants-pensions section (AGP). The desire to simplify exchanges with citizens and the administrative services of social welfare organisations, and the need to gradually decompartmentalise professional statuses and to approach social security entitlements globally have led to the creation of a new section called Labour, Solidarity and Civil Service (TSFP) section, which combines both sections' activity fields.

These structural changes imply some changes in the internal organisation. But the task of this new section, beyond all the missions of the two AGP and Social sections, is also to comprehend the problems encountered by people, who as a result of professional mobility, are obliged to change their job, professional circle, social security scheme and status.

It is also an opportunity to understand the problems encountered by officials of social security organisations during the numerous mergers which characterised the year, and to grasp the real public/private cultural shock the officials had to deal with when Pôle Emploi or regional healthcare offices were created.



**I wish to thank the 202 officials and 491 delegates who assisted me throughout my mandate and whose involvement have enabled the Institution to effectively defend the rights of citizens on a daily basis.**

## Jean-Paul Delevoye

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Claude – PIQUEMAL Dominique – POINGT Michel – POLART Pierre – POLLET-GÉRARD Bernadette – POLLET-ROUYER Frédérique – POMBIA Michel – PONS Henry – PONSATY Gérard – POULIN Martine – POUPLIER Jacky – PRADALIER Patricia – PRÉVOST Michel – PRIMOT Monique – PROCIDA Robert – PROT Jean – PROUST Jean-Pierre – PROUTEAU Catherine – PROVOST Roger – PRUDHOMME Alain – PRUNEL Jocelyne – PUECH Pierre – PYTKO Dominique – RAMECOURT Alain – RANSAC Sylvie – RAPIN Georges – RATINAUD Richard – REBOUL Christian – REDON Jean-Pierre – REGNIER Alfred – REITER Nadine – RENARD Noël – REVAUX Pierre – REY Alain – REY Michel – REYNAUD-KEISLER Martine – RHATTAT Rachid – RICHARD Ludovic – RIMBAULT Michel – RIVASSOUX Jean-Pierre – RÔFORT Philippe – ROGER Michel – ROLLY André – RONCIN Daniel – ROQUEBRUN Jean – ROUCOU Jean – ROUGON Caroline – ROUX Michel – ROUX Philippe – ROUX-GRANADEL Michel – ROUYEZ Daniel – ROY Gilbert – SABATIER Nadine – SAFRAN Denis – SALAGER Solange – SANSONNETTI Jacques – SAUBAUX Georges – SAUCEROTTE Michel – SCHELCHER Robert – SCHMIT Joseph – SEGARD Pierre – SEGUIN Richard – SEMUR François – SENAUX OCHOA Stéphanie – SERAIN Christian – SÉVERAN Christian – SIAB-NOUALI Christelle – SIBILLAUD Aurore – SIMARD Pierre – SINAGRA Pierre – SOLER Adrien – SOUMAH Joséphine – SPRECHER Philippe – STAILI Mustapha – SZYMANSKI Michel – TAUZET André – TAVERNIER Alain – TEBOUL Gilbert – TESTARD André – THIBAUD Albert – THIBAUD Jean-René – TILLAUD Françoise – TOUGNE Jean – TOULET Danielle – TRAVEL Jean-Michel – TRUJILLO Louis – VACHERET Jean-Claude – VALENTIN Bernard – VALETTE Claude – VALLEIX Gérard – VALTIER Alain – VANDERMESSE Dominique – VERGEZ Georges – VIDAL Chantal – VIDAL Marie – VIGNA Régine – VILLEDIEU Nicole – VILLERMAIN-LÉCOLIER Jean-Pierre – VINCENSINI Robert – VINCENT Claude – VINCENT Guy – VRILLAUD Philippe – WACHSMANN Patrick – WALKER Gaëlle – WATISSE Christian – WEHR Josette – ZULLEMARO Thérèse.

# Administrative and financial management in 2010

<b>Budgetary means</b>	<b>11 799 823 €</b>
<b>Staff related expenses</b>	<b>7 394 033 €</b>
Headquarters' staff	6 003 000 €
Delegates	1 311 033 €
Training	80 000 €
<b>Operating expenses</b>	<b>4 155 790 €</b>
Office premises (including rent)	2 000 422 €
General resources	1 499 886 €
Other external services	655 482 €
<b>Investments</b>	<b>250 000 €</b>

## The staff of the Mediator of the French Republic (as of 31 December 2010)

	<b>TOTAL</b>	<b>A</b>	<b>B</b>	<b>C</b>
Staff placed at his disposal by administrations	<b>30</b>	21	6	3
Staff from State and regional health and social security insurance offices (CPAM, Urssaf and Cramif)	<b>4</b>	0	0	4
Seconded staff	<b>11</b>	7	2	2
P3S	<b>5</b>	4	0	1
Staff working under contract	<b>37</b>	27	0	10
Staff assigned by the SGG*	<b>13</b>	3	2	8
<b>TOTAL</b>	<b>100</b>	<b>62</b>	<b>10</b>	<b>28</b>

\* Secretariat General of the Government.

There were two novelties in 2010.

## Improvement of the complaint-handling procedures and data processing tool

The Mediator of the French Republic introduced a referral form on his website in September 2009. It quickly became necessary to enhance the system, considering the significant influx of complaints, often very basic and pertaining to strictly private disputes, sent through this channel. Thus, a new version of the form was put on line in April 2010. This new form makes it possible to inform the citizens more about the Institution's field of activity and the conditions of admissibility.

Moreover, the file management software package introduced in 2005 had to be improved because of the new needs that have emerged since then, not only due to the complexity of the files but also, and above all, due to the significant growth of online communications. Thus, some modifications were made on the tool in 2010 to meet these new requirements.

## The creation of delegate-mediator offices in all French prisons

The agreement signed on 16 March 2005 by the Mediator of the French Republic and the Justice Minister kick-started a new action of the Institution: the creation, on an experimental basis, of offices of voluntary delegate Mediators of the French Republic in prisons, to reinforce the Institution's efforts to bring closer and make the law accessible to all categories of the population. Ten prisons with a total of 7,500 inmates, i.e. more than 10% of the French prison population, were, thus, chosen for an 18-month experimentation phase which ended in September 2006. Since the outcome was considered very positive, the Mediator of the French Republic and the Justice Minister signed in January 2007 an agreement on a gradual generalisation, until 2010, of detainees' access to delegate Mediators of the French Republic.

By the end of April 2010, the promise made by Jean-Paul Delevoye was fulfilled: the 61,000 detainees in Metropolitan France and overseas territories now have access to a delegate Mediator of the French Republic. One hundred and sixty-four prisons are concerned; 60 of them have regular office hours while 104 of them have office hours on a case-by-case basis.

## Stability of the Healthcare Security and Safety Unit (P3S)

In January 2006, a national mediation, information and dialogue mission for healthcare security (Midiss) was entrusted to the High Authority on Healthcare (HAS) by the Minister for Health. This mission, now the Healthcare Security and Safety Unit (P3S), was transferred on 1st January 2009 to the services of the Mediator of the French Republic through an agreement dated 17 December 2008. The staff of this mission was made available to the Mediator of the French Republic in 2009 and 2010 in return for reimbursement to HAS. This staff became an integral part of the Mediation Institution on 1st January 2011; the corresponding employment was provided for in the 2011 finance law.

Special tools had to be provided for this. Thus, a special version of the online referral form had to be designed for the P3S. Moreover, the file management software package used by the examination services was also adapted to the specific P3S procedures so it can be connected directly to the P3S call centre, and considering the confidentiality requirement in the medical field.

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