Annual Activity Report 2019

Tapestry “Dans le sens de liberté” by Richard Texier (detail)

We are all equal before the law

Défenseurdesdroits

RÉPUBLIQUE FRANÇAISE

Annual Activity Report 2019

Editorial

Truth, trust, equality

"...to speak the truth, because independent and free but close to everyone, everywhere; to legitimatise the trust that society has in the public service and in those who embody it; to guarantee equality and nourish feelings of belonging and justice..."

The Defender of Rights is on the agenda and "makes the agenda": it is present, it responds to requests, and it takes the initiative with regard to everything concerning relations between public services and their users, the fight against discrimination, promotion and defence of the best interests of the child, the monitoring of security force ethics and, more recently, the guidance and protection of whistleblowers.

The Annual Activity Report 2019, which is the sixth that I have presented since I took office in 2014, provides an accurate illustration of our institution's contribution to the operation of the Republic, since 2011, the date on which it was inaugurated by Dominique Baudis. In a traditional landscape, the Defender of Rights has provided unexpected colour that I would happily compare, with all due respect, to the polarising effect that causes the little patch of yellow wall in the "View of Delft", the famous painting by Vermeer.

Our work, which continues to increase, reflects and, like a seismograph, transcribes numerous of our society's characteristics in its relations with public authorities and in the implementation of the rule of law. This report, which renders account thereof, shows how our institution is able to redress inequalities, make rights effective, prevent other violations, and propose new advances in the law.

From the settlement of the 103,00 complaints processed in 2019 to general proposals, including on reforms of the law and its application, the role of the Defender of Rights is deployed both to social demand and to the proportion of decline or shortages in the public services.

From the work that we have carried out since 2014, I would like to choose a few examples that illustrate our "polyphonic" role.

As Children's Ombudsperson: the Marina and K. J. reports which, through authentic substantiated accounts, contribute to improvement in the shortcomings of child protection; the victories achieved for excluded children's right to education; the provision of care for unaccompanied foreign minors (UFMs); the ban on ordinary educational

violence (often summarised as the end of spanking); pedagogy in the best interests of the child and minors' right to expression and participation.

In our core responsibility to mediate between the public services and users: the risk of inequality introduced by digitisation of administrative formalities (vehicle registration documents, paid parking); responses to the evanescence of public services; the right to error; new rights for persons with disabilities and incapable adults; the 2016 report on the fundamental rights of foreigners.

With regard to observance of security ethics: all of our recommendations based on lack of respect for the individual; our contribution to the doctrine and practice of maintaining order when circumstances have made this particularly sensitive.

Our exclusive competence in fighting against discrimination and promoting equality: contribution to the implementation of systematic discrimination by courts; highlighting discrimination on the grounds of trade union activities and physical appearance; intersectional analysis of discrimination based on the social inequalities that affect certain social groups.

Protection of whistleblowers: contribution in favour of ambitious transposition of the European Union directive.

Combination of the five skills in the Defender of Rights' constitutional mandate has enabled these different situations to be addressed, in fact and in law, in accordance with all useful points of view and in full coherence.

Nevertheless, however just and relevant they are, and recognised as such, it must be noted that our decisions are not as fully effective as we would like. Without making the Defender of Rights a judge using res judicata or an economic or financial regulator likely to severely punish companies, our investigations should be facilitated, the restrictive nature of our reminders and recommendations should be strengthened, and our tools to monitor the application of our decisions should be developed.

This will necessarily take place through an increase in our human resources, which would also enable more case files to be processed in a shorter period of time, and more means to be devoted to training, studies, and research into: the consequences of digitisation on equality with regard to the public services, and the impact of artificial intelligence on fundamental freedoms, on inequalities - in particular between men and women - and on the rights of migrants, amongst others.

During my mandate at the helm of the institution, the tragic events that have taken place in France and in Europe have led to what can only be described as breaches of the rule of law.

The response to the paralysis of public opinions and the fear felt by populations has, consistent with the "war on terror" and under the pressure of demagogic and xenophobic doctrines, continued to accumulate measures that violate fundamental freedoms and rights.

"Fear is increasing" and "human rights are under assault" stated the UN Secretary General, Antonio Guterres, on 24 February 2020.

In France, since 2015, the Defender of Rights has alerted the public authorities, in particular Parliament, and the French people to the risks that laws related to the state of emergency carry and their application through raids, subpoenas and interrogations, without the intervention of a judge. Common law antiterrorist legislation, the law on internal security and combating terrorism (loi SILT - sécurité intérieure et la lutte contre le terrorisme) dated 30 October 2017, has, however, continued and enshrined in ordinary law that which was only supposed to be exceptional and temporary.

The fundamental right to asylum has been weakened, criminal law and criminal procedure have been lost from view behind an "administrative right of internal security" characterised by the powers conferred on an administrative authority from a presumption or suspicion, unconditional accommodation for any person in distress has been questioned, and the freedom to demonstrate and freedom of movement have been restricted.

The same holds true for fundamental social rights, such as universal accessibility for persons with disabilities, which has been rendered obsolete.

Terrorists are losing armed wars but winning the battle of democracy by forcing free countries to compromise on the principles of the rule of law.

The voice of the Defender of Rights is sometimes heard, but it is often covered by the protests of public opinion and neutralised by political expediency.

However, I maintain the conviction that this development is not irreversible, and that there are no fatalities in the consensual decline in human rights since 11 September 2001. A cycle that started in Nuremburg is probably witnessing its end, but another, based on the reaffirmation and safeguarding of fundamental rights, may occur thanks to new generations; generations for which scepticism and relativism are not options and who are convinced that they are able to rise to the ultimate challenge of the absoluteness of law and rights.

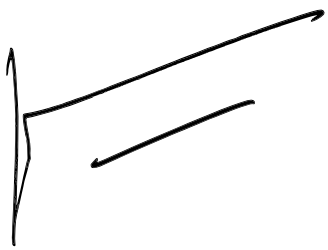
Then the echo of our words will have more strength than their immediate effects, and the Defender of Rights will no longer be perceived as a Cassandra or lecturer, but as what the Constitution wanted to make of it, and what I have tried to incarnate: the custodian of the rigour, independence and efficacy of the law when confronted with simplifications, essentialisations, and cultural isolationism.

And this, not by virtue of a political petition, but by simple accomplishment of its mission. A mission whose summary of six years in the role encourages me to focus on three requirements:

- to speak the truth, because independent and free but close to everyone, everywhere;
- to legitimatise the trust that society has in the public service and in those who embody it;
- to guarantee equality and nourish feelings of belonging and justice, instead of allowing the anti-republican spirit of communitarianism to prosper, regardless of the identity that it claims to impose.

Each and every day, the Defender of Rights is simply a human institution, the house in which more than 200 lawyers and experts work, almost 80% of whom are women, and some 500 territorial delegates led, since this year, by the heads of hubs in each region, in Metropolitan and Overseas France alike. They continue on from the four previous authorities but show evidence of even greater imagination and audacity thanks to the combination of the powers and skills of each of them.

I am a man who is proud of the work carried out by those who have embodied, with me and around me, the institution established by the Constitution. At the start of this last Annual Activity Report, I would like to thank them for teaching me so much, and to express my gratitude and admiration to them. Dare I write that the republican rule of law owes them this gratitude, because they make a significant contribution to its safeguarding, implementation and, beyond this, to social cohesion within a single, national community that is multiple, diverse, divided too, and which is cemented by equality in dignity and rights for every individual.



Jacques Toubon
Defender of Rights

Tribute

Bernard Dreyfus, a demanding critic of public services and ardent promoter of mediation

Bernard Dreyfus, who passed away in April 2019, brought his own unique viewpoint to the institution. Far from the stereotypical critiques of bureaucracy, never fully devoid of ideological ulterior motives, his vision was nourished by his experience as a public servant and through the processing of the complaints that he monitored daily with great care, first with the Ombudsperson, then as General Delegate for Mediation with the Public Services. His vision was, first and foremost, humanist and based on dialogue.

Aware of the need to modernise the public services, he firmly believed that such a policy should be envisaged and implemented so as to never impair the human relations which, in France, bind each and every one of us to the public services.

As such, he was one of the first to denounce the harmful effects of the accelerated digitisation and dehumanisation of reception, guidance, and information functions, in particular with regard to the 20% to 25% of users experiencing difficulties living in a virtual, digital world. He recommended that they be accompanied during the procedure, that paper alternatives be offered, and that they be able to speak with the competent men and women who make the public services what they should be: guarantors of the effectiveness of rights, in particular social rights.

This humanism was also at the heart of his commitment to mediation, as his work with the Defender of Rights illustrates, and the relationships that he succeeded in forging with institutional mediators. Bernard Dreyfus was attached to the cardinal virtues of dialogue in order to settle disputes with the public services.

Of course, the current "accelerated development" of mediation caused him to have some reservations. Concerned about users' specific situations, he highlighted the need for the legislator to guarantee the legibility of institutional mediation devices, their overall coherence and, above all, the independence of mediators.

Bernard Dreyfus remained convinced, however, that administrative and institutional mediation was not just one means amongst others to relieve the congestion of the courts, but that it constituted a true dispute resolution practice, based on dialogue, the law, and fairness. As with the dematerialisation of public services, he wanted it to align itself with a real public services modernisation project, orientated towards users, including the most precarious.

At a time when mediation appears as a world in transition, these thoughts constitute clear markers that the institution will strive to provide for the Defender of Rights.

Christine Jouhannaud

General Delegate for Mediation
with the Public Services

Claudine Angeli-Troccaz

Deputy responsible for Security Ethics

Police/population relations: and what if we moved away from a "warlike" mindset?

In a context of combating the terrorist threat and of a radical change in relationships between citizens and their institutions, over recent years we have witnessed a complexification of security missions and exacerbation of tensions in police/population relations.

The case files regularly referred to the Defender of Rights concerning security ethics highlight a crisis of confidence amongst citizens with regard to the security forces and an increase in violence when they carry out their missions.

This observation requires greater awareness on the part of the authorities. In the interests of the proper functioning of democratic institutions, it is henceforth essential not to limit security issues to an accounting logic of resources or to the challenges of confrontation or escalation, in order to place ethics at the heart of security debates and do everything possible to develop professional cultures, a prerequisite for a change in practices.

If ethics properly understood are professionalism to the benefit of republican values, they are far more a state of mind than the acquisition of concepts, and are instilled through a clear, systematic approach with professionals and through operational methods.

The development and revitalisation of adherence to ethical standards is an essential means of guaranteeing the effectiveness of the rule of law, while facilitating the work of professionals because, far from being an obstacle to the security forces' work, professional ethical conduct is a tool at their disposal, particularly for better adapting to the needs of the population that they serve, and a guide in the daily performance of their activities. Moreover, when faced with the complexity and difficulties connected with security challenges, promotion of ethical practices constitutes an effective means for professionals to rediscover meaning when carrying out their missions and for restoring trust in institutions and the legitimacy of their representatives, prerequisites when exercising authority and using force.

Several measures based on ethical practices have been implemented in European countries as well as in the context of national, individual and collective initiatives, which demonstrate the importance of compliance with ethical conduct in order to answer the question "How can we work well?", particularly in relations with the public and in order to guarantee the application of republican values at the same time.

As such, beyond the polemics and at a time when the exercise of security missions is at the end of its resources, ethics appear to be the best response to if we are to overcome the paradoxical requirements demanding both greater security for citizens and strengthened exercise of their rights and freedoms, and in order to give back all credit to the democratic functioning of our institutions.

Patrick Gohet

Deputy responsible for the Fight against Discrimination and Promotion of Equality

Challenges! Responses...

French society is at a crossroads. Complaints reaching the Defender of Rights and echoes that are reported to it by its delegates on the ground testify to this.

The crisis, which must not be dramatised but rather understood, is the proof of this. It is multidimensional. Its main causes are territorial inequalities and the social isolation that results from this, on the one hand, and the digital divide and accelerated dematerialisation which accompanies it, on the other. The progressive disappearance of public services that are open and accessible to different sectors of the public is causing concern and feelings of abandonment. Many of our fellow citizens feel forgotten.

We are at the heart of the Defender of Rights' vocation: the fight against discrimination and promotion of equality.

Several Frances coexist: the inner city of Paris and the metropolises with their suburbs, medium and small towns, rural areas, Overseas territories, etc. Despite the involvement of the different categories of elected representatives, the stacking of levels of responsibility (local authorities, intermunicipalities, *départements*, regions) and the new regional territorial organisation are not always well understood and are a cause for concern.

Responses and counterbalances exist. Such is the case, in particular, of the association movement, a means of gathering around common aspirations and shared needs. This is also why the Defender of Rights is surrounded by "comités d'entente et de liaison" (harmony and liaison committees) which bring together recognised representative associations acting in fields as diverse as disability, aging and dependence, origin, homophobia, health, employment, housing, etc.

These committees, whose themes for the most part correspond to criteria of discrimination prohibited by law, are forums for exchange which enable the Defender of Rights to explain its standpoints and initiatives, as well as understanding of the reactions, expectations and needs of their members.

Why have this dialogue between the Defender of Rights and the association movement? Because an association is essentially a gathering of men and women faced with similar difficulties, sharing and pursuing common projects, and defending identical notions.

An association is also individual commitment, collective solidarity, a mix of volunteers and specialists, skills, inventiveness, etc. As I have experienced in the field of disability, an association is often energy, hope and success.

The Defender of Rights, territorial authorities, associations, there are so many resources, amongst others, to understand and tackle the obstacles to accessing rights and equality in treatment, to calm tensions, to guarantee dignity for every individual, and to ensure the unity of the social fabric.

Geneviève Avenard

Children's Ombudsperson, Deputy to the Defender of Rights

The voice of the most vulnerable children

2019 shall remain an extraordinary year in my mandate as Children's Ombudsperson, with celebration of the thirtieth anniversary of the United Nations Convention on the Rights of the Child (UNCRC), adopted unanimously on 20 November 1989 by the United Nations General Assembly.

A celebration that was the opportunity to measure both progress and setbacks, as well as obstacles hampering the full effectiveness of rights and respect for the best interests of children in each decision concerning them.

Also the occasion for our institution, fully mobilised, to strengthen our actions with regard to promotion, awareness-raising, information and communication on the meaning and scope of the UNCRC. Every day we measure the extent to which it remains largely unrecognised by the population and inadequately appropriated into the practices of public and private and professional institutions alike.

Above all, 2019 was the year that saw the launch of our project to consult with children on their rights and gather their testimonials and opinions on the respect of these rights in their daily lives and their proposals for improvement: Children's words should clarify our mission, enrich it, and guide it, in the same way as the legal analyses carried out by our in-house "rights of the child" advisors the concrete findings shared with civil society.

2,200 children took part in the national Defender of Rights "I have rights, listen to me!" consultation, thanks to the unwavering involvement and support of around fifty associations, in Metropolitan and Overseas France alike, in the context of workshops during which children and adults were made aware of the rights of children, and learned how to create open, caring forums for discussion, welcoming the expression of free speech and promoting creativity in a multitude of forms.

As we hoped, this consultation was first and foremost aimed at children in situations of vulnerability, those who we even see every day and who are the most cut off from their fundamental rights, the right to express themselves in particular.

Children in care unaccompanied minors, children living in squats, slums or hostels, children in prison, and children with disabilities: a large majority of them (7 in 10) had never even heard of their rights.

We e also had to constantly and collectively adjust in order to make these rights more accessible and less virtual in view of the difficulties experienced by these children, so that they are able to simply grow up, learn, evolve and be safe like others.

And the result exceeded our expectations! In the end, with no fewer than 276 proposals from all of the children consulted.

But what moves me the most and fills me with joy is that, according to the associations, the children's involvement in the consultation has had extremely positive effects for them, in terms of self-esteem and confidence, in terms of opening up to others, and of solidarity and commitment. "Something has happened!" May this wonderful experience make others want to get involved in it!

"*What is done for others without others is done against others*" (Tuareg proverb)

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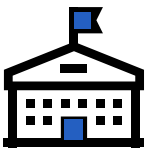
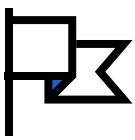
The Defender of Rights in figures

A team at the service of rights and freedom



226

employees



510

delegates active nationwide

874

reception points nationwide

Over 131,000 requests for intervention or advice

103,066

complaint files

7.5%

increase[1] Complaints in 2019, i.e. **14.1%** over the two last years and **40.3%** since 2014

48,183

calls to the institution's call centres

[1] The calculation is based on the number of referrals, not taking account of multi-complainants

Permanent contact with the public and the civil society

3

advisory boards composed of **22 qualified individuals**, which met **13 times**

9

permanent committees for dialogue with civil society, which met **18 times**

55

partnership agreements, including **2** concluded in 2019, with the aim of improving access to rights.

2,143,287

consultations of the Defender of Rights website in 2019

Over

330,000

communication tools disseminated in 2019

59,087

subscribers on Twitter

22,100

subscribers on Facebook

Over

1,742,512

views on YouTube

13,936

subscribers on LinkedIn

Recognised expertise

99,095
case files processed

Almost
80%
of amicable settlements having positive outcomes

304
decisions

694
recommendations

141
submissions of observations to the courts
In **70%** of cases, the court decisions confirmed the institution's observations

4
opinions to the Public Prosecutor's Office

11
ex-officio referrals

2
special reports

14
opinions to Parliament /
Over **180 recommendations** for regulatory and legislative reforms

General statistics

Overall evolution of complaints received between 2018 and 2019

Head office	19,204	20,661	23,639	+ 14.4%
Delegates	71,148	75,175	79,427	+ 5.7%
Total	90,352	95,836	103,066	+ 7.5%

Breakdown by Defender of Rights' areas of competence

Relations with public services	38,091	34,527	55,785	61,596	+ 78.4%
Defence of the rights of the child	1,250	2,493	3,029	3,016	+ 21.0%
Fight against discrimination	3,055	4,535	5,631	5,448	+ 20.1%
Security ethics	185	702	1,520	1,957	+ 178.8%
Guidance and protection for whistleblowers			84	84	
Access to rights		31,206	34,999	35,626	+ 14.2%

Account should be taken of the fact that the sum in the presentation does not equal the total number of complaints received (multi-qualification).

Breakdown of case files received between the head office and delegates

77.1%

of files received by delegates

22.9%

of files received at head office

Head office referral method

Online form	61.1%
Mail	38.9%

Delegate referral method

Physical reception	71.6%
Email	11.2%
Mail	10.8%
Telephone	6.4%

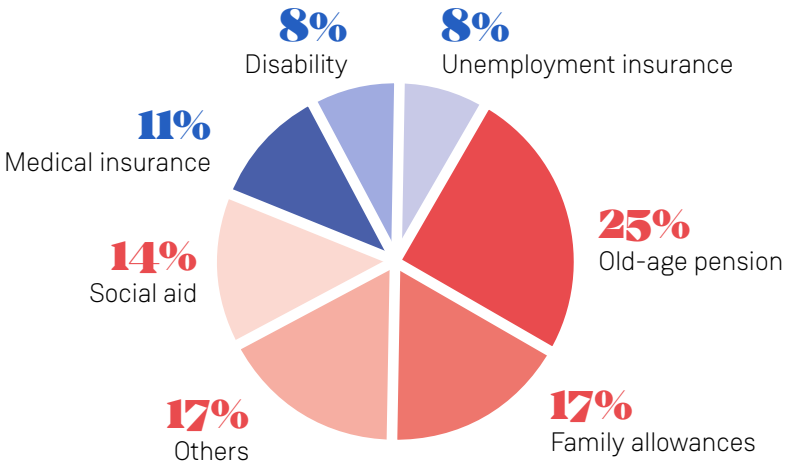
Overall breakdown of complaints by institution's focus areas

In 2019, **4,305** cases were multiqualified, comprising 1,503 cases dealt with by delegates, and 2,802 cases dealt with at the head office.

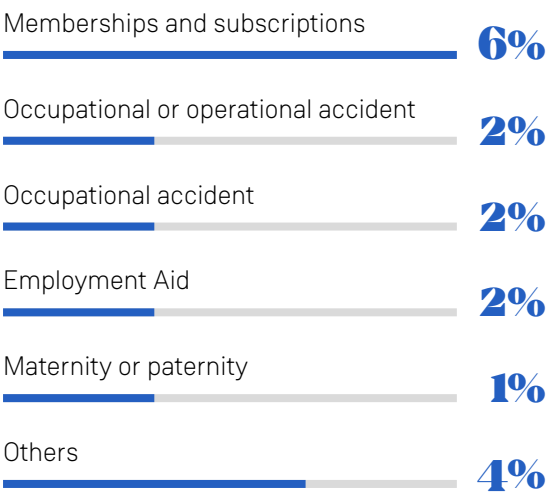
1. Social protection and security	24.0%
2. Road trafic law	11.2%
3. Rights of foreigners	10%
4. Justice	9.4%
5. Public services	6.5%
Private goods and services	5.1%
Tax	5.0%
Private sector employment	3.7%
Civil Service	3.5%
Privacy	3.4%
Environment and urban planning	3.1%
Housing	3.0%
Child protection	2.4%
Security ethics	2.4%
Nat. education/Higher education	2.2%
Network operators	2.1%
Health	1.8%
Civil liberties	0.7%
Regulated professions	0.5%

Main files:

1. With regard to social protection and social security

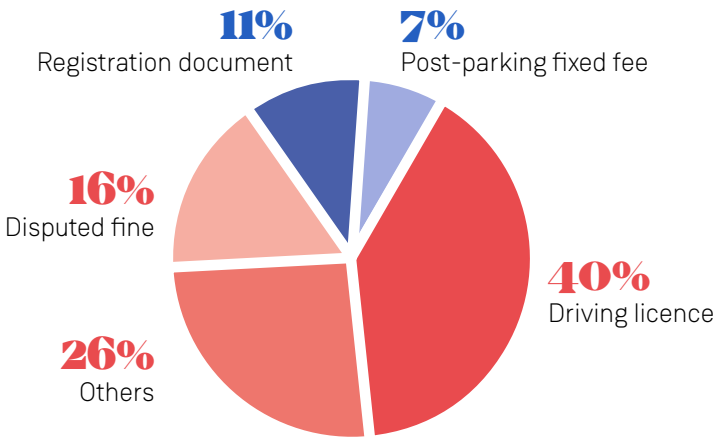


Among " Others "



Main files:

2. With regard to road traffic law



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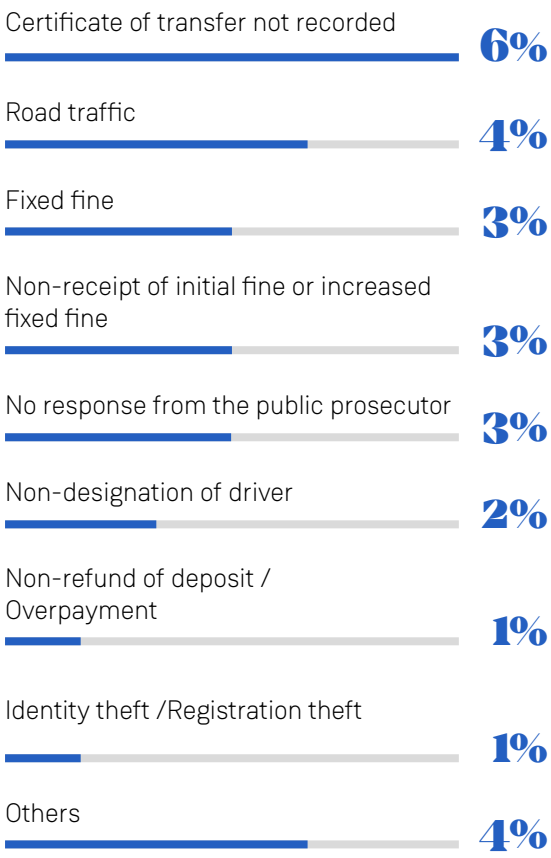
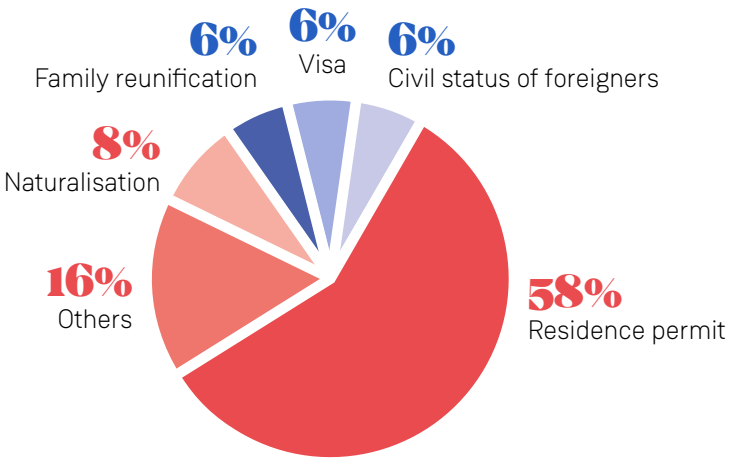


Main files:

3. With regard to rights of foreigners



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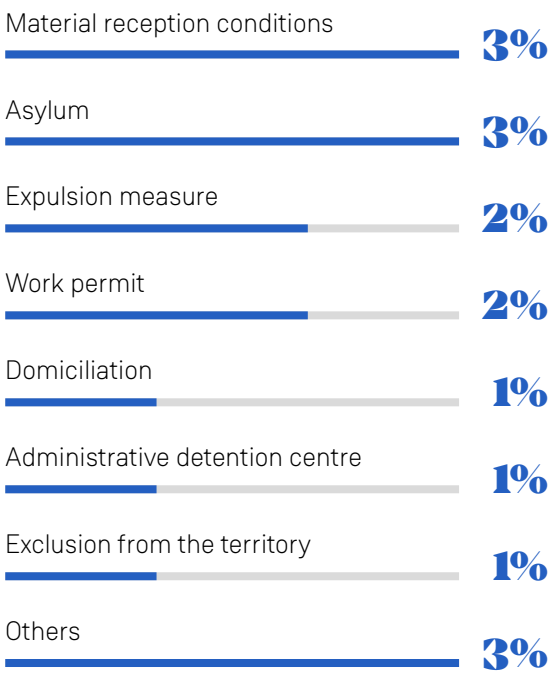
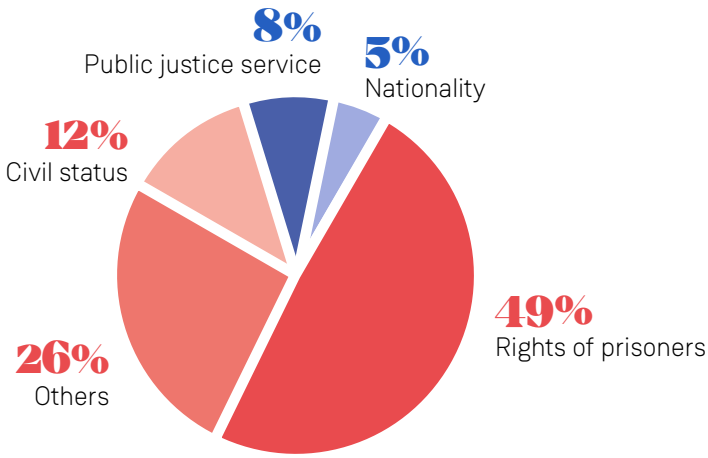


Main files:

4. With regard to justice



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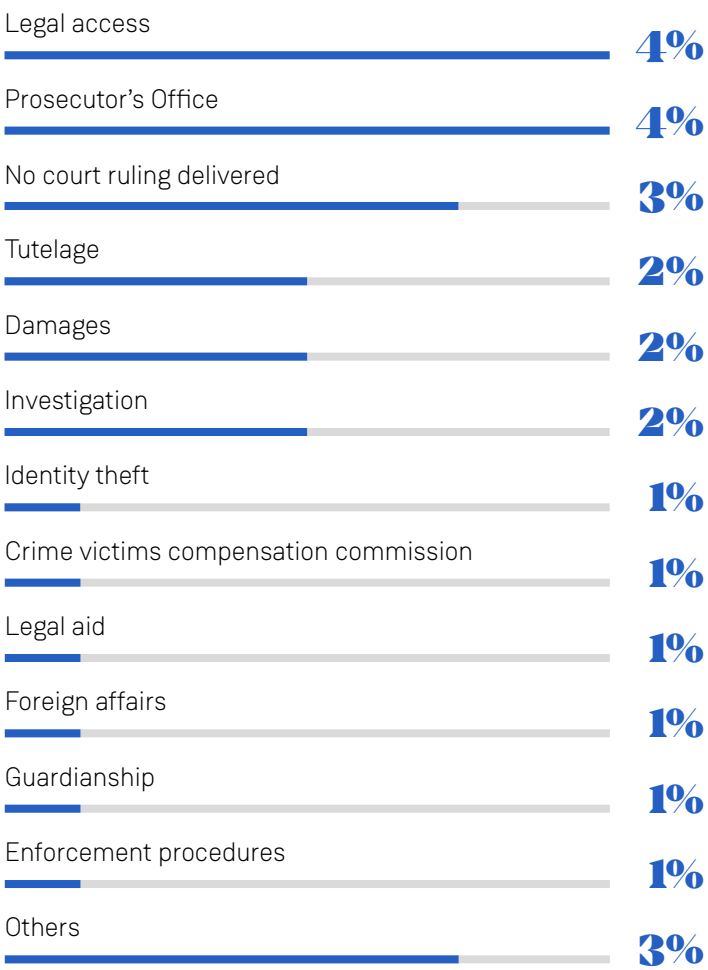
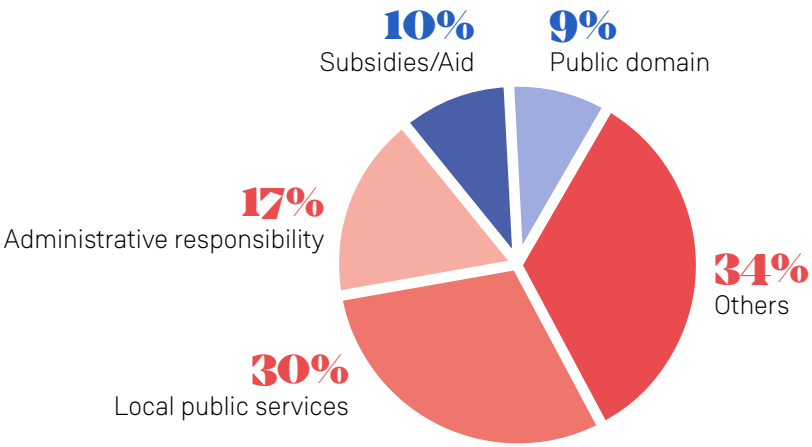


Main files:

5. With regard to public services



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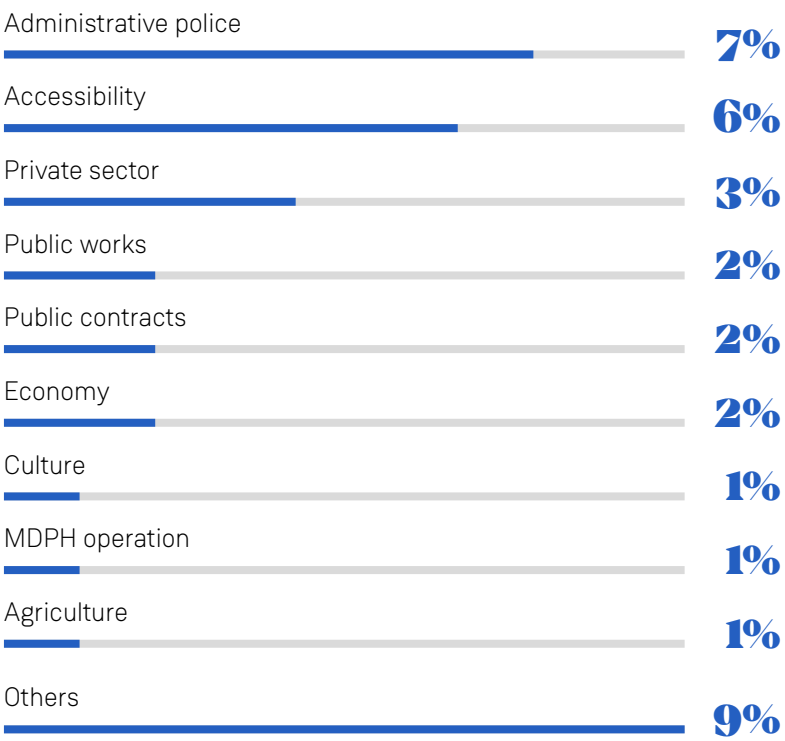


Statistics per mission

1. Public Services

Typology of main rights violations

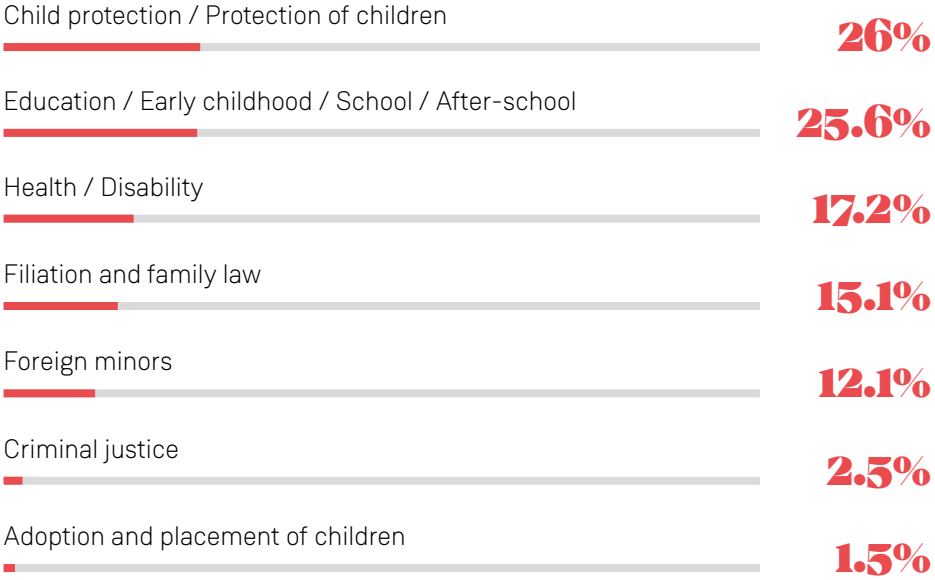
Violations related to relations with users	73.70%
Violations related to regulations	20.80%
Violations related to IT tools	3%
Violations connected to organisations	0.5%

Comparative analysis of main types of alleged rights violations with regard to public services

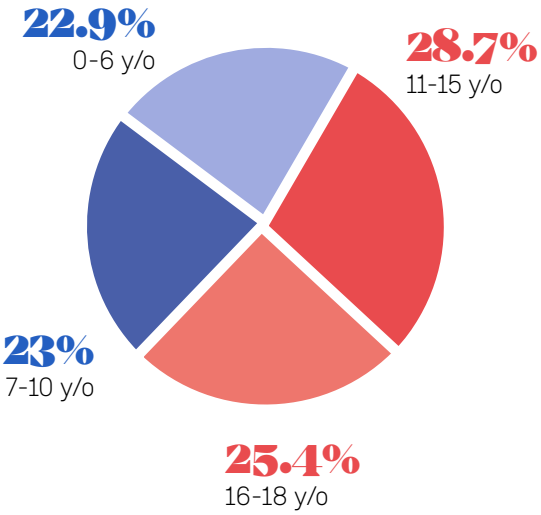
Arguments not listened to or taken into consideration	42%	33%	16%	47%
Processing or response time	39%	45%	58%	29%
Lack of response	6%	8%	18%	5%

2. Defence and promotion of the rights of the child

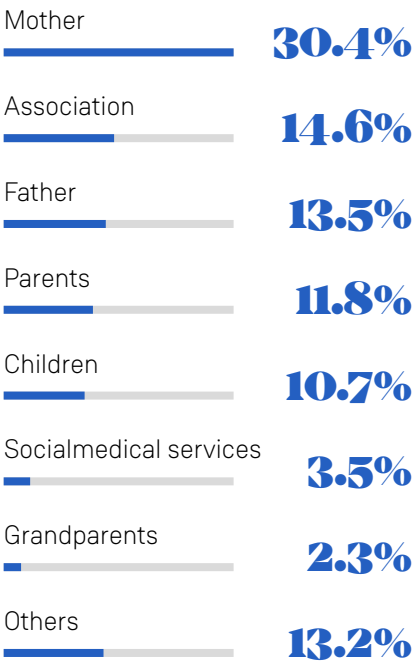
Breakdown according to nature of complaint



Breakdown by age of children



Breakdown by complainant



3. The fight against discrimination

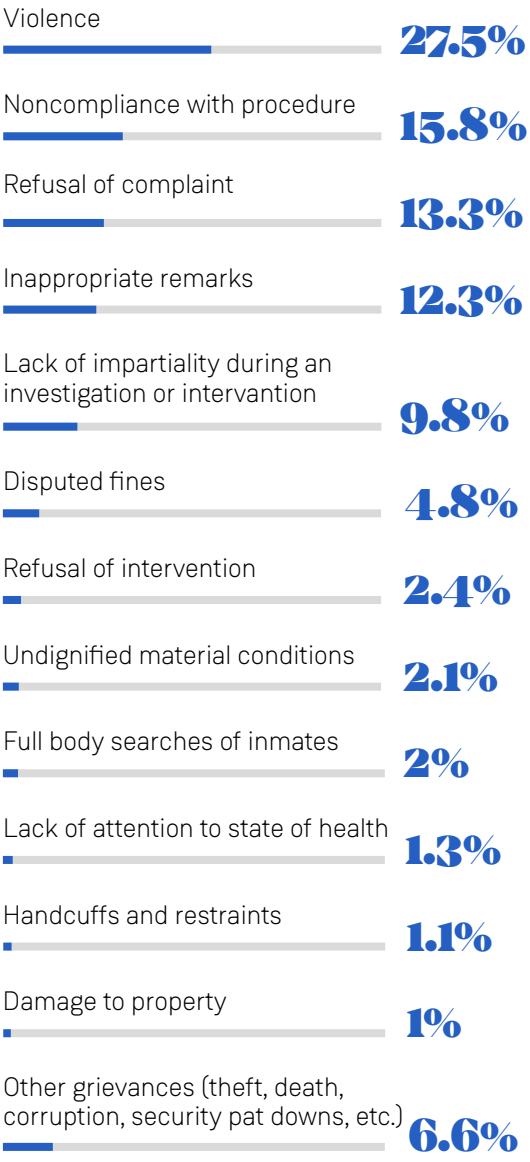
Main reasons for discrimination (head office and delegates)

Disability	22.7%	4.5%	4.0%	4.7%	4.5%	5.0%
Origin	14.5%	5.0%	2.2%	2.8%	3.7%	0.8%
State of health	10.3%	3.5%	3.6%	1.4%	1.2%	0.6%
Nationality	9.9%	1.0%	0.2%	6.7%	1.5%	0.5%
Age	5.7%	2.2%	0.8%	0.9%	1.5%	0.3%
Trade union activities	5.5%	3.1%	2.2%	0.2%	0.0%	0.0%
Gender	5.4%	2.2%	1.4%	0.7%	1.0%	0.1%
Family situation	4.1%	1.1%	0.8%	1.0%	1.1%	0.1%
Pregnancy	3.2%	2.1%	0.8%	0.1%	0.1%	0.1%
Religious convictions	2.6%	0.9%	0.3%	0.7%	0.5%	0.2%
Sexual orientation	1.9%	0.5%	0.4%	0.5%	0.5%	0.0%
Gender identity	1.7%	0.3%	0.0%	0.8%	0.6%	0.0%
Political opinion	0.9%	0.2%	0.4%	0.2%	0.1%	0.0%
Others*	11.6%	2%	1.2%	3.7%	3.9%	0.8%
total	100%	28.6%	18.3%	24.4%	14.0%	8.5%

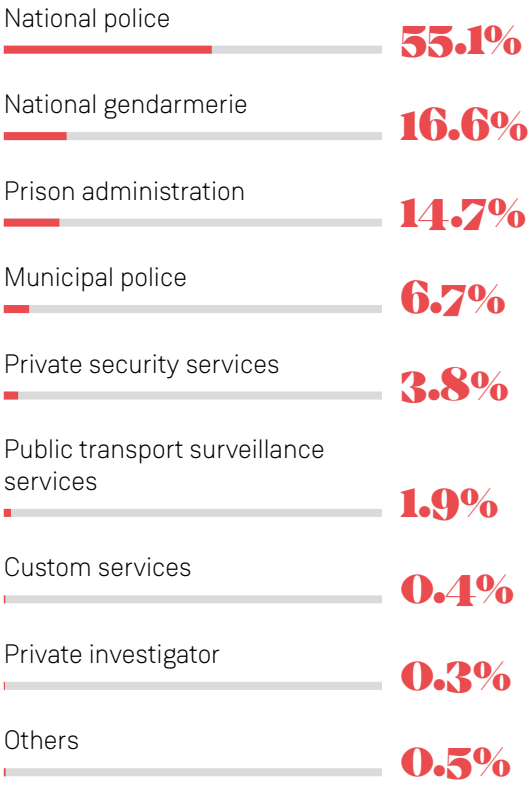
* Other criteria: place of residence, physical appearance, economic vulnerability, banking information, surname, morals, genetic characteristics, loss of autonomy.

4. Security force ethics

Main grounds for complaints processed by the institution



Security activities in question



PRÉAMBULE

Les représentans du peuple Francois, constitués en assemblée nationale, considérant que l'ignorance, l'oubli ou le mépris des droits de l'homme sont les seules causes des malheurs publics et de la corruption des gouvernemens, ont résolu d'exposer, dans une déclaration solemnelle, les droits naturels, inaliénables et sacrés de l'homme; afin que cette déclaration, constamment présente à tous les membres du corps social, leur rappelle sans cesse leurs droits et leurs devoirs; afin que les actes du pouvoir législatif et ceux du pouvoir exécutif, pouvant être à chaque instant comparés avec le but de toute institution politique, en soient plus respectés; afin que les réclamations des citoyens, fondées désormais sur des principes simples et incontestables, tournent toujours au maintien de la constitution et du bonheur de tous.

En conséquence, l'assemblée nationale reconnoît et declare, en présence et sous les auspices de l'Être suprême, les droits suivans de l'homme et du citoyen.

ARTICLE PREMIER

Les hommes naissent et demeurent libres et égaux en droits: les distinctions sociales ne peuvent être fondées que sur l'utilité commune.

II

Le but de toute association politique est la conservation des droits naturels et imprescriptibles de l'homme; ces droits sont la liberté, la propriété, la sûreté, et la résistance à l'oppression.

III

Le principe de toute souveraineté réside essentiellement dans la nation. nul corps, nul individu ne peut exercer d'autorité qui n'en émane expressément.

IV

La liberté consiste à pouvoir faire tout ce qui ne nuit pas à autrui. Ainsi, l'exercice des droits naturels de chaque homme, n'a de bornes que celles qui assurent aux autres membres de la société la jouissance de ces mêmes droits; ces bornes ne peuvent être déterminées que par la loi.

I.
An ambition for rights and freedoms

The Defender of Rights, which has received over 103,000 complaints this year, is a privileged observer, not only of the daily difficulties encountered by users of administrations and public services, but also of the infringements of their rights and freedoms and of the discrimination to which they may be subject.

If the complaints received by the institution in 2019 confirm the scale of the harmful effects of the evanescence of the public services and users' rights, they above all lead to greater awareness: nothing can ever be taken for granted with regard to rights and freedoms, and their fragility means constant vigilance.

This observation is not new, although the idea has taken hold in people's minds that rights had built a sufficiently solid foundation over time to prevent them from ever again regressing. Based on philosophical foundations that have been well established since the 17th century, guaranteed through many international and European regulatory texts drafted after the Second World War, whose national courts ensure compliance, rights and freedoms appear firmly guaranteed and protected.

In France, they are established via the 1958 Constitution's Preamble, whether it be the Declaration of the Rights of Man and of the Citizen or of the Preamble of the Constitution of 27 October 1946 - to which the Environmental Charter of 2004 should also be added. They are of "full constitutional value" (decision 81-132 DC of 16 January 1982) and are imposed on the legislator, the only entity authorised to set rules concerning "the fundamental guarantees granted to citizens for the exercise of civil liberties" (article 34 of the Constitution of 1958).

However, despite its historical and legal importance, through its daily work, the Defender of Rights observes that this pre-eminence of rights and freedoms has been tested for several years..

If, during the 1980s, human rights may have appeared as an impassable horizon durably engaging democracy, they are now subject to an ever more critical rhetoric of populist inspiration, going well beyond the analyses that law historians were able to develop.

Criticism of "human rightsism", which continues to grow in the political and media spheres, takes on an ever more "uninhibited" character, demanding pragmatism and breaking with what is presented as a form of "right-thinking" or "political correctness". The development of human rights would lead to a proliferation of rights, to the benefit of social groups, "communities" and, finally, single individuals, with the effect of dividing society, dissolving the social ties in individualism and, eventually, judicialising social relationships that have essentially become conflictual.

This criticism is more often than not accompanied by the calling into question of supranational bodies and, notably, the European Court of Human Rights, its case law, and several fundamental principles of our law. And regimes which claim to be "democratic" are taking hold in the world without ensuring respect for rights and freedoms.

When confronted with these attacks, it is necessary, now more than ever, to reaffirm that, through their universality, rights and freedoms are attached to the human person and cannot be dissociated from the social ties that the help build and consolidate. Defending rights, ensuring that they are respected and mobilising them, is what enables us to give form to society through the understanding of its common values.

Beyond critical discourse, in a context marked by fear, oversimplification, immediacy and indifference, rights and freedoms are also called into question in their ability to prevail over other considerations such as security or identity.

Yet, for the Defender of Rights, even though rights and freedoms must of course be compatible with each other, they cannot in any way be considered as simple, flexible adjustment variables adaptable to conform with changing policies and legislations. As the foundations of our democratic societies, and in this sense fundamental, they are the reflection of the primacy granted to the human person and the rule of law and, as such, they must prevail at all times, everywhere.

a. Protecting rights and freedoms in all circumstances

The principle of safeguarding the dignity of the human person against any form of subservience and degradation is a constitutional value (decision 94-343/344 DC of 27 July 1994). It constitutes the basis of inalienable rights that the Defender of Rights strives to ensure prevail when faced with the "reality principle" increasingly invoked by the public authorities.

The right to decent living conditions

Respect for the dignity of the human person first passes through the right of every individual to benefit from conditions that allow them to live in dignity. This right, called into question when a person is forced to live in the street in inhumane and degrading conditions, results in the unconditional right to emergency accommodation, which enables them to benefit from shelter for the night. The effectiveness of this right has been undermined for years through invocation of the so-called "reality principle", which consists of tailoring the right to the administration's means, including for asylum seekers who should enjoy increased legal protection.

For the Defender of Rights, which is regularly called upon in these situations, respect for the dignity of the human person cannot be submitted to conditions. This is why it recently denounced the instruction of 4 July 2019 bearing on cooperation between the integrated reception and guidance services and the French office for immigration and integration in order to take responsibility for asylum seekers and beneficiaries of international protection. Taken pursuant to the law of 10 September 2018, it provides for communication of the list of these people provided with accommodation under the obligations of the State with regard to emergency shelter.

Giving rise to confusion between the right to accommodation as a fundamental right and migration policies, implementation of this instruction could lead to the unconditional

nature of emergency shelter being called into question by excluding people who should benefit from it from the measures. Moreover, the complaints addressed to the Defender of Rights demonstrate that, if a large number of asylum seekers are housed in mainstream services, this is not the case for many who are forced to live on the street. The Defender of Rights presented observations to the Council of State (decision 2019-259) which, whilst dismissing its appeal (decision of 6 November 2019), neutralised certain points of the instruction, so responding in part to the fears and observations that it had expressed (press release).

The Defender of Rights also considers that the expulsion procedures against families living in camps or squats, not respecting the guarantees of shelter and the rights provided for by the texts, call into question the right to not be deprived of shelter, the right to benefit from adapted assistance in the search for accommodation, and the right to maintain access to fundamental rights, such as access to health and child protection measures for unaccompanied minors (see decisions 2019-068 and 2019-040 by way of example).

Beyond accommodation, the right of every individual to live in dignity also implies the right to housing. Although enshrined in law since 2007, the enforceable right to housing (droit au logement opposable - "DALO"), which recognises the right to decent housing for anyone residing on French soil on a regular basis, is difficult to implement.

Deficiencies in these measures allow families recognised as priorities and are in precarious situations to fall by the wayside for several years, with no re/housing solution. The obligation of result imposed by law on the State is, therefore, yet to be fulfilled. The Defender of Rights' findings in this respect led it to present observations to the administrative court referred to with regard to a refusal to provide social housing to an individual recognised as high-priority under the enforceable right to housing.

It also addressed observations to the Council of Europe's Department for the Execution of Judgements, responsible for ensuring the execution of the *Tchokontio Happi vs. France* ruling, whereby the European Court of Human Rights (ECHR) condemned France for breach of the European Convention on Human Rights, due to non-execution of a ruling ordering the priority and urgent rehousing of the complainant within the context of the enforceable right to housing (decision 2019-138).

For the Defender of Rights, the waiting periods for housing cannot be justified by the lack of suitable housing, with numerous studies revealing selection effects around the income and origin of asylum seekers. Moreover, existing judicial recourses rarely enable the ineffectiveness of the enforceable right to housing to be remedied. The Defender of Rights recommended adoption of a series of general measures in order to improve the system (opinion 18-18 and 18-13).

The right of each individual to live in dignity, which also justifies the allocation of certain welfare benefits, such as the earned income supplement (revenu de solidarité active - RSA), for social organisations, gives way to the desire to recover fraudulent debt by ignoring the economic situation of the often very precarious sectors of the public targeted. For the Defender of Rights, even in hypotheses where the approach may have been fraudulent, dignity demands that the organisations concerned respect the financial capacities of recipients and their family situations by establishing responses taking account of disposable income and which, as far as possible, allow decent living conditions to be maintained and any risk of expulsion from housing to be limited (see the report on "Excesses of the fight against fraud: at what cost to the rights of users?").

The right to the State's protection

Although ingrained in texts, vulnerable individuals' access to the State's protection remains fragile at the very least, eclipsed by budgetary and political considerations alike.

For several years now, the Defender of Rights has observed that migrant unaccompanied minors (UMMs) struggle to benefit from reception and care provided by the public authorities across the territory. Moreover, the ECHR observed this in the *Khan vs. France* ruling of 28 February 2019, which condemned France, under article 3 of the European Convention on Human Rights, for having failed in its obligation to provide care and protection for a migrant minor who lived in a Calais shantytown for several months. The Defender of Rights intervened in the procedure (decision 2018-003). Referring on several occasions to the Defender of Rights' analyses, the Court sanctioned the deficiencies of the French authorities in deployment of adequate suitable means for identification and protection of unaccompanied minors. This year, the Defender of Rights presented observations to the Court in another case, *S.M.K. vs. France*, focusing on the same questions, as well as on the effectiveness of domestic recourses.

When the minor is taken in under child protection, the Defender of Rights may be led to observe deficiencies in reception and care arrangements, as in its decision of 28 March 2019 (decision 2019-058), in which it formulated several recommendations on the assessment and social and educational support of young people in the process of being assessed and minors in care, as well as on preparation for adulthood and independence (see decision 2019-230).

The right to the State's protection is also undermined by the practice of using "bone tests" to assess the age of unaccompanied minors requiring care under child protection. Unanimously criticised for years due to its violations of the rights of the child guaranteed by the United Nations Convention on the Rights of the Child (UNCRC) and its unreliability, this test is, nevertheless, still used. After the Constitutional Council (decision 2018-768 QPC), the Court of Cassation was notified of legislative provisions authorising the use of this assessment method, and in particular of their non-conventionality. It delivered a rejection ruling on 21 November 2019, whereby it deemed that, contrary to what had been supported by the Defender of Rights, with regard to the guarantees concerning the use of this examination, the best interests of the child guaranteed by the UNCRC and article 3 of the European Convention on Human Rights had been respected in this particular case. The Defender of Rights intervened in the proceedings (decisions 2019-275 and 2018-296) in order to argue that, due to their unreliability and unsuitable nature, the use of radiological bone scans constitutes a disproportionate infringement of the rights of the child, aside from the fact that this method of assessment does not respect children's dignity of physical integrity or health.

It also submitted observations in support of the communication of a priority question of constitutionality (question prioritaire de constitutionnalité - "QPC") regarding the creation of a biometric file for unaccompanied minors ("Support for the Assessment of Minors"- Appui à l'Évaluation de la Minorité [AEM]) which, under the guise of better guaranteeing child protection, is aimed at managing migration flows, the fight against administrative nomadism and documentary fraud, in disregard of children's rights and best interests (decision 2019-104). However, on 26 July 2019, the Constitutional Council declared the criticised provisions to be in compliance with the Constitution (decision 2019-797 QPC).

As the Defender of Rights regularly deplores, instead of a genuine reception policy, the public authorities implement a policy based essentially on the "policing of foreigners", notably in implementation of European regulation 604/2013 of 26 June 2013 (the "Dublin III Regulation"). Notified of complaints from asylum seekers relating to transfers to other countries pursuant to this regulation, the Defender of Rights intervenes with the competent authorities in order to request re-examination of their situation, notably in the light of the risk of inhumane and degrading

treatment to which they are exposed. For example, it succeeded in stopping a transfer procedure by highlighting that the interruption of support in a mother-and-child centre enjoyed by an asylum seeker use could have an incidence on her state of health incompatible with her transfer (RA-2019-089). It also presented observations before the administrative court regarding the transfer procedure of an individual who was the victim of human trafficking, recalling the identification criteria of the State responsible for the application for asylum as well as the "discretionary clause" enabling France to take charge of the application (decision 2019-270).

Asylum seekers' right to access public services

Since its creation, the Defender of Rights has continued to reveal the difficulties encountered by asylum seekers in accessing asylum procedures. In response to the saturation of the national reception system, the law of 29 July 2015 stipulated that an "initial reception of asylum" (premier accueil des demandeurs d'asile - PADA) seekers would be carried out by external service providers primarily responsible for making appointments with the "single window for asylum seekers" (guichet unique d'accueil des demandeurs d'asile - GUDA). This single window, which brings together employees from prefectures and the "French office for immigration and integration" (Office Français de l'Immigration et de l'Intégration - OFII), is responsible for registering asylum applications three days after presentation of the application at the latest; this timeframe may be extended to ten days when a high number of foreigners apply for asylum at the same time.

Yet, the Defender of Rights observes that, very often, these timeframes are not respected, with people sometimes waiting several months for an appointment. Besides the fact that they contravene European and domestic law, these timeframes lead to people searching for international protection being kept in an illegal situation, exposing them to the risk of being arrested and expelled to countries in which they fear for their lives. Unable to register their applications, such individuals cannot access the material reception conditions guaranteed by European law (accommodation, asylum seekers allowance (hébergement, allocation pour demandeur d'asile - ADA), access to the labour market after nine months) and, as a result, find themselves kept in conditions of deprivation contrary to human dignity and likely to be characterised by inhumane or degrading treatment prohibited by article 3 of the European Convention on Human Rights (opinion 18-14).

In Mayotte, the prefecture's department for foreigners was closed on several occasions prior to being subject to complete closure on grounds relating to the preservation of public order. This situation was at the origin of particularly serious violations of rights, notably for students – in particular young people who had just passed their baccalaureate examination and had been accepted by universities in Metropolitan France or on Reunion Island.

On the occasion of the "Focus on Rights!" ("Place aux droits !") operation in October 2019, the Defender of Rights was able to observe the efforts made by the Mayotte prefecture to clear the backlog of case files that had accumulated since the partial reopening of the department in October 2018. Pending full reopening of the helpdesk, only individuals able to justify an appointment are received.

Beyond the difficulties posed for some with regard to accessing the Internet, as the Defender of Rights highlighted in its report on dematerialisation, the dematerialisation of appointments at the prefecture restricts access to the Naturalisation Department. The Defender of Rights also recommended that prefectures review their arrangements for scheduling appointments, plan for redeployment of staff dedicated to the Naturalisation Department, and establish an alternative to dematerialisation (decision 2019-266).

In the absence of a genuine digital alternative,

Jacques Toubon and Guido Raimondi, President of the European Court of Human Rights in Strasbourg, January 2019

effective access to prefectural counters – whether to file an initial application or o renew a residence permit – is seriously hampered, with foreigners eligible to apply for a residence permit finding themselves stuck in a precarious administrative situation, exposed to the risk of arrest at any time. Foreigners who already have residence permits risk being subject to particularly detrimental breaches of their rights (loss of employment, social rights, etc.).

In response to the Defender of Rights' recommendations, such as issuance of nominative, dated login acknowledgments of each time users connect to a dematerialised procedure, the Minister of the Interior informed the Defender of Rights, in a letter dated 16 January 2020, that it would pay particular attention to the potential difficulties in accessing online services, in particular for foreigners, and that development of the digital administration programme for foreigners in France (programme d'administration numérique des étrangers en France - ANEF) would, over time, enable the need identified by the institution to be better met. The Defender of Rights will monitor the progress of the dematerialisation programme closely.

Obstacles arising from EU legislation

Many of the Defender of Rights' areas of responsibility come under European Union legislation. Such is the case of the protection of the fundamental rights of foreigners.

The Defender of Rights also wanted to meet the European Commission's Commissioner for Migration and Internal Affairs on 6 March 2019 in Brussels in order to present the conclusions that it had reached with regard to the effects of recent European policies on asylum and immigration in France. It also reminded him of the recommendations that it had proposed to successive French governments, in particular on the "detrimental effects" of the Dublin III Regulation.

In its "Exiles and fundamental rights: the situation in the Calais region" ("Exilés et droits fondamentaux: la situation sur le territoire de Calais") report of October 2015 and the December 2018 report on the situation "Three years after", The Defender of Rights recommended, for example, suspending application of this regulation and denouncing the Le Touquet treaties and agreements. In effect, all of the agreements binding France and Great Britain exacerbate the effects of the European Union's migration policy. In addition to being ineffective, as only 10% - 15% of transfer decisions are actually carried out, the measure is contrary to the right to leave any country, including one's own, enshrined in the European Convention on Human Rights and the Universal Declaration of Human Rights. Moreover, it encourages exiles to live hidden away, often in conditions of extreme deprivation and subject to the worst forms of exploitation. Without prospects, and without a genuine examination of their situation, they are doomed to perpetual vagrancy.

During the discussion, the deadlocks regarding the "asylum package" and the reform of the asylum system were also raised. The Defender of Rights pointed out that some of the proposals under negotiation do not respond to the structural questions raised by the current texts. It alluded to the ongoing disproportionate burden on southern countries such as Greece, Italy and Spain, still considered as "first application States". It also alluded to the pitfall of mistrust in a system that is based on the voluntary cooperation of member States for a "sharing of responsibilities" which is yet to be expressed in significant practical results.

Finally, during this interview, the Defender of Rights pointed out that Member States' independent institutions for the protection of the rights and freedoms have unique expertise and knowledge about concrete, individual and collective situations of non-respect for the fundamental rights of foreigners. It wanted these independent, impartial stakeholders to be better taken into account in the work of the European Union institutions in this regard.

The fundamental freedom to demonstrate

The security rationale in operation since the introduction of the state of emergency, and now largely transcribed into common law, has continued to influence all layers of the law and produce detrimental effects on the rights and freedoms of individuals.

2019 was marked by a tightening of law enforcement rules during demonstrations, with the adoption of the law of 10 April 2019, which restricts the freedom to demonstrate, which is constitutionally and conventionally protected. This law provides for several preventive measures, such as visual inspection and searches of bags and searches of vehicles at demonstration locations, along with such repressive measures as the offence of intentional concealment of all or part of the face without a legitimate reason.

In its opinions and decisions (opinion 19-02, decision 2019-086), the Defender of Rights questioned the constitutionality and conventionality of these measures, in particular their necessity and proportionality to the desired objective. It also showed concern for their consequences on relations between police and population, their dissuasive effect on exercising the freedom to demonstrate, and on the risks of checks and placements in custody carried out as a preventive measure in order to put away individuals before they even commit a potential offence.

This rationale of suspicion has been instilled in texts and practices. In a decision dated 10 December 2019 (2019-246), the Defender of Rights noted that, in January 2019, during a gathering in Paris, people had been subject to "remote identity checks" at a police station, outside any legally scheduled procedure and without the legal authority, guarantor of individual freedoms, being informed of this. The aim of this "disguised arrest", which constitutes an arbitrary deprivation of liberty, was to prevent any interested parties from demonstrating. In the continuation of its report on "Law enforcement with regard to the rules of ethics" ("Le maintien de l'ordre au regard des règles de déontologie") submitted to the President of the National Assembly in January 2018, the Defender of Rights highlighted the illegality of this delocalised identity check procedure.

Decisions made during law enforcement operations may give rise to breaches of security ethics, violations of the freedom to demonstrate, and pose risks to physical integrity, which may have a dissuasive effect on individuals whose intention it is to demonstrate.

The Defender of Rights observed a disproportionate use of force (decision 2019-262) and use of a stinger hand grenade which did not meet the requirement of absolute necessity (decision 2019-165). It also intervened in its capacity as amicus curiae before the Council of State, in an appeal seeking to suspend the use of defence bullet launchers (DBLs) in the context of law enforcement operations. It brought to the judge's attention the observations and recommendations addressed to the Minister of the Interior and Parliament during the processing of individual complaints referred to it and in the context of the work carried out on the use of intermediate weapons in law enforcement. In particular, it recalled the unsuitability of DBLs in law enforcement (decision 2019-029). Their unsuitability was highlighted in a decision delivered at the end of the year regarding the circumstances in which a young demonstrator received a serious injury to the head from a DBL; the officer who fired the shot could not be identified and the conditions of use were not established (decision 2019-263).

Prohibition of discrimination

In 2016, The Defender of Rights warned the public authorities about the effects of the measures taken in the context of the state of emergency and the risk of erosion of social cohesion (opinion 16-06). The security rationale pursued in the name of the fight against terrorism and "radical Islamism" is accompanied by a discourse calling for creation of a "vigilant society". Fuelled by fear, it fosters a climate of mistrust of individuals who, due to their religious convictions and origin, are suspected of having, in one way or another, links to Islamism and terrorism. It also tends to support attitudes based on amalgams and prejudices, which nourish discrimination and weaken rights and freedoms on a daily basis, whilst calling into question the foundations of the principle of secularism.

By way of example, in the field of employment, the Defender of Rights was also referred to regarding a disciplinary procedure brought against an education assistant working at an upper secondary school, in the special context of the terrorist attacks of 13 November 2015 and the declaration of a state of emergency. Examination of the case showed that the context had influenced the administration in its interpretation of the facts. It only relied on the feelings of colleagues to substantiate gross misconduct at the origin of a suspension measure for violation of the principle of neutrality. In the terms of its decision, the Defender of Rights requested, in particular, that the local education authority indicate to it the envisaged actions with school principals in order to support them in carrying out administrative investigations intended to gather objective facts free of any discriminatory biases so as to establish a breach of the duty of neutrality in the disciplinary procedures that could be initiated (decision 2019-119).

This situation is reminiscent of the measures taken regarding administrative security investigations, the system for which has existed for several years and is tending to extend to other jobs. Although the Defender of Rights does not call into question the system itself, which pursues a legitimate security objective, it had the opportunity to identify a number of procedural shortcomings likely to call into question the rights and freedoms of the individuals concerned on the occasion of the discussion on the law relating to public security in 2017 in its opinion 17-02.

The principle of the State's neutrality was wrongly applied to users of an accommodation and social reintegration centre, with the centre refusing to process files and grant accommodation solutions to individuals wearing religious symbols (decision 2018-070), and to a university student forced to remove her headscarf during examinations (decision 2016-299).

The requirement for neutrality in the public services could also have been wrongly enforced on third parties unduly assimilated with public service employees. Such was the case, for example, of the refusals enforced by school principals on mothers wearing headscarves who wanted to accompany school outings. The study adopted by the Council of State at the request of the Defender of Rights (19 December 2013) had already highlighted that such third parties were not subject to the principle of neutrality even though, as with employees and participants in the department, they may, on a case-by-case basis, have to comply with the restrictions on the freedom to manifest their convictions for reasons connected with the proper functioning of the public service.

The Defender of Rights finds that a restrictive view of the principle of secularism is increasingly extending to the private sphere, and notably to access to private goods and services. The institution was recently referred to regarding the wearing of "burkinis" in private swimming pools. In two decisions (2018-297 and 2018-301), the Defender of Rights considered that, in the absence of any basis for establishing that the wearing of such clothing (designed especially for bathing) would present a hygiene and security risk, the refusing a woman wearing a "burkini" access to a private swimming pool constituted an act of discrimination based on religion.

The Defender of Rights was also received a complaint relating to the ban on a woman

working on a stand at a Christmas market organised by a municipality because she was wearing a headscarf. Upon examination of the case file, it considered that, as the ban had not been justified through application of the principles of secularism and neutrality of the public services, which such a market is clearly not a part of, it was likely to characterise discrimination on the grounds of belonging to a religion. It therefore recommended that the municipality compensate for the harm suffered (decision 2019-201).

This situation does not spare children, who are affected in particular by the abolition of replacement menus in certain school canteens. In the report dated June 2019 entitled "A right to the school canteen for all children" ("Un droit à la cantine scolaire pour tous les enfants"), the Defender of Rights recalled the position that it had emphasised on several occasions: although the principle of secularism does not create an obligation to offer replacement menus in school canteens, it nevertheless cannot justify the abolition of existing practices accepted by everyone.

b. Guaranteeing access to justice

The defence of rights and freedoms is contingent upon access to a judge and to the procedural guarantees enabling one's rights to be heard and asserted.

Equality of access to justice

Although one of the justice system's principles is provision of services that are free of charge, access to a judge comes at a cost to the plaintiff, which can vary depending on the complexity, nature, and duration of the case, procedure and competent court.

For the most disadvantaged, the legal aid scheme, in place since 1991, plays a fundamental role in guaranteeing equal access to justice. Observing that this system is overburdened, following an information mission in July 2019, parliamentarians formulated proposals to facilitate access to legal aid, reassert its value for plaintiffs and representatives of the law, and guarantee its funding. The Defender of Rights seized this opportunity to call upon the public authorities to not simply rethink reform through the prism of budgetary considerations, but to also take account of the specific situations of applicants (disability, extreme precariousness, unaccompanied minors, etc.) and the difficulties that they encounter in accessing justice (opinion 19-09).

Ignoring these situations would lead to these individuals being further weakened. It would also contribute to the phenomena of forfeiting the exercise of rights and "non-take-up", which the Defender of Rights was able to observe in the context of its investigations into access to rights, the scale of which it found worrying.

Providing for different conditions of access to a judge depending on the plaintiff's place of residence may also pose a problem with regard to the principle of equality of access to justice. The Defender of Rights also analysed the systematic use of video-hearings for examination of appeals filed before the French National Court for Right of Asylum by asylum seekers. This measure is reminiscent of the

Legal aid for isolated foreign minors

In its opinion 19-09 relating to legal aid, the Defender of Rights in particular scrutinised the question of access to such aid for isolated foreign minors.

Receiving several complaints, the Defender of Rights was concerned about decisions pertaining to inadmissibility, rejection and withdrawal a posteriori opposing refugee minors' requests to lodge appeals before the administrative court in order to have an embassy abroad register a visa request for one of their relatives in the context of a family reunification request.

Contrary to what has been enforced, such requests for legal aid directly concern minors as their purpose is to make their right to family unification effective. Moreover, the situation, which is of particular interest to applicants, within the meaning of the law of 10 July 1991 bearing on legal aid, is characterised as it pertains to isolated minors and consequently justifies the benefit of legal being granted to such minors in any event.

The Defender of Rights is concerned about these obstacles to unaccompanied minors' access to justice and recommends that instructions be given that particular attention be paid by legal aid offices in their management of these case files.

infringement of defence rights on the occasion of the 23 March 2019 justice programming and reform law 2018-2022, which allows increased use of audiovisual media during hearings of individuals held or detained, who are physically distanced from courthouses and representatives of the law.

The situation of protected adults

Access to justice for protected adults is one of the Defender of Rights' concerns in fulfilling its missions, and also in its capacity as an independent mechanism for monitoring implementation of the United Nations Convention on the Rights of Persons with Disabilities. In an opinion addressed to Parliament on the fundamental rights of protected adults (opinion 19-01), the Defender of Rights reaffirmed that access to justice should be guaranteed through representation by a lawyer in the context of a declaration of a protective measure when an adult is unable to express his/her will. This right should be accompanied by measures aiming to match the appropriations allocated to legal aid, taking into account the social characteristics of the protected population.

In its opinions to Parliament on the justice programming and reform law 2018-2022 (opinion 18-26), the Defender of Rights also shared its concerns regarding the abolition of district courts and the position of district judge, the judge of personal or economic vulnerabilities. It successfully requested hat statutory judges competent to rule on community disputes and protection of vulnerable adults be maintained: judges for protection disputes replacing trial judges.

Moreover, strengthening the rights of protected persons implies taking account of the difficulties and reality of professionals' operating conditions. The overburdened situation in which many courts find themselves de facto, notably with a lack of means at their disposal to address an increasing number of requests to open protective measures, means that these judges may not be able to carry out their main mission as guarantors of the respect for the fundamental rights of protected adults. Similarly, legal agents for the protection of adults, who suffer from a lack of recognition of their profession, fear the diversion movement introduced by the law of 29 March 2019 and the additional workload that it is likely to entail. Present in the day-to-day lives of protected adults, they have a key role to play in the guarantee of and respect for their fundamental rights.

Suitable reception of and support for complainants

Access to justice can only be ensured if the reception and accompaniment of plaintiffs within gendarmerie and police force services are adapted. For the Defender of Rights, this is a requirement that weighs both on the material conditions of hearings and the interview techniques used when speaking to minors who are victims of rape (decision 2019-133), and on the reception of a plaintiff who is hearing impaired (decision 2019-145), or even on the conditions of care provided to a victim of an offence confronted with a breach of the duty to assist (decision 2019-022). These complaints echo the government plan for the fight against domestic violence which, notably, provides for measures that aim to improve the reception, guidance and care of victims in police stations and gendarmeries, whose implementation will be subject to particular attention on the part of the Defender of Rights.

Access to justice may also be made difficult by certain shortcomings in the public service. When a plaintiff has no news of the follow-up given to their complaint in order to launch a civil action, despite the procedures carried out with the legal authority, the Defender of Rights may intervene in order to gather observations (RA-2019-049). It has also intervened in order to ensure access to the documents of criminal proceedings for a plaintiff represented by a lawyer (RA-2019-047), in the absence of communication of a document in the criminal case file to the civil party (RA-2019-090) or the absence of the serving of a court decision to an individual (RA-2019-001).

The right to execution of a court decision and the right to effective remedy

Depriving plaintiffs of the benefit of the execution of a court order favourable to them is the same depriving them of the right to a court hearing.

Referred regarding a complainant's difficulties of a claimant in obtaining establishment of a civil status record in compliance with his identity as recognised by a judicial decision, the Defender of Rights obtained the transcript of his foreign birth certificate in the French civil registers from the competent authorities (decision 2019-222). Taking account of the abnormal length of time taken to execute the order, and the infringements of the complainant and his family's right to privacy, the Defender of Rights recommended that a compensation procedure be implemented for the harm suffered.

The effective protection of rights requires a judge to be accessible through the lodging of an appeal. Otherwise, the rights proclaimed, however fundamental they may be, remain purely formal and illusory.

The Defender of Rights' action in support of foreign women who are victims of violence

Systems for protection of foreign women who are victims of violence have been strengthened over recent years. The provisions of article L.313-12 of CESEDA resulting from act no.2016-274 of 7 March 2016 stipulate that when a foreigner has suffered domestic violence at the hands of her French spouse and the couple are no longer living together, the prefect must grant renewal of the residence permit issued under article L. 313-11 4° of CESEDA.

However, the complaints addressed to the Defender of Rights demonstrate that these provisions are not fully effective, and prefects tend to state that these provisions are contingent up the production of evidence not provided for by the texts.

In this context, the Defender of Rights successfully recommended, for example, that a prefect stating that the renewal of a residence permit is contingent upon the production of a court decision following a complaint filed by the victim to re-examine the interested party's situation; the ministerial instructions of 9 September 2011 stipulate that evidence of violence may be established by any means (decision 2019-166). During a dispute, it also presented its observations to the courts referred to (decisions 2019-020 and 2019-118). Having annulled the prefect's refusal, the court of appeal pointed out that the simple fact that the complaint had been filed without follow-up did not suffice to dismiss the reality of the violence suffered by the spouse who was applying for renewal of her residence permit (CAA Nancy, 22 October 2019, 19NC01309).

The Defender of Rights presented observations to the ECHR with regard to the situation of many unaccompanied minors who fail to be provided with care under child protection. These unaccompanied minors are confronted with numerous difficulties, notably connected with assessments carried out by *départements*, which are sometimes based on appearance, refusal of care without justification, and long waiting times. In the absence of suspensive effect of the judge's referral of children following the *département*'s decision to end temporary emergency reception, minors are deprived of an effective legal remedy. They are forced to become vagrants, confronted with the risk of violence and subject to expulsion measures. They are therefore deprived of the shelter to which every child has a right, and of the continued protection to which they have a right under the child welfare system, until a definitive court decision has been obtained (decision 2019-117).

C. Protecting rights and freedoms in the light of new technologies

The scientific and technological innovations developed over recent years are profoundly transforming society. They are shaking up the law along with the principles on which it is based, and raising philosophical, ethical, and legal questions that require certain rights and freedoms to be re-formulated.

Progress on bioethical issues

The Defender of Rights has been called upon on several occasions with regard to bioethical questions such as the collection and storage of the gametes of transsexuals who are in the process of transitioning (decision 2015-009), and the opening up of access to medically assisted reproduction ("MAR") for all women (opinion 15-18), which it has recommended since 2015. Once again, it expressed its views on the subject in the context of the bill on bioethics, submitted in July 2019, following organisation of the general assemblies by the French National Ethics Advisory Committee for Life Sciences and Health (opinion 19-11), as well as on other challenges to the rights and freedoms of individuals, such as access to personal origins in the presence of a donor third party, establishment of the filiation of children born after MAR with a donor third party carried out by a female same-sex couple, ecognition of a general right to the self-preservation of gametes for non-medical reasons, or haematopoietic stem cell harvesting in an intra-family context, etc.

The Defender of Rights has also been regularly referred to regarding recognition of the filiation of children born via surrogacy abroad.

Although it takes the ban of this practice in France for granted, since 2015 it has recommended that all necessary measure be taken to allow children born via surrogacy to enjoy filiation legally established abroad with regard to their two parents, and legal protection making their integration and development in their family possible.

In January 2019, it reaffirmed this position by intervening as a third party before the European Court of Human Rights (decision 2019-016). In its advisory opinion, the Court notably recalled that domestic law must provide for procedures for recognition of such filiation, at the risk of disregarding the right of the child to privacy.

Warnings about rights and freedoms in the digital era

The emergence of new technologies in terms of information, communication and surveillance has given rise to significant challenges. In 2015, the Defender of Rights highlighted the dangers of the infringement of rights and freedoms by the law on intelligence authorising the use of new intelligence-gathering techniques that are highly intrusive for the privacy of individuals (opinion 15-09).

Facial recognition now appears to be the new tool coveted by private actors and the public sector alike. This additional surveillance instrument calls for in-depth thought matching the complexity of this new technology and the dangers that it represents for the rights and freedoms of individuals, as requested by the French Data Protection Authority (Commission nationale informatique et libertés - CNIL) in November 2019.

In parallel, digital technology continues to raise questions on the conditions of exercising rights and freedoms, such as the right to privacy and freedom of information and expression, their conciliation, and the threats that it may pose. This question was raised, for example, during a dispute before Luxembourg's Court of Justice regarding the scope of the right to be delisted in view of European Union legislation and the necessary conciliation between the right to the protection of personal data and the freedom of expression. In its capacity as third-party consultant, the Defender of Rights addressed

The Defender of Rights' opinions on bioethical issues

In its opinion 15-18 of 3 July 2015, the Defender of Rights highlighted that conditions of access to medically assisted reproduction (MAR) – which was open to "heterosexual couples committed to a parental project without reference to the marital status of the couple or to other conditions of the union's stability" – created an inequality in the treatment of women with regard to both their sexual orientation and to their family status.

For reasons connected with the equality of parental projects and with the freedom to procreate as an expression of personal autonomy, the Defender of Rights has systematically recommended changes in the legislation on this point in its opinions on the review of bioethics laws (opinions 18-23, 19-11 and 19-13) in order to open up MAR to all women, i.e. to female same-sex couples and unmarried women, "without excluding any techniques and without introducing any specific conscience clause".

The Defender of Rights has also called for the recognition of a general right for all women to the self-preservation of gametes for non-medical reasons, independently of the donation, and in the context of the costs involved in the procedure being covered by medical insurance. The Defender of Rights recommended that any expenses linked to extraction and storage of oocytes be fully covered by medical insurance in order to guarantee equality. In addition, it highlighted the need to objectify the risks for all individuals, namely to determine an age limit for self-preservation for both women and men in order to guarantee equal access to care and to strike a balance between the autonomy of the individual, the interests of the future child, and the liability of the medical teams.

The Defender of Rights is also pleased to see that Parliament is in the process of adopting these two measures in the context of the review of laws on bioethics.

observations to the Court in 2017 and – like the French Data Protection Authority – advocated global delisting (decision 2017-326). On 24 September 2019, the Court delivered its judgment, opting instead for a delisting that is only to operate for all European Union Member States. However, it recommended that European Union legislation should not prohibit the implementation of global delisting, which would be decided upon by the French Data Protection Authority or the judge.

The other major challenge with regard to the protection of rights and freedoms and the right to non-discrimination bears on the use of artificial intelligence and algorithms, which are present in all sectors nowadays: justice, employment, health, social protection, education, etc.

The bill on bioethics provides for use of algorithmic processing of big data by healthcare professionals. This new technology enables medical progress, including epidemiological surveillance, diagnostics, therapeutic treatment and efficiency of the healthcare system. Nevertheless, the Defender or Rights reminded Parliament of the need to surround this mechanism with adequate guarantees, such as respect for the rights of the patient, introduction of a principle of human intervention, assurance that the

Hearing by the Parliamentary Assembly of the Council of Europe's Committee on Equality and Non-Discrimination, March 2019

databases processed by algorithms are truly representative of the population and that the algorithms themselves do not produce discriminatory bias when processing this data (opinion 19-11).

In higher education, the Defender of Rights adjudicated on the operation of the French national platform for admission to initial training courses in the first cycle of higher education and the algorithmic processing of applications (Parcoursup) (decision 2019-099, decision 2019-021). With regard to the request for transparency on the admission procedure made by the complaining student organisation, the Defender of Rights pointed out that the secrecy of review board deliberations must not prevent candidates being informed of the exact content and precise method of the assessment of their candidacies. It considers that the publication of this information does not infringe the review board's principles of sovereignty and the secrecy of its deliberations, given that it does not intend to disclose the content of the assessment made of each application, but only the criteria taken into account during this assessment as well as the application method. This is why the Defender of Rights recommended that such information be made public.

d. Fostering democratic control equal to the challenges posed

The last few years have been marked by constant additions to security legislation weakening the right to privacy, freedom of movement, freedom of expression, freedom to demonstrate, freedom of religion, and the procedural guarantees from which everyone should benefit. For example, the law of 13 November 2014 concerned the ban on leaving the territory and the blocking of websites glorifying terrorism, followed by the Intelligence Law in 2015, then the State of Emergency law in November 2015 and its subsequent extensions up to October 2017. The laws of June and July 2016 then provided for other measures such as administrative detainment and the law of 30 October 2017 on internal security and combating terrorism (sécurité intérieure et la lutte contre le terrorisme - SILT), integrated state of emergency measures into common law, such as the introduction of protection perimeters, the closure of places of worship, searches and seizures, and "house arrests".

These provisions, initially exceptional then becoming standard, which dismember the constitutional and conventional structure of rights and freedoms, the fundamental principles that govern the law and balance of power, pillars of democracy and the rule of law, have all been adopted fast-track. This choice by successive governments has created a pressure that has limited the space required for genuine democratic debate, calm, rational, focussed on substantive issues and investing complexity in line with the challenges and requirements enshrined in the Constitution.

The Constitution nevertheless entrusts the legislator with the responsibility of monitoring the respect of rights and freedoms and ensuring "the conciliation between the prevention of infringements of public order and the pursuit of perpetrators of offences, both necessary for the safeguarding of rights and principles of constitutional value on the one hand, and the exercise of constitutionally guaranteed rights and freedoms on the other".

The Defender of Rights formulated several critical opinions, the most recent focussing on the law of 10 April 2019 aimed at strengthening and guaranteeing law enforcement during demonstrations, which drastically limits the freedom to demonstrate (opinion 19-02).

Referred to prior to promulgation of the law, on 4 April 2019, the Constitutional Council censured the provisions relating to the individual ban on demonstrating due to the scope of the ban, grounds likely to justify it, and the conditions of its challenge (decision 2019-780 DC). The Defender of Rights had submitted observations in this sense (decision 2019-086).

In this regard, it is regrettable that the Constitutional Council is all too seldom referred to prior to the promulgation of laws, as allowed for under article 61 of the Constitution. It only has been on two occasions since 2015: for the Intelligence Law of 24 July 2015, and for the law of 10 April 2019 intended to strengthen and guarantee law enforcement during demonstrations.

In the absence of such control, there is still recourse to the QPC communicated in the context of a dispute brought before a court. In line with the recommendations of the Defender of Rights, the Constitutional Council censured a posteriori several provisions that infringed rights and freedoms, such as the offence of regular consultation of terrorist websites, declared unconstitutional on two occasions, the provisions relating to a state of emergency, including the second paragraph of article 5 of the law of 3 April 1955 which permitted prefects to "establish, by order, protection and security zones where people's presence is regulated". The Constitutional Council considered that the legislator had not ensured "balanced conciliation" between the necessity to safeguard public order and freedom of movement.

II

Le but de toute association politique est la conservation des droits naturels et imprescriptibles de l'homme; ces droits sont la liberté, la propriété, la sûreté, et la résistance à l'oppression.

III

Le principe de toute souveraineté réside essentiellement dans la nation, nul corps, nul individu ne peut exercer d'autorité qui n'en émane expressément.

IV

La liberté consiste à pouvoir faire tout ce qui ne nuit pas à autrui. Ainsi, l'exercice des droits naturels de chaque homme, n'a de bornes que celles qui assurent aux autres membres de la société la jouissance de ces mêmes droits; ces bornes ne peuvent être déterminées que par la loi.

V

La loi n'a le droit de défendre que les actions nuisibles à la société. Tout ce qui n'est pas défendu par la loi ne peut être empêché, et nul ne peut être contraint à faire ce qu'elle n'ordonne pas

VI

La loi est l'expression de la volonté générale; tous les citoyens ont droit de concourir personnellement, ou par leurs représentans, à sa formation; elle doit être la même pour tous, soit qu'elle protege, soit qu'elle punisse. Tous les citoyens étant égaux à ses yeux, sont également admissibles à toutes dignités, places et emplois publics, selon leur capacité, et sans autres distinctions que celles de leurs vertus et de leurs talens

II. Five missions at the service of complainants

a. To defend the rights of the child: their best interests as a compass

On 20 November 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child (UNCRC), the first international treaty to announce rights for all children and oblige Member States to comply with each of its articles.

In France, the Defender of Rights is the independent authority that ensures respect of the rights of the child. Recognised by the United Nations Committee on the Rights of the Child, it ensures respect for the best interests of the child, i.e. that the child's interests are considered primordial.

Adopted 30 years ago, the UNCRC is the international text ratified by largest number of States (196 countries), yet the rights of children are not always fully respected, in France and elsewhere.

In the first months of its mandate, the Defender of Rights presented its alternative evaluation report to the UN Committee on the Rights of the Child, in which it highlighted its concern regarding France's lack of follow-up on several of the Committee's recommendations. In particular, it deplored the lack of responses provided by the authorities with regard to the actions carried out to circulate the UNCRC to children and train professionals working with children. It also regretted that the recommendations of the Committee calling on the State to tackle inequalities in access to healthcare services, in particular in Overseas *départements* and territories, had not been implemented.

For five years, the Defender of Rights has been particularly active on behalf of the rights of the most vulnerable children.

Although advances have been made and although consideration of the child as a subject of law is making progress, it continues to observe violations of the rights of the child on a daily basis, whether it be the right to education, the right to non-discrimination, or the right to be protected from any form of violence.

Failures in child protection

Child protection accounts for more than half of complaints and has been the subject of a great deal of work, with the institution providing its assistance to the government, parliamentarians, and inspectorates with a view to developing national child protection and preventive strategy.

In 2019, the Defender of Rights delivered an opinion on the Child Welfare system to the National Assembly's information mission (opinion 19-08), formulating recommendations on the training of professionals in the rights of the child, the necessary improvement of consultation and coordination between services, and implementation of projects for the child in all *départements*.

In its Annual Report 2019, dedicated to the rights of the child and entitled "Childhood and violence: the part played by public institutions", it emphasised that the consequence of the mere fact of not placing the best interests of the child at the heart of the concerns of public institutions in charge of children is both direct and indirect violence. This is particularly the case when decisions taken are based on management logistics and considerations foreign to the child itself, to the detriment of its rights to benefit from emotional security, a stable upbringing, responses adapted to its needs, and to express its opinion in either an individual or collective context.

The investigation carried out by the Defender of Rights' departments into the situation of the child K. J. gave rise to the publication of an analysis report in June 2019 on the socioeducational, judicial, and police interventions that were carried out between 1998 and 2005, a period during which the child, aged from one year to eight years, suffered rapes in the family home without the various indications of the situation resulting in its protection.

This retrospective analysis procedure identified the coordination difficulties encountered by child protection actors in the exercise of their missions and enabled areas for improvement to be identified. This report, coming after several years, demonstrates how the new legal framework for child protection, from the Laws of 2007 and 2016, has, subject to its effective application, improved the possibilities offered by the law to respond to the shortcomings due to centralisation of reporting and the place given to the risk of danger in information of concern.

However, it also shows that much work still needs to be done in order to improve practices, including consideration of the views of children and the place of written work in stakeholders' practices, so as not to fall into the trap of forgetting the child itself due to the primacy granted to the criminal investigation.

Once again this year, the Defender of Rights intervened to defend the rights of unaccompanied minors. Referred to regarding individual situations, by children and adolescents themselves and by associations and social workers, it used its various means of intervention to defend their rights: mediation, observations before courts (decisions 2019-054 and 2019-065), and individual and general recommendations (decisions 2019-058 and 2019-230).

The complaints illustrate to what extent these children, in situations of particular vulnerability connected with their migration journeys and separation from their families, struggle to be recognised as subjects of law by the public authorities. They are all too often considered as foreigners in irregular situations rather than minors who need to be protected.

It is in this context that the Defender of Rights presented its observations before the Council of State in order to challenge the legality of the "Support for the Assessment of Minors" biometric file (decision 2019-065). Opposed to the use of bone age examinations, it also advocated before the Court of Cassation referral to a preliminary decision of constitutionality before the Constitutional Council (decision 2019-104). The latter, referred to by the Court of Cassation, did not issue any reservations on the legislation passed on bone age examinations but recalled the guarantees that must surround them, recognising a constitutional value for the requirement to protect the best interests

of the child (decision 2018-768 QPC of the Constitutional Council of 21 March 2019). Referred to in Part 1.

Furthermore, the Defender of Rights continued its action on access to rights in Overseas France and, during its departments' visit to Mayotte, was again able to observe that all rights of the children living there – more than 50% of the *département*'s population – are particularly mishandled, whether with regard to the right to be protected, the right to health, or the right to education.

What has changed thanks to the Defender of Rights

Facilitating the declaration of a birth to the civil status office

The Defender of Rights was referred to regarding the difficulties encountered by parents during the procedure for declaration of the birth of their child to the civil status department in the birthplace.

A declaration of birth is mandatory for all children. Pursuant to article 55 of the French Civil Code, parents who do not declare the birth of their child within three days following the birth, to the civil status department of the town hall in the place of birth, must proceed with a judicial declaration of birth; this is a lengthy procedure that can take up to 18 months and requires representation by a lawyer.

Pending the end of the procedure, the child is deprived of civil status, which contravenes article 8 of the UNCRC, under the terms of which States undertake to guarantee the elements inherent to the identity of the child, and therefore a fortiori to its civil status.

This also has an impact on all of the procedures required to open rights connected with the birth, notably the right to benefits, thus exacerbating the precariousness of some families.

The obstacles encountered by individuals calling upon the Defender of Rights are manifold: different information from the maternity hospitals and town halls on the territory, the presence or absence of a civil status officer at the hospital, difficulty in certain territories in accessing civil status departments, particularly in Overseas France, and the complexity of applicable law.

Faced with these very concrete realities and the increasing number of complaints, the Defender of Rights investigated individual situations but also deemed it necessary to recommend a more general reform in order to ensure that every child's right to identity is respected.

Besides the extension of the timeframe to eight days in cases where distance justifies it, notably in Overseas territories where numerous difficulties have been noted, on 21 March 2016, through decision 2016-001, the Defender of Rights recommended that, in all other cases, the timeframe for declaring a birth to the civil status officer be extended from three days to five days.

These recommendations were implemented, with article 55 of the Civil Code being amended to reflect them through law no. 2016-1547 of 18 November 2016 on modernisation of the French justice system for the 21st century.

Violations of the rights of the child at school

With regard to the rights of the child at school, throughout its mandate, the Defender of Rights has been made aware of many cases relating to school bullying. Despite the involvement of the French National Education Department, it notes the persistence of the phenomenon and the difficulties experienced by schools in identifying such situations and addressing them appropriately. This year, in its annual report on the rights of the child, it recommended stepping up the training of school staff on dealing with bullying, refusing any trivialisation, and improving the monitoring of individual and collective situations alike.

Its commitment to supporting school and extracurricular integration continued in 2019. During its hearing by the rapporteurs of the committee of inquiry on the inclusion of children with disabilities in schools and universities of the Republic, fourteen years after the adoption of the law of 11 February 2005, the Defender of Rights drafted a general overview of the mixed results regarding respect for the rights of children with disabilities in the school environment (opinion 19-06). It again delivered several decisions with recommendations in this field, in particular aimed at taking better account of the needs of the child and implementing any reasonable arrangements necessary (decision 2019-025). It also oversaw numerous amicable settlements with schools and/or town halls, for example, in order to re-establish dialogue between a municipality and the family of a hyperactive child in order to better organise the child's extracurricular time and enable the professionals involved to gain a better understanding of the child's disability (RA 2019-115).

It also continued to remind the different public stakeholders that refusing a child access to leisure activities due to its disability may constitute discrimination (RA 2019-121; decision 2019-083).

Confronted with the public authorities' inability to agree on their respective responsibilities with regard to supporting a child with disabilities in the best interests of that child, the Defender of Rights observes that territorial disparities are such that equal access to the rights of children is threatened. Following the opinion of the board responsible for the defence and promotion of the rights of the child, it delivered a decision (2019-271) recommending that the Association of French Mayors remind municipalities of their responsibilities with regard to reception of children with disabilities during extracurricular time and that the State implement all necessary measures to clarify the legal framework for receiving children with disabilities during the various school and extracurricular times.

The best interests of the child when faced with the justice system and prison administration

The Defender of Rights adopted a decision 2019-133, relating to the slowness and handling of a criminal investigation into the rape of 9-year-old minor, a situation that also fell within its competence with respect to security ethics. It observed failures on the investigator' part due to the coercive climate in which he carried out the hearing and confrontation of the child victim. It also observed the lack of resources dedicated to police and judicial services to enable them to carry out their missions, notably with regard to minors, in suitable material conditions (hearing locations, and investigation and procedure timeframes). It formulated seventeen recommendations aimed at improving respect for the rights of child victims during criminal investigations and the auditing of the whole penal chain in the *département* concerned in order to enable identification of difficulties and of solutions to remedy them.

The study entitled "Adolescents without housing. Growing up in a family in a hotel room"

The study carried out by researchers at the Paris Samusocial Observatory and the University of Tours, complements the 2013 survey entitled "Children and families without housing" (Enfants et familles sans logement - ENFAMS), by characterising in as much detail as possible the living conditions of adolescents housed in social hotels. It is based on repeated interviews, conducted between April 2017 and May 2018, with around forty young people aged from 11 to 18 y/o living in social hotels in Paris (and its conurbation) and in Tours.

The adolescents housed in social hotels are primarily migrant children, and, more rarely, the children of migrants. Regardless of how they came to be at the hotels, the adolescents experience the hotel nomadism imposed by the administration.

Published in February 2019, the study carried out by the Defender of Rights highlights the way in which the housing conditions and residential instability of families produce detrimental effects on adolescents' family and friend relationships, schooling and health.

With regard to the conditions in which children visit an incarcerated parent, at 1 April 2019, it was estimated that almost 100,000 children are affected by these matters. In its decision 2019-114, the Defender of Rights emphasised that the best interests of the child must be the primordial consideration when organising such visits. It recommended to the prison administration that it adapt its premises, disseminate and promote best practices for training prison staff in the specific reception of children in prison, and appoint a "children's reference person" in each institution.

b. Defending the rights of public service users: the imperative of quality

Public services are subject to repeated criticisms of the reduction in their scope, their delegation to private companies, and restriction of their budgetary resources.

The Defender of Rights, responsible for defending the rights and freedoms of users of administrations and public services, is convinced that the latter play a key role in social cohesion, ensuring a redistributive role and access to many fundamental rights, such as the rights to health, housing, education, justice, emergency accommodation, etc. It makes every effort to ensure that they remain in a position to offer the same access to everyone.

Yet, with the decline in public services that began many years ago and which it analysed in its previous annual report, the Defender of Rights observes that this requirement is less and less fulfilled.

Failings in the law, failings in rights

The Defender of Rights has often highlighted that certain difficulties that users must overcome in order to access their rights effectively are located upstream of the public services in deficiencies in the law. The Defender of Rights intervenes before courts that may interpret laws when disputes are referred to them and before the public authorities that introduce legislation and regulations.

In the field of social protection, besides a lack of coordination between the different pension schemes often criticised by the Defender of Rights, certain schemes present particular difficulties. Such is the case, for example, with the calculation of numbers of complementary retirement points accumulated by micro-entrepreneurs. With a view to redressing a legal gap in the system, the French Interprofessional Fund for Pension Planning and Insurance (Caisse Interprofessionnelle de Prévoyance et d'Assurance Vieillesse - CIPAV) decided to refer to the provisions on State compensation, whereas, in the Defender of Rights' view, they had not been intended to apply to the actual calculation of insured parties' rights. This choice also diminished the rights of micro-entrepreneurs (decision 2018-001). As the Court of Cassation shared the same analyses as the Defender of Rights (decision 2019-062), it rejected the appeal introduced by the fund, through the ruling of 23 January 2020. Public authorities are now obliged to bear the consequences of the legal gap that they allowed to persist and for which, until then, insured parties had borne the cost.

Another example: the division of certain family benefits (maintenance support, housing allowance, back-to-school allowance, etc.) in cases of shared custody, presents comparable difficulties. Unlike family allowances, the legislation in force does not stipulate any provision derogating from the principle of unicity of the beneficiary. In the event of agreement between the parents, the family allowances fund retains the individual jointly agreed by the parents as beneficiary. In the event of disagreement, the organisation maintains the parent who already receives family benefits as beneficiary. On several occasions, and notably before the courts which have agreed with it, the Defender of Rights has emphasised that this deficiency was the cause of discrimination based on gender and the family situation, and violated the best interests of the child (decision 2019-122, Paris Court of Appeal, 11 October 2019, no.10/04054).

The Defender of Rights' reform proposals in the context of budgetary discussions

Each year, Parliament is referred to with regard to finance bills (projets de loi de finances - PLFs) and social security funding bills (projets de loi de financement de la sécurité sociale - PLFSSs). In this context, the Defender of Rights is called upon to rule on highly diverse subjects, notably with regard to relations with public services, in particular with welfare benefits organisations.

For the first time in 2019, the Defender of Rights made public all the recommendations that it wished to present to the general rapporteurs of the French National Assembly's and Senate's Social Affairs Commissions on the occasion of examination of the social security funding bill for 2020. Hence, opinion 19-10 addresses subjects as diverse as family benefits, retirement pensions, State medical aid, and control of and countering fraud.

Resulting from the processing of a very high number of complaints relating to welfare benefits, these reform recommendations are communicated throughout the year by the Defender of Rights to the ministries and administrations concerned, and centralised at the time the PLFSS is examined.

The following are recommended in particular: amendment of the social security code so that parents can request the division of family benefits and related benefits in the event of alternating residence; amendment of the provisions relating to phased retirement in order to open up the right to employees whose work time is counted in days; the opening of additional financial aid in the event of downtime due to maternity or paternity for all physicians in private practice; and abolition of the minimum residence condition in order to benefit from the solidarity allowance for the elderly (allocation de solidarité aux personnes âgées - ASPA).

In this opinion 19-10 as well as in opinion 19-12 focussing on the 2020 Finance Bill's "health" mission, the Defender of Rights also reasserted its recommendations, already formulated on several occasions, on the merger of State medical aid (aide médicale d'Etat - AME) and medical insurance. It regrets the legislator's decision to only maintain a specific system for undocumented foreigners at the time of the 2015 reform of universal health cover. Although the need for treatment is a relatively minor reason for migration, bearing the healthcare costs of every individual living on the territory is nonetheless a major public health challenge.

What has changed thanks to the Defender of Rights

Progress made for victims of terrorism

The Defender of Rights has carried out a great deal of work in order to improve the operation of the guarantee fund for victims of terrorism (fonds de garantie des victimes du terrorisme - FGTI). It observed that this compensation system for victims of terrorism did not integrate European requirements in this regard. It also recommended that the public authorities improve support for victims and/or their families during the compensation process, that decision support for the guarantee fund for victims of terrorism be strengthened and, finally, that support for foreign victims be permitted (decision 2017-193).

Several of these recommendations have been followed up by the government, notably the creation of a court specialising in compensation of acts of terrorism, greater consideration for victims of terrorism of the harm to the loved ones of deceased victims, drafting of a guide to compensation for victims of terrorism, better information for victims with implementation of an Internet portal, strengthening of European and international cooperation for aid for victims, and the implementation of an interministerial information system on attack victims.

Difficulties meeting users' simplest needs

The Defender of Rights has often highlighted the increasing difficulties that public services have responding to the requests addressed to them. They are exacerbated by the decline in the financial resources allocated to them.

Many public service users encounter difficulties in obtaining a response to their inquiry or request for information on the progress of their procedure. Public prosecutors' offices do not have sufficient staff resources to inform victims in a reasonable timeframe of the decision made following their complaints. In 2019, the Defender of Rights contacted prosecutors over 600 times in this regard. Similarly, clerks of the court are unable to respond systematically to requests regarding the progress of procedures.

Certain courts are also experiencing difficulties in hearing claims within reasonable a timeframe; for example, in parental neglect proceedings, authorisations granting a contribution by a guardianship judge, verification of enforceability of an adoption judgment, etc., as well as in sending judgments or copies of judgments to the individuals concerned.

In the field of health, patients benefit from a fundamental right to information (article L1111-7 of the French public health code). The medical record must be given to the patient, or doctor designated by him/her, within eight days. This timeframe is increased to two months if the medical information dates back more than five years.

Defender of Rights teams visit Dijon, December 2019

The Defender of Rights observes that these timeframes are not always respected and that patients still encounter difficulties in obtaining communication of the entirety of their medical records. With this fundamental right being called into question, the Defender of Rights has for many years been regularly reminding health facilities establishments of the texts in force, emphasising that, even in the absence of a direct sanction provided for by the texts, health professionals and facilities are not authorised to ignore requests by patients or their beneficiaries or to delay in responding to them (RA 2019-136, RA 2019-146).

Challenging the fundamental rights of the most vulnerable people

Faced with the budgetary restrictions imposed on them, certain public services are under strain. The lack of personnel, which results in the lack of their availability, may also lead to the fundamental rights of particularly vulnerable users being called into question.

Prison inmates encounter difficulties in accessing routine care due to the restrictive nature of the procedure as well as long waiting periods. With regard to access to emergency care, continuity of care at night and at weekends is not always guaranteed, and inmates suffer from delays in treatment (RA-2018-174). They also encounter difficulties in managing addictions, access to medication and specialised consultations (ophthalmologists, dermatologists, gastroenterologists, etc.) which is highly

inadequate (RA-2019-003). In parallel, the lack of appropriate care and prevailing prison conditions have proved to be unsuitable for prisoners suffering with psychiatric disorders, the elderly inmates and those with reduced mobility; the situation is exacerbated by prison overcrowding.

Similarly, the Defender of Rights reported a number of occurrences of abuse in medicosocial facilities (see, for example, decision 2019-318). These occurrences are characterised by lack of respect for privacy, lack of hygiene, constraints on freedom of movement, installation of barriers or restraints, restrictions or bans on the right to nonmedical visits, unsuitable management of individual care needs, such as young adults with disabilities placed in dependent old people's homes (Etablissements d'Hébergement pour Personnes Agées Dépendantes – EHPADs) due to a lack of places in specialised care homes. These acts of abuse may even go as far as arbitrary requests for placement under a legal protection regime in order to exclude families deemed to be too demanding and, more rarely, to physical and psychological assaults, essentially humiliations. For the Defender of Rights, such occurrences violate the right to privacy as well as the dignity of the person, and call for a comprehensive response.

The Defender of Rights, a key actor in mediation with the public services

Access to a judge has a dissuasive cost for many people, in particular when they find themselves in precarious situations. Furthermore, litigation proceedings are complex, which may constitute an obstacle in the face of which public services with specialised facilities available to them and users are not on an equal footing.

Based on this observation, the Defender of Rights, heir of the Ombudsperson, favours mediation in the processing of complaints addressed to it, when they lend themselves to the possibility. Such access to the law based on dialogue is concluded with amicable settlement in 80% of complaints for which mediation was undertaken.

Such mediation, based on the law and into which equity considerations may sometimes enter, is essentially vested in the Defender of Rights' 510 delegates, volunteers present in 874 centres across the national territory, in Metropolitan and Overseas France alike. They benefit from the support of 12 managers in regional hubs, executives installed in all regions since the end of 2019. Experimentation with mandatory prior mediation (médiation préalable obligatoire - MPO) is entrusted to these delegates.

Mediation implies both parties' commitment to real dialogue. Yet all too often, due to a lack of resources, authorities, notably in rural municipalities, and public services, in particular prefectures and certain social organisations, are less and less inclined to respond to requests for dialogue made by delegates.

In these conditions, mediation meets its limitations: it does not enable rights to be defended when faced with a public service reluctant to enter into dialogue and any concessions, protected by the asymmetric situation in which it finds itself with regard to the user.

It is for this reason that the Defender of Rights, mandated by the Constitution to ensure respect of rights and freedoms, was allocated more extensive and constraining prerogatives than those vested in the Ombudsperson, in particular investigatory powers, from which the public services cannot be exempted, injunctive powers and powers to publish special reports.

What place does dialogue have in the public services? Initial feedback on experimentation with mandatory prior mediation

The Defender of Rights participates in the experimental system of mandatory prior mediation, implemented by decree no. 2018-101 of 16 February 2018.

In six *départements* (Maine-et-Loire, Loire-Atlantique, Isère, Haute-Garonne, Meurthe-et-Moselle and Bas-Rhin), people who intend to contest certain decisions on the earned income supplement, exceptional end-of-year aid, and personalised housing aid before the administrative court must, under penalty of inadmissibility of their claims, inform the Defender of Rights of a request prior to mediation. This mission is entrusted to the delegates.

The Defender of Rights has agreed to participate in this experimental system, which aims to the possibility of prompt, free-of-charge mediation vested in a neutral, impartial, independent third party, to individuals in situations of precarity for whom access to a judge is often difficult. In doing so, mandatory prior mediation must open up a genuine forum for discussion conducive to access to rights, whether it is a matter of access to information on the law and services, access to services themselves and, if necessary, access to a judge. It intends to assess the system each year.

The first evaluation of mandatory prior mediation submitted to the Council of State in June 2019 emphasises that, during the first year of experimentation, around 500 requests for mandatory prior mediation were addressed to the Defender of Rights (43% for earned income supplement and 31% for personalised housing aid). This number remains inadequate for elimination of any risk impediments to accessing rights and judges.

When undertaken, mandatory prior mediation does, however, yield satisfactory results: for the whole experiment, 22% of mandatory prior mediation carried out during the first year led to the organisations concerned making either total or partial concessions deemed satisfactory by users, who did not undertake contentious appeals.

However, the Defender of Rights deplores the fact that *départemental* councils, along with certain social organisations, are all too often limited to strict application of the rule of law, with explanations provided in the context of mediation that rather belong in a litigation brief that it would be necessary to duplicate if an appeal were to be filed.

Moreover, as the joint body has already ruled in the context of mandatory prior administrative recourse (recours administratif préalable obligatoire – RAPO), certain organisations state that undertaking mandatory prior mediation is contingent upon the existence of new factors, so introducing a restrictive condition not established by the relevant texts.

Similarly, the question of fraud presents a particular difficulty: many organisations purely and simply disallow mediation on cases in which fraud is suspected.

In the face of such reluctance, only the development of a shared culture of mediation will enable the system to acquire its full scope.

The Defender of Rights, a privileged observer of mediation in the public services

Enlightened by the complaints that it receives and the relationship that it has with the institutional mediators with whom it works closely, the Defender of Rights is a privileged observer of the mediation schemes implemented in the public services.

Since act no. 2016-15472016-1547 of 18 November 2016 on modernisation of the French justice system for the 21st century, institutional mediation has enjoyed fresh impetus, developing "here, there and everywhere", notably in social organisations, with act no. 2018-727 of 10 August 2018 for a State serving a society of trust, and in territorial authorities, with act no. 2019-1461 of 27 December 2019 on involvement in local life and on local public action.

This development calls for clarifications. Henceforth, it is necessary for the legislator to ensure both the clarity of the mediation schemes that it intends to implement and the cohesion of all the institutional mediation schemes in force and under development.

Wishing to clarify systems for mediation between citizens and the administration, the French National Assembly's Assessment and Monitoring Committee for Public Policies called upon France Stratégie, which submitted a report to it in July 2019 entitled "Mediation accomplished?". Discourse and practices of mediation between citizens and administrations.

In this context, on several occasions throughout 2019, and notably during national conferences on the administrative mediation organised by the Council of State on 18 December 2019, the Defender of Rights emphasised that the time had come to abandon a rationale of juxtaposition of schemes, a smokescreen for some, exposing users already much tested by the withdrawal of public services to all kinds of pitfalls.

Institutional mediation must be based on solid foundations and clear guidelines, enabling it to become a project for modernisation of the administration and public services, intended for users, including the most precarious among them.

If, at present, a certain number of institutional mediators are able to "play the third party" with regard to the public service to which they belong, adoption of a legal framework including a "common set of guarantees of independence", as proposed by France Stratégie, would contribute to consolidating this positioning.

This set of guarantees of independence could, in particular, establish the way in which mediators are appointed (notably, in national organisations, the appointment of local mediators should not fall under local management, but under the national mediation scheme), the minimum duration of the mandate and the principle of its nonrenewal, a regime of incompatibilities, ethical rules, and the need for a separate, adequate budget.

Beyond this set of guarantees, it could be envisaged that a power of recommendation, and additional guarantees aimed at making the use of mediation truly accessible, be awarded to the mediator. On the one hand, the obligation for the organisation to communicate its mediator's contact details to users in a "legible" and "intelligible" manner, whether on its website or any other suitable medium, in particular notifications of decisions; on the other hand, the obligation to provide for an alternative to digital referral so as not to exclude users who do not have access to the Internet.

It would also be appropriate to harmonise the referral effects of mediators on the timeframes allowed for contentious appeals. The timeframes allowed for appeals to a judge following administrative mediation start from zero, whilst for social mediators, the complainant only has the time remaining prior to the referral to the mediator, which may constitute a source of complexity for users, in particular the most precarious, likely to hinder

their right to an effective remedy before a judge.

Taking these developments into account, the Defender of Rights, which works closely with the majority of institutional mediators, national and international alike, will be led to strengthen this collaboration around renewed agreements more suitable to the development in progress, defining different collaboration arrangements[2].

c. Ensuring the security forces' compliance with ethics: The need for effective independent external control

The independent external control of the ethics of individuals carrying out security activities is entering its 20th year of exercise since creation of the National Security Ethics Committee (commission nationale de déontologie de la sécurité - CNDS) by act no. 2000-494 of 6 June 2000, whose missions have been transferred to the Defender of Rights.

As the National Assembly's Law Commission emphasised when the National Security Ethics Committee was created, such control is inherent to the responsibility of "the State to assure citizens that the principle consequence of the powers entrusted to individuals carrying out security missions is not the substitution of force for law. It is therefore urgent to reconcile the right to security recognised by the Declaration of the Rights of Man and of the Citizen with the requirement of democracy and transparency. At the same time, it is also necessary to establish a lasting bond of trust between security actors and citizens." (Extract from the report by the National Assembly's Law Commission on the bill bearing on creation of the National Security Ethics Committee).

The implementation of effective, efficient, impartial control of security ethics is essential for maintaining citizens' trust in the bodies legally granted the use of constraint, force and weapons prerogatives concerned by such control. In order to succeed, it is imperative to deploy means to identify the shortcomings of an administration or its employees, make them public, and propose solutions so that they do not reoccur.

Diversification of the Defender of Rights' means of intervention

In the exercise of its mission, the Defender of Rights analyses the professional practices of individuals carrying out security activities with regard to ethical rules and, more broadly, with regard to the law, and it delivers its opinions and recommendations in order to prevent the reoccurrence of practices that it considers to be contrary to professional obligations.

External control experienced profound change when organic act no. 2011-333 of 29 March 2011 permitted any individual to call directly upon the Defender of Rights without addressing a parliamentarian, as was the case for the French National Security Ethics Committee (Commission nationale de déontologie de la sécurité – CNDS). This development led to a considerable increase in the number of referrals by people who considered themselves to be victims of breaches of ethics, increasing from 20 during the French National Security Ethics

[2] Information report no. 2702 on the assessment of mediation between users and the administration submitted on 20 February 2020 and presented by Sandrine Mörch and Pierre Morel-À-L'Huissier.

Committee's first year of activity to 1,957 this year.

The development also had a significant impact on the nature of the problems referred to the Defender of Rights and led it to multiply its means of intervention.

Hence, upon request, in January 2018 it submitted a report on law enforcement to the President of the National Assembly and t adopted general recommendations on methods of security forces' intervention in private houses, with regard to children and in the context of the state of emergency (decision 2016-069). It also presented observations to the Court of Cassation on racial profiling in 2016 (decision 2016-132), to the Council of State in 2019 on the use of intermediate weapons during demonstrations (decision 2019-029), and to the Constitutional Council on the law on reinforcing and guaranteeing law enforcement during demonstrations (decision 2019-086).

In order to process certain individual complaints, the Defender of Rights has established a network of delegates responsible for proposing amicable settlements in order to ensure a prompt, local response when people are unable to file a complaint or have been subject to inappropriate comments by a police officer or gendarme.

The institution has also multiplied its initiatives at the service of the promotion of standards and practices in compliance with security forces' ethical requirements.

The Defender of Rights is an external control in addition to the control carried out by the inspectorate attached to the gendarmerie, the police and the prison administration. It acts in order to strengthen dialogue with these actors carrying out additional missions, notably for the purpose of establishing guarantees enabling the effectiveness and timeframes of investigations conducted by the hierarchy, internal inspectorates, the judicial authority, and Defender of Rights to be improved.

It has generalised training/awareness sessions for security actors (3,508 people trained in 2019), carried out studies, and multiplied exchanges with all actors affected by issues relating to security force ethics, including other independent administrative authorities with an interest in fundamental rights, the judicial authorities, the internal control authorities, and the hierarchical authorities of the administrations affected by its control. It has also developed its collaboration with its foreign counterparts.

Analysis of professional practices in view of the law

Article R. 434-2 of the French Internal Security Code - General Framework of action for the National Police and National Gendarmerie:

"Placed under the authority of the Minister of the Interior for the accomplishment of internal security missions and acting in compliance with the rules of the criminal procedure code in relation to the judiciary, the task of the national police and national gendarmerie is to ensure the defence of institutions and national interests, compliance with laws, peacekeeping and law enforcement, and the protection of people and property. Serving the republican institutions and the population, police officers and gendarmes carry out their duties with loyalty, a sense of honour, and dedication."

Article 30 of decree no. 2010-1711 of 30 December 2010 on the ethical code of the public prison service:

"With regard to the individuals placed in custody on whose part they intervene, natural persons, and the officers of legal entities contributing to the public prison service, conduct themselves in such a way as to apply the principles of absolute respect, non-discrimination and exemplarity stipulated in articles 15 and 17. They intervene in strict impartiality vis-à-vis these individuals and in compliance with the ethical rules applicable to their profession."

Referred to by individuals who complain of abusive behaviour against them on the part of security professionals, the Defender of Rights leads inquiries, drawing on its investigatory powers – the right to communicate reports, videos, medical certificates, hearings, onsite inspections – in order to establish the course of events prior to analysing them in terms of the law. The investigation stage is often delicate, notably with regard to recurrent evidential difficulties. This is particularly the case with regard to allegations of inappropriate comments or discriminatory conduct.

Pursuant to article 23 of organic law, in order to carry out its investigations, the Defender of Rights must obtain the prior agreement of the relevant courts or the public prosecutor when it is referred to regarding events giving rise to legal proceedings or examining them on its own initiative. In the rare event of refusal, it is unable to exercise its powers.

At the end of the vast majority of the investigations that it carries out, the Defender of Rights does not observe any breach of ethics: either the facts could not be established, or they are not unethical. The percentage of breaches observed for infringement of ethics examined at head office was 10.7% in 2019.

The Defender of Rights also considered that certain practices implemented or tolerated by the hierarchy were illegal and, consequently, constituted breaches of ethics:

- The technique known as "boxing in", which consists of depriving several people of their freedom to move around in a demonstration or its immediate proximity, by means of encirclement by the security forces, which aims to prevent them from going to or leaving the area so defined, sometimes for several hours, without any legal framework (decision 2019-246);
- The technique consisting of transporting people in order to carry out "remote identity checks", outside any procedure legally planned for and without any judicial authority, guarantor of individual freedoms, being informed thereof at any time (decision 2019-246);
- Instructions on the "systematic evictions of the homeless and Roma" from Parisian tourist districts in the absence of any reference to objective conduct linked to public disorder, relying on profiling from exclusively discriminatory criteria connected with physical appearance, origin, actual or supposed membership of an ethnic group or race, or to particular economic vulnerability (decision 2019-090);
- The instructions and technical advice given to civil servants carrying out air escort missions in an instruction dated February 2019 violate human dignity and are not compliant with law, notably article 803 of the French criminal procedure code regarding the use of handcuffs and constraints (decision 2019-127);
- The wearing of full-face motorcycle helmets or balaclavas by law enforcement authorities, preventing the identification of officers, has been observed in the context of law enforcement operations, outside any legal or regulatory framework (decision 2019-299).

This year, as in previous years, the Defender of Rights also stressed that any use of force must be carried out within a legal framework, and be necessary and proportionate (decision 2019-262), whether it be in prison (decision 2019-175) or during law enforcement operations (decisions 2019-165, 2019-263).

When it issues its findings on an individual case, the Defender of Rights may, pursuant to article 25 of the organic law of 29 March 2011, make any recommendations that it considers will ensure respect for the rights and freedoms of the aggrieved person, resolve the difficulties he/she has encountered, and prevent them from reoccurring. This article also stipulates that the authorities and individuals concerned inform the Defender of Rights, within the timeframe that it establishes, of the follow-up to its recommendations.

The Defender of Rights is still awaiting responses to the recommendations that it formulated upon observation of the infringements presented above.

IPCAN's 5 th Seminar on Police-Population Relations, Paris, October 2019 | © Jean-Bernard Vernier/JBV News

Pursuant to article 29 of the organic law, the Defender of Rights may also refer the matter to the authority invested with the power to undertake disciplinary proceedings for the events of which it is aware and which it deems justify a sanction.

Since the start of its mandate, the Defender of Rights has requested that disciplinary proceedings be initiated in 36 cases. Yet, despite being few and detailed with regard to the numbers of cases processed over the same period (3,987 complaints, i.e. 1%), none of its requests have been acted upon.

This situation partially deprives the Defender of Rights of the effectiveness of the external control mission entrusted to it by the legislator and, therefore, of contributing to calming relations between the State's security forces and the population.

Identity checks

Since its establishment, the Defender of Rights has followed the work of the French National Security Ethics Committee intended to combat abusive and discriminatory identity checks.

Its position has been developed from individual complaints and evidence that it has received, hearings and work that it has carried out, and comparative law studies resulting from its international partnerships.

Three key points have been identified: objectify the choice of the person being checked; inform the person being checked of the grounds for the check; establish traceability enabling the way in which identity checks are implemented, along with their use, to be evaluated.

The Defender of Rights' survey on access to rights in its 2016 chapter on police/population relations revealed that, over the previous five years, identity checks had only affected a small part of the population, yet on a massive scale. 84% of the people questioned stated

that they had not been subject to a check (90% of women and 77% of men). But 40% of young people (18-24 y/o) stated that they had been subject to a check and, of them, 80% of men perceived to be black or Arab/North African reported that they had been subject to a check. These facts have emphasised the discriminatory aspect of certain checks, which can only have a negative impact on the population's perception of the law enforcement authorities.

In the context of a dispute relating to the responsibility of the State, through its observations before the Paris High Court, the Court of Appeal and the Court of Cassation, the Defender of Rights contributed to developing evidential rules in order to establish the discriminatory nature of a check and so facilitate compensation of victims (decisions 2015-021, 2016-132 and 2018-257).

Individuals' rights during demonstrations

In its opinion 19-02 on the bill "aiming to prevent acts of violence during demonstrations and sanction their perpetrators", which became act no. 2019-290 of 10 April 2019 "to reinforce and ensure law enforcement during demonstrations", the Defender of Rights was worried by for the provisions that enable prefects to rule on searches and frisking in and around areas where demonstrations were taking place.

Given the significant means of control that security forces already had, these new measures resulting from the state of emergency gave rise to risks of discrimination, additional tensions between law enforcement authorities and demonstrators, and a deterrent to demonstration, due in particular to the disproportion between the enforcement power entrusted to the administrative authority and the nature and severity of the threat.

The warning from the Defender of Rights was heeded by the National Assembly, which amended the system provided for by replacing the intended administrative arrangements with a judicial procedure that was more respectful of individual freedoms.

Concerned that this text should not lead to disproportionate infringements of freedom of movement and the right to collective expression of ideas and opinions to which the freedom to demonstrate is attached, the Defender of Rights presented its observations to the Constitutional Council for the first time in 2019 (decision 2019-086). It is pleased that the Constitutional Council declared the article enabling the administrative authority to ban an individual from participating in a demonstration on the street contrary to the Constitution (decision 2019-780 DC of 4 April 2019).

The Defender of Rights has adopted several positions in order to respect the obligation to protect the physical integrity of people participating in a demonstration and of the security forces. Such protection is an ethical obligation and it should be noted that it extends to law enforcement authorities, with the provisions of the ethical code stipulating that the hierarchical superior constantly ensures preservation of the physical integrity of its subordinates (R. 434-6 of the CIS).

The Defender of Rights also recommended, and has done so for many years, the abolition or in-depth evaluation of the use of several weapons that it considers inappropriate for law enforcement operations. This was the case for OF-F1 grenades following the death of a person in Sivens (decision 2016-109) and stinger hand grenades (decision 2019-165). It also presented observations to the Council of State's judge in chambers on the use of defence ball launchers during demonstrations (decision 2019-029). It delivered a decision (2019-263) regarding the circumstances in which a young demonstrator received a serious injury to the head from a DBL in Rennes in 2016, and was contacted by 45 people stating that they had been injured by DBL shots during the demonstrations that have taken place since the start of the "yellow vest" movement.

It also took note of the announcement by the Minister of the Interior on 26 January 2020 of suspension of use of GLI-F4 explosive grenades during law enforcement operations. The Defender of Rights regrets, however, that they have now been replaced by another type of grenade, the GM2L, for similar use but without explosives or a blast effect.

Medical examination of minors placed in custody

The provisions of article 4 of the order of 2 February 1945, made it clear that "when a minor aged 16 or over is placed in custody, their legal representatives are notified of their right to request a medical examination when they are informed of the custody pursuant to II of this article. (...)"

During its hearing by the National Assembly's information mission on the juvenile justice system in October 2018, the Defender of Rights recommended that "any minor aged between 13 and 18 placed in custody should compulsorily benefit from a medical examination (and not only minors under 16 y/o).".

Article 94 of the law of 23 March 2019 on justice programming and reform 2018-2022 enabled a first step forward through amendment of article 4 of the order of 2 February 1945 which now stipulates that, in addition to the minor's legal representatives, "the minor's lawyer may also request that the minor undergo a medical examination".

The Defender of Rights welcomes this progress but regrets that a medical examination is still not systematically carried out on minors aged 16 to 18 y/o in custody.

The draft juvenile criminal justice code (article L. 412-8) also stops halfway, stipulating that: "From the time at which a minor aged under 16 y/o is placed in custody, the Public Prosecutor or examining judge appoints a physician who examines the minor under the conditions stipulated in article 36-3 of the criminal procedure code. When minors aged over 16 is placed in custody, they are informed of their right to request a medical examination in accordance with the provisions of article 63-3 of the criminal procedure code. Their legal representatives are notified of their right to request a medical examination when they are informed of the custody. The minor's lawyer may also request that the minor be subject to a medical examination."

In 2019, through decision 2019-172 and an opinion to Parliament (opinion 19-14) , in its constant concern for the best interests of the child, the Defender of Rights recommended going further by stipulating that every minor aged between 13 and 18 placed in custody benefit compulsorily from a medical examination.

IPCAN's 5 th seminar on police-population relations, Paris, October 2019 | © Jean-Bernard Vernier/JBV News

The Defender of Rights' relations with its foreign partners

Mindful of being able to compare its practices and analyses with its counterparts, the Defender of Rights has actively developed the activities of the Independent Police Complaints Authorities' Network (IPCAN) created in 2012, bringing together ten international counterparts active in the field of security ethics, with annual seminars associating European institutions.

In 2019 in Paris, in collaboration with the European Union Agency for Fundamental Rights (FRA), it organised the network's 5th seminar entitled "Police-population relations: challenges and practices" which brought together over 50 experts. The meeting's purpose was to analyse times of interaction between police and population in several European countries and identify any situations that could result in tensions. Although the results of recent investigations, including those by the Union Agency for Fundamental Rights and EUROSTAT, reveal that the population has a high level of confidence in the police in European Union countries, such confidence varied from one country to another - it varies from 45% (Romania) to 93% (Finland) - and decreases in those who have been victims of breaches of security ethics or violence on the part of law enforcement authorities.

The seminar focussed on questions relating to discriminatory identity checks and profiling, including algorithmic profiling, management of public demonstrations, and reception and protection of victims and vulnerable groups. It enabled exchanges on practices and experiments carried out in this regard, which are soon to be the subject of a report. The results of investigations by the FRA (EU-MIDIS in particular) show a continuous increase in identity checking targeting certain groups.

d. Fighting against discrimination: a priority to be restored

Recognising that, far from decreasing over the years, discrimination persists or is increasing and can be seen in all aspects of daily life (employment, access to goods and services, relations with public services, etc.), the Defender of Rights can only regret the absence of a proactive targeted public policy to better prevent and combat it.

Promoting the fight against discrimination is taking action for the right of every individual to equal human dignity and the strengthening of our republican pact.

It is unacceptable that recruitment, salary, career, rights to a pension, and access to housing, public services and leisure activities is subject to individual or systemic inequalities as a result of origin, gender, age, disability or nationality. It is also unacceptable that rifts in French society are expressed through violence and harassment towards people due to their religion, origin, or supposed sexual orientation, without the State committing to real action and evaluating the means implemented to ensure the effectiveness of protection against such violence and discrimination in the field.

In public and private employment

Persistent discrimination based on disability

Act no. 83-634 of 13 July 1983 on the rights and obligations of civil servants in particular guarantees each individual the right to not be subject to unfavourable treatment due to their disability. The obligation to make reasonable accommodation obliges the employer to take all appropriate measures in order to enable an employee, whose disability has not been declared incompatible, to access the job in question, carry it out, and progress in it. However, throughout its mandate, the Defender of Rights has observed that disability was the first criterion for referrals to it in the field of public employment.

With regard to careers, in its decision of 26 February 2019 (2019-056), the Defender of Rights restated that it was discriminatory to reduce an employee's premium rate by taking into consideration the reasonable accommodation made in order to ensure that a disabled employee remains in employment. The administrative court followed up the Defender of Rights' observations and sanctioned the administration concerned.

Referred to regarding a situation of discriminatory harassment due to disability, the Defender of Rights addressed several general recommendations of a general to a public establishment in order to improve knowledge of the rights of persons with disabilities through introduction of staff training courses and a procedure to collect and process reports of discriminatory harassment (decision 2019-254).

In 2019, the Defender of Rights observed certain progress. For Example, an administration frequently called into question over the disability criterion, not only requested that all its decentralised departments review procedures for recruitment of persons with disabilities, but also wanted the institution to intervene with same departments in order to prevent continuation of such practices.

Furthermore, the public authorities have started to give careful consideration to reimbursing persons with disabilities when they consult a registered medical practitioner in the context of special arrangements for competitive examinations and tests (RA-2019-083 of 24 June 2019). They have also proved themselves open to amicable settlements, made in particular when special arrangements for sitting competitive examinations, provided for by law, proved insufficient.

In the private sector, the Defender of Rights has had the opportunity on several occasions to remind employers to comply with their legal obligations at all stages of working life (access to employment, career development,

Discrimination towards people with chronic illnesses

The Defender of Rights adjudicated on a proposed law to improve access to certain professions for people with diabetes. Regularly referred to by people with chronic illnesses complaining of discrimination in access to employment, it recommended in particular that:

- the proposed law be extended to all individuals with chronic illnesses such as diabetes, HIV, cancer, etc.;
- all texts prohibiting access to certain professions for people affected by such illnesses be identified;
- the ability of each person to take up employment be assessed in concreto, taking account of therapeutic and technological developments.

Adopted unanimously by the French National Assembly, on 30 January, at first reading, the proposed law largely reflects the Defender of Rights' recommendations. Initially limited to diabetics alone, the proposed law was extended to all chronic illnesses.

termination of employment contract, etc.). In its decision 2019-029, it recommended that an employer compensate the harm suffered by an employee whose trial period was not renewed and which came to an end just two weeks after he received all of the equipment to adapt his workstation. The accommodations, recommended by the occupational health department in order for the employee to be able to carry out his work, had not been implemented in good time. Without them and unable to work, the employee had been reproached for professional incompetence in order to justify termination of his trial period.

Two framework decisions: on discrimination due to physical appearance and discrimination due to trade-union membership

The right to non-discrimination relies on concepts and mechanisms that call traditions, identity and values into question. It involves all professional environments.

In order to support the development of practices and ensure that this obligation is respected, the Defender of Rights adopts framework decisions which address all actors in a sector concerned, reiterating the legal framework, and specify the way in which it is to be implemented.

Referred to on complaints about discrimination based on physical appearance in employment, which also indicates discrimination based on origin, gender, sexual orientation, gender identity, age, state of health, disability, religion and opinions, the Defender of Rights adopted framework decision 2019-205 setting out the

principles to be applied and best practices to be adopted by private and public sector employers.

Consideration of physical appearance is a complex subject for employers to understand insofar as it refers to unconscious cognitive bias and changing social codes. Some recruiters even believe that, inasmuch as they reflect social identity, appearances impart relevant information in the recruitment process, and are less scrupulous in crossing off candidates on the basis of this criterion.

The framework decision includes five appendices which address obesity and excess weight, types of clothing, beards, hairstyles, and tattoos and piercings. It stresses that it is prohibited to take physical appearance into account at the recruitment stage and, in the context of the employment relationship, specifies the possible restrictions with regard to clothing requirements and presentation, in addition to the sanctions that the employer may impose in the event of noncompliance. Finally, it emphasises the prohibition on and sanction for discriminatory harassment based on physical appearance.

In order to facilitate implementation of these principles, the Defender of Rights recommends that employers in the public and private sector alike draw up a written document (rules of procedure, employment contract, memorandum, circular, etc.) defining constraints and restrictions with regard to physical appearance and presentation in line with the nature of the job held and tasks to be carried out, while respecting the principle of proportionality in definition of such requirements. It also recommends preventing any discrimination and discriminatory harassment based on physical appearance and sanctioning them effectively.

In order to respond to the numerous requests that it receives in the field of trade-union discrimination in the most appropriate way possible, the Defender of Rights has drafted a handbook presenting the legal tools and framework applicable to the analysis of trade-union discrimination in private sector employment. Designed as a practical, pedagogical tool to facilitate identification and evidence of discrimination in the professional career path based on the panel method, it reports on the applicable texts and case law. The handbook is made available to staff representatives and, more broadly, to all employees involved in activism or industrial action, so that they have the means to protect themselves against any form of reprisals due to their engagement.

Discriminatory harassment

For five years, the Defender of Rights has worked on recognition of discriminatory harassment as one of the forms that discrimination in the workplace may take, whether it manifests as violence, apparent rejection or attack on moral integrity by a superior, colleague or work collective (decisions 2016-216, 2017-128, 2018-104).

With the support of the Defender of Rights, case law also developed the concept of an atmosphere of sexual and/or sexist harassment (decision 2016-212, Orléans CA 07/02/2017 no. 15/02566). Victims can now be protected from harmful professional environments that become unbearable for them if they are subjected to provocations or obscene jokes without being their direct targets.

In 2019, the Defender of Rights presented observations to the Paris Court of Appeal in a case where the employee of a large company had been the target of racist and anti-Semitic graffiti on the walls and had found Quranic suras burned into his locker, without his employer deeming the events to be serious enough to warrant intervention (decision 2019-041). In a decision on 5 December 2019, the Court confirmed that, on the basis of the law of 27 May 2008, a single act – in this case the Quranic suras burned into the employee's locker – constitutes discriminatory harassment, confirming the case law according to which a particularly offensive single act is enough to characterise of discriminatory harassment.

2019 ILO Barometer Survey on trade-union discrimination: a widespread phenomenon against which action should be taken

Each year for over ten years, the Defender of Rights and the International Labour Organization (ILO) have carried out a survey on perceived discrimination in employment among a representative sample of the population.

Discrimination in employment and at work is one of the priorities of the ILO, which is at the origin of several instruments fostering equal opportunities and treatment in employment and at work.

The choice of dedicating this 12th edition of the Barometer to trade union discrimination follows on from the Defender of Rights' contribution to the opinion delivered the French Economic, Social and Economic Council (Conseil économique, social et environnemental - CESE) on July 2017, which highlighted the lack of data available to document discrimination due to trade-union activity.

Trade unions and the working population were questioned about their perception of the discriminatory phenomenon, both as witnesses and as possible victims, taking a representative sample of the working population and a representative sample of people carrying out a trade union activity. The questionnaire was sent to eight trade unions represented at the French Economic, Social and Economic Council (CFDT, FO, CFTC, CGT, FSU, UNSA, CFE-CGC, and Union syndicale solidaires) and disseminated to all of their members.

Almost a third of active workers (29%) and half of trade unionists (52%) consider that trade-union discrimination occurs often or very often, which makes such discrimination at work a phenomenon perceived to be widespread. One third of the active population questioned believes that fear of reprisals from management is the factor that most dissuades employees from engaging in a trade union activity. Almost half of trade unionists believe that they have been discriminated against during their professional careers due to their trade union activity.

An increase in complaints related to sexual harassment and sexist attitudes

Even though it is essential, condemnation of perpetrators by criminal judges does not appear enough to end the sexual harassment and sexist attitudes that occur notably in certain predominantly male government agencies.

Reports of sexual harassment by public officers, which used to be very rare, have increased significantly over the last two years: from one or two annual referrals up to 2017, complaints reached fifteen referrals in 2019.

Despite the proliferation of public actions and government directives calling upon public sector employers to implement the "zero tolerance" principle, findings too often remain the same: insufficient consideration of employees' reports on the part of the hierarchy: no investigation or incomplete investigation, refusal of functional protection, refusal to qualify actions as sexual harassment, and absence of disciplinary sanctions for perpetrators and the hierarchy that has covered them up.

In its opinion on the civil service transformation bill (opinion 19-07), the Defender of Rights recommended better provision of information about and better combating of sexual harassment and sexist behaviour. It recommends that public sector employers take greater account of their responsibility in prevention of sexual and sexist harassment, and protection of employees who are victims of such behaviour.

The Defender of Rights' departments have also participated in the development of tools, both for the State civil service (emergency instruction sheets from the Department for Women's Rights) and for the hospital civil service (MOOC).

Systemic discrimination

Systemic discrimination is based on the operation and mechanisms of a given society (in the context of work, for example) which create an accumulation of unfavourable rules induced by an unequal social and cultural system.

It is necessary to recognise this notion in France as discriminatory practices inherent to the organisational system, and often still interiorised, are rarely reported by victims and rarely sanctioned.

An emblematic case in this field was that of the Moroccan railway workers (the "Chibanis") who saw their careers negatively affected by the treatment they received, which was less favourable than that received by French railway workers employed in the same position, and by the effects caused by the restrictions imposed by this employment framework (see decision 2016-188 and Paris Court of Appeal decision of 31 January 2018 no. 15/11388). This case led to greater awareness of case law on the relevance of the notion of systemic discrimination in order to understand systems generating discrimination.

In 2019, the Defender of Rights investigated the situation of 25 undocumented Malian workers in the construction sector. It presented observations (decision 2019-108) that highlighted the discrimination resulting from racist work organisation which prioritised tasks on a building site depending on the actual or supposed origins of each individual, as the workers were interchangeable and had no specific identity. The group of complainants was assigned to carry out the most gruelling and dangerous tasks, namely demolition operations, without any protective equipment. The verdict handed down by the Paris Labour Relations Court on 17 December 2019 was in line with the Defender of Rights' analysis and concluded that there was systemic racial discrimination.

The possibility of a new judicial response for the cessation of and compensation for such collective discrimination appeared with the introduction of class action in France through act no. 2016-1547 of 18 November 2016 on modernisation of the French justice system for the 21st century. This mechanism, open to trade unions and associations before the civil and administrative courts with regard to discrimination, opens up new perspectives for making the systemic aspect of discrimination visible and increasing the impact of judicial remedies.

The Defender of Rights presented its observations to the Paris Regional Court in the first class action proceedings regarding discrimination, concerning systemic trade-union discrimination in the career development of staff representatives in a large industrial group.

Another example, that of individuals with disabilities working in centres providing assistance through employment (établissements et service d'aide par le travail – ESATs), who do not enjoy the same protection, with regard to remuneration, as other workers. As this is not adequately regulated, the minimum guaranteed wage paid to them is left to the ESAT's discretion. It therefore constitutes an economic adjustment variable that may be expressed by a substantial decrease in remuneration for workers with disabilities (decision 2019-220).

European residents' rights of residence and non-discrimination

The Defender of Rights was appointed by the government as France's organisation for responsible for promoting equal treatment and supporting European workers and their family members, in pursuant to article 4 of directive 2014/54/EU.

Receiving several complaints highlighting the fact that prefectures and social organisations are developing an interpretation of the notion of employed activity granting right of residence that is too restrictive, it deemed that these practices violated European workers' right of residence and non-discrimination guaranteed by directive 2004/38/EC and the ECJ's extensive case law.

It therefore recommended that the social organisations concerned amend their interpretation of the lawful residence condition for European citizens working less than 60 hours a month (decision 2019-080) and presented observations to the courts to which individual disputes were referred (decisions 2019-031 and 2019-280).

What has changed thanks to the Defender of Rights

Creation of class action and harmonisation of protection against discrimination in the act of 27 May 2008

Act no. 2016-1547 of 18 November 2016 on modernisation of the French justice system for the 21st century created class action on discrimination.

In 2013, the Defender of Rights had recommended that this judicial procedure, which enables referrals to courts for systemic and collective discrimination, be implemented in order to put an end to it. It participated in the parliamentary work which resulted in the 2016 act, and in its opinions 13-10, 15-13 and 15-23 and 16-10 it recommended that access to and effectiveness of this new remedy be guaranteed.

The Defender of Rights encouraged harmonisation of the class action mechanism with regard to employment, so that it could be mobilised in the private sector and public sector alike, from recruitment to retirement, by ensuring that jobseekers can be supported by associations in the absence of trade union bridging.

What remains to be accomplished

The act on modernisation of the French justice system for the 21st century only specifies the judge's role very briefly and does not provide any details on its function at the first phase of class action, consisting of ruling on the materiality of the collective breach attributed to the respondent employer.

In its opinions to Parliament, the Defender of Rights had highlighted the text's shortcomings in terms of procedural indications to support the specificity of this judicial process. It would be to the texts' advantage to organise the procedure and the contribution of experts, notably with regard to systemic evidence and corrective human resources measures, which should provide support enabling it to perform the new role assigned to it.

Furthermore, in order to filter access to the mechanism and make it a lever of negotiation, the law stipulated that only trade unions and associations could initiate a class action, bearing in mind that, in terms of employment, they could only do so for recruitment and traineeship refusals. After more than three years of implementation, it can be observed that only groups at the heart of trade union concerns have mobilised class action. No recourse was initiated with regard to discrimination in access to goods and services. With regard to employment, although trade unions are very much involved in combating trade union discrimination, they find difficulty in initiating remedies for gender discrimination and do not intend to mobilise the mechanism in support of other forms of discrimination, although widespread, based on sexual orientation, origin, or disability.

The Defender of Rights has already had the opportunity to stress that such a filter may not be effective and could present a significant risk of non-recourse to the mechanism. It reiterates that it would be appropriate to re-examine the possibility of substantially opening up class action with regard to discrimination. Finally, class action is still a very onerous procedure to organise. After more than three years, remedies are far too few as they are not very clear to the actors involved and, above all, are very costly. With regard to discrimination in access to goods and services, the Defender of Rights is not aware that any class action lawsuit has yet been initiated. It appears that it is highly unusual for associations to mobilise the technical and financial resources required to launch this type of intervention. Creation of a financing fund for class actions, which could potentially be provisioned through civil fines imposed by courts or specific legal fees, could be envisaged. In this regard, the model of Quebec's class proceedings fund (fonds d'aide au recours collectif) would appear to offer interesting avenues for work.

Defender of Rights officers visit Angers, October 2019 | © Regine Lemarchand

In access to goods and services

The age criterion in access to goods and services

Although employment accounts for almost half of complaints, certain discriminatory practices are also rooted in access to goods and services. Complaints relating to price differences based on age have been referred to the Defender of Rights. It questioned respondents on the grounds for these price differences, explaining the requirements of the right to non-discrimination which, in order to justify any difference in treatment, imposes demonstration of the pursuit of a legitimate objective and application of a measure proportionate to these objectives.

Through dialogue and thanks to the legal arguments made in this context, the Defender of Rights obtained the abolition of higher education tuition fees imposed on students aged 30 or over in a higher education institution, price differences for access to a municipal theatre, as well as age limits for participation in a scriptwriting competition.

The technical difficulties of public services, a screen for discriminatory practices

The technical difficulties with which public services are sometimes confronted may lead them to create discrimination, as shown, for example, by various social security organisations' refusal to record foreign bank details. All of such bodies acknowledged their obligation to pay benefits into bank accounts opened in establishments located in the Single Euro Payments Area (SEPA). Seemingly harmless, this obligation forces operators, whose IT tools are unable to record such banking information, to perform onerous manual interventions.

This situation has resulted in numerous refusals, calling access to social rights into question and creating discrimination due to the location of the beneficiary's bank. Although national bodies have requested that their

networks implement the measures necessary to overcome these difficulties, in accordance with the Defender of Rights' recommendations (decisions 2018-159 and 2018-315), difficulties persist, notably with regard to payment terms (decision 2019-063).

Conversely, technical difficulties may be invoked in order to conceal discrimination. The Defender or Rights continues to be called upon by users benefiting from an aid scheme to cover healthcare costs, such as State medical assistance (aide médicale de l'Etat – AME), universal complementary health coverage (couverture maladie universelle complémentaire – CMU-C) or additional healthcare payment assistance (aide au paiement d'une complémentaire santé - ACS), for which the provision of care, practising third-party payment or the standard rate is refused. The justifications invoked by the healthcare professionals called into question are essentially technical: administrative difficulties, "failure" of the healthcare card reader, etc. These often false reasons are not enough to justify refusal of care, which constitutes discrimination based on particular economic vulnerability (decisions 2019-125 and 2018-281).

The opacity of rules governing administrations, a source of discrimination

The opacity of rules applicable to the processing of their requests is one of the main driving forces of the discriminatory treatment of foreign nationals. With regard to access to social rights, this opacity is maintained through organisations' practice of restricting publication of network letters and circulars. Such is the case for the solidarity allowance for the elderly (allocation de solidarité aux personnes âgées - ASPA), the earned income supplement (revenu de solidarité active - RSA), family benefits and, until recently, health insurance cover.

The report on the fundamental rights of ill foreigners, published in 2019, reconsiders the consequences of the universal health cover reform, which endorsed the scaling back of rights for many foreigners in regular situations. By way of example, the Defender of Rights notes that checking lawful residence for access to health insurance cover is more restrictive than was previously the case; that foreigners recently settled in France are not always able to join; and that certain foreigners who benefit from the safeguarding of their rights following a temporary loss of their right to residence do not have access to universal complementary health coverage.

In the two years that followed the creation of the single benefit, several of these negative effects reported by the Defender of Rights were partially corrected through legislation. Publication of decree no. 2017-240 of 24 February 2017 relating to the monitoring of conditions enabling individuals to benefit from universal health cover ensured that, as individuals exempt from the three-month prior residence condition necessary for membership, the members of families who, in order to settle in France, are joining or accompanying a French or foreign insured party, can be included. The order of 10 May 2017 specifies the list of certificates and documents proving lawful residence for affiliation to social security, but, with regard to the three-month prior residence condition imposed on certain individuals for such affiliation, it causes new difficulties as it invalidates some exemptions to the benefit of former adult beneficiaries.

Despite these modifications, difficulties persisted. In accordance with the Defender of Rights' recommendations, the French Social Security Directorate addressed instructions to the French national health insurance fund (Caisse nationale d'assurance maladie – CNAM) on 15 January 2019. These new instructions are likely to provide guarantees for foreigners under the scheme to maintain rights in the event of temporary loss of the right to residence and requiring the universal complementary health coverage benefit, and for those who entered France via settlement visas not covered by the order of 10 May 2017 stipulating the list of residence permits enabling the opening-up of health insurance rights.

Test on refusals to provide healthcare care linked to origin and economic vulnerability

After an initial report published in 2014 and regular interventions, the Defender of Rights remains concerned about the persistence of discriminatory refusals to provide healthcare. It launched a call for projects in December 2018, in collaboration with the universal complementary health coverage fund, in order to carry out a situation test on refusals to provide healthcare. Carried out on a national scale for the first time, between February and April 2019, the study aimed to assess discriminatory refusals to provide healthcare based on origin and particular vulnerability resulting from an economic situation (beneficiaries of universal complementary health coverage and additional healthcare payment assistance), during a first medical appointment made over the phone.

Researchers from the "ERUDITE" laboratory team attached to the Université Paris-est Créteil (Sylvain Chapeyron) and the Université Paris-est Marne la Vallée (Yannick L'Horty and Pascale Petit) tested three categories of independent specialists: gynaecologists, dental surgeons and psychiatrists. Over 4,500 requests for an appointment and 3,000 situation tests in 1,500 medical practices were carried out on a representative sample.

The study entitled "Refusals to provide healthcare linked to origin and economic vulnerability: tests in three medical specialities in France", published in October 2019, revealed the scale of discrimination according to economic vulnerability. Such discrimination is twice as high against beneficiaries of additional healthcare payment assistance than it is against beneficiaries of universal complementary health coverage. Its discrimination is more pronounced in the secondary sector that it is in the primary sector.

The overall rate of appointment refusals (whether lawful or discriminatory) testifies to the scale of the difficulties experienced in accessing healthcare by patients in situations of precarity: 42% of patients who benefit from universal complementary health coverage or additional healthcare payment assistance did not have access to an appointment, with the percentage varying from 25% to 66% depending on medical speciality, healthcare professionals' activity sector, the type of interlocutor, and region (higher frequency in Ile-de-France, irrespective of local medical density). Situations of explicit and direct discriminatory refusals to provide healthcare are 9% for dentists, 11% for gynaecologists, and 15% for psychiatrists.

In order to respond to these situations and combat discrimination in the field of healthcare, the Defender of Rights has developed information tools against refusals to provide healthcare, in cooperation with three professional bodies, the universal complementary health coverage fund (Fonds CMU-C), associations that are members of the Defender of Rights "healthcare" and "disability" harmony committees and the French health insurance coverage (Assurance maladie). The Defender of Rights has published a leaflet for the general public, as well as a practical fact sheet for healthcare professionals reminding them of their obligations.

The French national health insurance fund (Caisse nationale d'assurance maladie – CNAM) put an end to the difficulties highlighted on 9 July 2019 by publishing a series of circulars, including circular no. CIR-14/2019 on social protection for asylum seekers and no. CIR-16/2019 on management of lawful residence.

Beneficiaries of the solidarity allowance for the elderly (allocation de solidarité aux personnes âgées – ASPA) encounter similar difficulties. In 2018 and 2019, the Defender of Rights recommended to the Social Security Directorate that unenforceability of the condition of residence duration for Algerians, Moroccans and Tunisians be highlighted in instructions to all bodies paying the solidarity allowance for the elderly and made public (decision 2019-231). Although in agreement with the Defender of Rights' the legal analysis, the Social Security Department responded that once international commitments are public, publication of the ministerial instructions communicated to funds does not appear necessary. Given decisions of refusals to pay the solidarity allowance for the elderly, over which the Defender Rights was once again referred to, this response is not satisfactory.

Opacity is also a problem in the operation of the Parcoursup programme, responsible for student placements, since the law of 8 March 2018 on the guidance and success of students (orientation et réussite des étudiants - ORE). The Defender of Rights recommended to the Minister of Higher Education, Research and Innovation that the scheme's transparency be improved so as to ensure that candidates are aware of all the information on the methods used to process their application, once their choice has been made (decision 2019-099).

It also recommended to the Minister that geographical mobility be guaranteed for candidates, in Ile-de-France in particular, that reception of scholarship candidates be promoted in all higher education training courses in order to achieve the objective of social diversity stipulated in the act on the guidance and success of students, and that an in-depth analysis be carried out on placement of technological and professional baccalaureate holders, many of whom come from modest or disadvantaged backgrounds, in higher education in order to further promote their access to the training courses of their choice. Finally, the Defender of Rights reiterates that use of the secondary school background criterion to select candidates may be equated with a discriminatory practice if it results in the exclusion of candidates on this basis. The Defender of Rights favours the idea of anonymising applications submitted to Parcoursup so that place of residence is not visible (decision 2019-021).

The right to non-discrimination is an indicator, a lever for solutions and a tool for transforming society. The Defender of Rights calls for a new stage in the involvement of public authorities and all public and private stakeholders in order to achieve equality. For several years, it has striven to defend the implementation of nonfinancial indicators with regard to employment, recommendations reiterated in the context of the bill on the growth and transformation of companies (opinion 18-20). Such indicators will be used to identify and measure discrimination in companies, and to fight against it.

e. Protecting and guiding whistleblowers: an inadequate system

Since Law no. 2016-1691 of 9 December 2016 the so-called "Sapin II Law", which established a general regime to protect whistleblowers, the Defender of Rights has been responsible for guiding any individual reporting an alert and ensuring that the rights and freedoms of such individuals are respected.

Through disclosure of serious situations contrary to general interest, whistleblowers reinforce freedom of expression and contribute to creating conditions for a more transparent society.

Flaws in the system

This mechanism relies on a broad definition of whistleblower specified in articles 6 to 8 of the act, on compliance with a reporting procedure that includes the prohibition of professional reprisals and civil sanctions, and of the mechanism for exemption from criminal liability for disclosing a protected secret.

Despite the potential that this protection regime has, the Defender of Rights finds that it is inadequate for several reasons.

Firstly, the regime is little known. In three years, only 255 cases have been recorded by the institution.

This low number of complaints can be explained in part by public and private sector employers' ignorance of their new obligations in this regard, as no information policy has been pursued.

The Defender of Rights' survey among ministries, regions, *départements* and the thirty of France's larger cities showed that fewer than 30% of public sector employers in France have implemented procedures for collection of reports, despite their being mandatory since 1 January 2018.

The current regime is also dissuasive for whistleblowers as it is not secure enough. Through individual cases that were referred to it, the Defender of Rights measured just how difficult a whistle-blower's pathway is. Legislation is complex and the conditions to be fulfilled in order to benefit from the protection regime are manifold.

Whistleblowers may lose the benefit of the protection regime if they do not comply with the internal whistleblowing procedure or if the confidentiality of the information they have is not respected, when the context does not authorise them to make the alert public.

Action taken by the Defender of Rights

In the context of its guidance mission, the Defender of Rights ensures that whistleblowers who refer to it take the fewest possible risks. Among other things, it published an online guide for the guidance and protection of whistleblowers and participates in training activities in partnership with the French national centre for the territorial public service (Centre national de la fonction publique territoriale – CNFPT).

In the context of its protection mission, the Defender of Rights works to ensure that whistleblowers who are victims of reprisals have their rights restored. If the whistleblowing procedure complies with legal requirements, the mechanism for shifting the burden of proof allows for the chronology of events to be used in order to establish the presumption that any unfavourable measures are the consequence of the alert. The employer is then responsible for "proving that its decision is justified through objective elements foreign to the declaration or testimonial of the interested party" (article 10 of the Sapin II Law).

The Aix-en-Provence Court of Appeal's order of 14 February 2019 on an interim ordinance by the labour relations tribunal illustrates the uncertainty in which whistleblowers are placed and the risks to which they are exposed.

In this case, a butcher employed in a company was made redundant for serious misconduct after reporting various breaches of food hygiene regulations and poor business practices directly to the administration. The Aix-en-Provence Court of Appeal first noted "the concomitance of the dismissal and [the employee's] reporting several breaches of food hygiene regulations to the administration" and considered that the dismissal of a whistleblower for events relating to this reporting "constitutes a manifestly unlawful disturbance that the trial judge is qualified to put a stop to". But it dismissed the employee's application for interim measures on the grounds that, by failing to report the events to his employer, he had not complied with the tiered reporting procedure provided for by the Sapin II Law.

The Defender of Rights' recommendations for a safer system

In the face of these difficulties, the Defender of Rights has worked to improve the situation of whistleblowers for three years, and to draw the public authorities' attention to the need to develop the legislation concerned in order to make it more consistent, clearer, and more operational.

The act of 9 December 2016 partially harmonised existing whistleblowing regimes, but did not provide for ways of combining the general regime with existing sectoral regimes (banks, insurance companies, business secrecy, etc.). It follows therefrom that whistleblowers who do not fulfil all of the conditions of the Sapin II Law may, in certain cases, come under a reduced protection regime.

In its opinion 18-11 on the act bearing on business secrecy protection, the Defender of Rights recommended providing whistleblowers coming under this act alone with protection identical to that of the Sapin II Law.

The Defender of Rights considers that coordination and simplification of legislation are essential in order to create an effective reporting and protection mechanism for whistleblowers.

Transposition of the European Parliament and Council's European directive no. 2019/1937 of 23 October 2019 provides an opportunity for the European Union's twenty-eight Member States to improve their whistleblower protection regimes.

On 3 December 2019, in order to contribute to the work on the methods for transposing the directive, the Defender of Rights dedicated an initial European meeting to the theme "Protecting whistleblowers: a European challenge", giving it an open-ended multidisciplinary character. Whistleblowers, sociologists, legal experts, practitioners and public authorities from various European countries were able to recount their experiences and exchange views on the challenges ahead in front of an audience of over 300 people.

At the end of this day, the Defender of Rights stated that, in addition to the developments in French legislation that will be required for transposition of the directive, easing of the whistleblowing procedure, establishment of monitoring of reports, implementation of a whistleblowing procedure in the external authorities responsible for processing alerts, etc. and the necessary maintenance of the progress made via the Sapin II Law, transposition of the directive should provide an opportunity for a thorough reappraisal of the French mechanism and not just a minimal transposition. It recommended taking the necessary time to bring all of the texts in force into line in the context of genuine interministerial work bringing together all the organisations mobilised through defence of whistleblowers.

European colloquium on whistleblowers, organised by the Defender of Rights in December 2019

In parallel with this meeting, the Network of European Integrity and Whistleblowing Authorities (NEIWA), created in the Hague in May 2019, met for the second time in Paris on 2 December 2019, on the Defender of Rights' initiative. It includes fourteen public bodies responsible for whistleblowers in eleven European Union countries. In the Paris Declaration of 3 December 2019, NEIWA members committed to coordinating their efforts so that all European Union Member States have a whistleblower protection mechanism that is:

- accessible to all thanks to coherent, clear, legible, and comprehensible legislation and effective public information;
- highly protective, with effective protection for whistleblowers throughout the process and mechanisms that ensure prompt, efficient processing of alerts;
- backed up by adequate human and financial resources ensuring independence of the process and of bodies responsible for providing whistleblowers with support and protection and/or for ensuring follow-up of alerts.

VII

Nul homme ne peut être accusé, arrêté, ni détenu que dans les cas déterminés par la loi, et selon les formes qu'elle a prescrites. Ceux qui sollicitent, expédient, exécutent ou font exécuter des ordres arbitraires, doivent être punis; mais tout citoyen appelé ou saisi en vertu de la loi, doit obéir à l'instant; il se rend coupable par la résistance.

VIII

La loi doit établir que des peines strictement et évidemment nécessaires, et nul ne peut être puni qu'en vertu d'une loi établie et promulguée antérieurement au délit, et légalement appliquée

IX

Tout homme étant présumé innocent jusqu'à ce qu'il ait été déclaré coupable, s'il est jugé indispensable de l'arrêter, toute rigueur qui ne seroit pas nécessaire pour s'assurer de sa personn doit être sévérement réprimée par la loi.

X

Nul ne doit être inquiété pour ses opinions, mêmes religieuses pourvu que leur manifestation ne trouble pas l'ordre publi établi par la loi.

XI

La libre communication des pensées et des opinions est un des droits les plus précieux de l'homme: tout citoyen peut donc parler, écrire, imprimer librement; sauf à répondre de l'abus de cette liberté dans les cas déterminés par la loi.

XII

La garantie des droits de l'homme et du citoyen nécessite une force publique: cette force est donc instituée pour l'avantage de tous, et non pour l'utilité particulière de ceux à qui elle est confiée.

XIII

Pour l'entretien de la force publique et pour les dépenses d'administration, une contribution commune est indispensable elle doit être également répartie entre tous les citoyens, en raison de leurs facultés

XIV

Les citoyens ont le droit de constater par eux-mêmes ou pa

III.
Tools for promoting knowledge of rights

Dialogue with civil society guides the Defender of Rights' action to promote rights and equality, by taking account of the knowledge, needs and constraints of professionals and associations. Such exchanges enable the information in the institution's possession to be supplemented, research results in particular, and recommendations and relevant tools to be developed.

Pursuant to the law, the Defender of Rights is assisted by three boards, advisory bodies composed of individuals who provide it with their expertise and a multidisciplinary view when examining new and important questions.

The "defence and promotion of the child" and "security ethics" boards, for example, were consulted on minors' prison conditions (2019-045) and hearings of victims who are minors (2019-133). The "fight against discrimination and promotion of equality" board debated conciliation of the principle of non-discrimination based on age and certain policies on access to culture and to transport depending on age thresholds.

The Defender of Rights brought all 22 members of the boards together on 18 September 2019 to form a joint board to address crosscutting subjects: opinion on the bioethics bill, the status of individuals accommodated in work centres for disabled persons (établissements spécialisés d'aide par le travail – ESATs), and the potentially discriminatory practices of adoption services against homosexual couples and single people.

Exchanges are also organised in the context of its nine harmony and liaison committees' biannual meetings.[3] Bringing community-based and professional actors together around a variety of themes.

The new "advanced age" harmony committee, launched at the end of 2019, includes some fifteen associations. It met twice in 2019 to discuss the difficulties encountered by the elderly and their families and friends in the context of an ageing French population - a quarter of the current population is over 60, and 10% are 75 or over. These meetings have already enabled identification of a need for objectification of the discrimination to which people "advancing in age" may be subject (access to loans, healthcare, housing, leisure activities, etc.).

It deploys a policy of partnerships and exchanges with all actors likely to intervene in its field of expertise. In 2019, the Defender of Rights continued its cooperation on training

[3] Seven harmony committees were set up (health harmony committee, LGBTI harmony committee, gender equality harmony committee, child protection harmony committee, harmony committee with disability associations, origin harmony committee, and advanced age harmony committee) along with two liaison committees (employment and accommodation),

with the French national school for the judiciary (Ecole nationale de la magistrature – ENM), the French national bar council (Conseil national des barreaux – CNB), and the French national centre for the territorial public service (Centre national de la fonction publique territoriale – CNFPT). It also strengthened its cooperation with the independent authorities of which it is a member, the national advisory commission on human rights (commission nationale consultative sur les droits de l'homme – CNCDH) and the national commission for French data protection authority (Commission Nationale de l'Informatique et des Libertés - CNIL) with which it will continue its work, in particular on the discriminatory bias of algorithms.

In order to foster a comparative, collective approach, the institution is very much involved in networks bringing together foreign organisations with similar missions. In 2019, for example, the Defender of Rights contributed to the work of the Equinet network, which brings together European authorities for promotion of equality, on age-based discrimination and sexual harassment in employment.

The "Defender of Rights thesis prize"

For five years, this prize has encouraged academic research in human and social sciences likely to enrich knowledge on the institution's fields of competence. The 2019 edition rewarded work whose common feature was that it addressed the fundamental rights of individuals who are often the most cut off from them:

- Noémie Paté for her sociology thesis entitled "Access - or non-access - to protection for isolated minors in a migration situation", presented at the Université Paris Nanterre. This thesis provides a well-documented perspective on access to protection for isolated minors in a migration situation in France and analyses the criteria and practices mobilised by actors involved in assessment of isolation and such children's minority in order to distinguish "true" minors from "false" minors.
- Anne-Sophie Ranaivo for her public law thesis entitled "No fixed abode and law", presented at the Université Paris I Panthéon-Sorbonne. It shows that the law contributes to maintaining homeless individuals in situations of extreme precarity: As well as only partially ensuring their protection, it is often mobilised in the interests of the protection of society and third parties "against" the NFAs themselves.

a. Promoting the rights of the child through the United Nations Convention on the Rights of the Child (UNCRC)

2019 was marked by the 30th anniversary of the adoption of the United Nations Convention on the Rights of the Child (UNCRC), an international treaty ratified by the greatest number of States (196 countries). The UNCRC's anniversary provided an opportunity to assess the application of the Convention, the implementation of which the Defender of Rights is responsible for monitoring in France. In this context, the institution chose in particular to make the voices of those primarily affected heard, children.

The Defender of Rights' "I have rights, listen to me!" consultation

Enshrined in article 12 of the UNCRC, the right to participation means that the child, from its earliest years, is a full-fledged human being with its own rights, and an active member of our society. This being so, it is of fundamental importance that the child be supported, encouraged, listened to, heard, and taken into consideration. The right to participation constitutes one of the Convention's four core principles must be taken into account in the interpretation and application of all the other rights enshrined in the UNCRC. There are still many obstacles and stumbling blocks to full realisation of the right to participation.

The Defender of Rights and the Children's Ombudsperson held the "I have rights, listen to me!" consultation throughout 2019. With the help of some fifty partner associations, the consultation brought together over 2,200 children aged between 4 and 18 y/o with a view to raising their awareness of their rights, provide them with the necessary information in appropriate form, and enable them to suggest improvements to the Defender of Rights to increase the effectiveness of their rights in France.

In particular, the consultation revealed that 70% of the children interviewed did not know their rights and had never expressed themselves on the subject, while the United Nations Committee on the Rights of the Child told France in 2016 that it remained "concerned about the little progress made on systematically guaranteeing respect for the child's opinion in all areas of life [...] ".

Following the consultation, a report was drafted containing 276 children's recommendations and testimonies.

Celebration of the 30th anniversary of the UNCRC, 20 November 2019 in Paris

On the occasion of the 30th anniversary of the UNCRC, the Defender of Rights joined forces with UNESCO to organise an inverted conference aimed at making the voices of the children consulted throughout the year heard. The meeting brought together over 800 adults and 400 young people from the Defender of Rights' consultation and UNESCO's Associated Schools Network.

Over the course of the morning, opened by the President of the Republic, Emmanuel Macron, and facilitated by Mélissa Theuriau, the children had the opportunity to question French and international politicians, associations and experts on the rights to participation, education and protection against all forms of discrimination and violence.

The International Convention on the Rights of the Child's 30th birthday, 20 November 2019

Children's participation in the European Network of Ombudspersons for Children (ENOC)

The Defender of Rights also contributes to the effectiveness of the right to participation within the European Network of Ombudspersons for Children (ENOC) of which Geneviève Avenard, Children's Ombudsperson, was president in 2019. ENOC sets up a participatory project each year intended to enable children and young people from each member country to examine the implementation of their rights on a given subject. In 2019, discussions were devoted to the theme of digital technology and the challenges that it presents for children.

In France, the Defender of Rights worked with young people from the Val Fleury youth hub in Meudon, who met with experts and associations over the course of a week in order to exchange views on proposals. They created posters and awareness-raising videos and conducted radio and video interviews, publishing all their productions in a blog.

Two young representatives per country then participated in a forum held on 25 and 26 June 2019 in Brussels, where they were discussed such issues as online security, education, confidentiality and fake news at European level, and made a video about their hopes and fears in the digital world.

Among the recommendations presented on the occasion of ENOC's 23rd annual conference in September 2019, young Europeans specifically requested better protection of their privacy online as well as more information on digital technology, equal access for all to the Internet and to educational platforms, and creation of an application to check information. They would like digital technology to provide young people with greater awareness of their rights, and that prevention of online harassment be improved.

The rights of the child at the heart of the Francophonie

The Association of Ombudspersons and Mediators of la Francophonie (AOMF), of which the Defender of Rights is a member, celebrated the UNCRC's 30th anniversary by organising a joint conference with the Parliamentary Assembly of La Francophonie (APF) in Rabat (Morocco) on 23 and 24 October 2019.

The AOMF's reference framework , which was presented on this occasion, assists members in carrying out self-assessments on promotion and protection of the rights of the child. It expresses the key principles of an approach through the rights of the child in concrete, operational indicators to guide them in assessment of their implementation. The tool seeks to strengthen the AOMF members' to work on issues relating to the rights of the child, support development of a culture of results aimed at obtaining concrete achievements that enable the rights of the child to be developed in their respective countries, and measure the progress made.

At the end of the conference, in order to highlight discrimination with regard to children and the absence of any real culture of participation for children, AOMF adopted the Rabat Declaration in which they undertook to step up their actions to defend and promote the rights of the child, optimise the accessibility and effectiveness of the mechanisms to process cases concerning them, and actively involve children in their work.

The Defender of Rights' programmes to promote the rights of the child

Young people in civic service at the Defender of Rights: the Youth Ambassadors for Rights programme (programme des Jeunes Ambassadeurs des Droits - JADE)

The Youth Ambassadors for Rights programme enables some hundred young volunteers in civic service, aged from 16 to 25, to spend nine months with the Defender of Rights in order to promote the rights of the child, equality and non-discrimination to young audiences in schools, leisure centres, hospitals and specialised facilities under the child welfare and judicial protection of juveniles systems, and during events for the general public in Metropolitan and Overseas France. A scheme initiated by the Children's Ombudsperson in 2006, the programme has continued at Defender of Rights and widened its scope and ambition: since 2013, it has also been aimed at upper secondary students and apprentices, raising their awareness of the right to non-discrimination and promotion of equality. Following a three-week training course, Youth Ambassadors for Rights are able to adapt their methods and activities media to the teaching teams' requirements and the specificities of their audiences. Moreover, in the event of a child disclosing an alarming situation, a procedure developed with the "Defence of the rights of the child" division enables Youth Ambassadors for Rights to collect and submit children's accounts to the Defender of Rights.

For six years now, the Defender of Rights' focus on deployment of the Youth Ambassadors for Rights programme, in particular in Overseas France (Mayotte, Reunion Island and French Guiana) has been a testimony to its commitment to the training and pathways of young people from very different backgrounds, all of whom identify with the institution's missions and values. Since 2013, such investment has led to the number of young people whose awareness has been raised each year to double, increasing from 30,000 to 60,000.

The EDUCADROIT platform's educational resources

Educadroit is an educational space dedicated to educators, teachers, facilitators, parents and law professionals who wish to carry out awareness-raising activities on the law and rights with young participants. The Educadroit.fr website provides free access to adapted tools (videos, exhibition panels, posters, games and cartoons), a directory of specialised speakers, and an activity manual.

All these resources are structured around ten thematic entries (e.g. "Is everyone equal in the eyes of the law?", "Are sanctions the same for everyone?", "Under 18? What rights do you have?").

In order to respond to the challenges of protecting children's personal data right to privacy of children, cyberbullying and the right to information, new teaching resources are being developed in partnership with the French Data Protection Agency (Commission Nationale de l'Informatique et des Libertés – CNIL).

The Youth Ambassadors for Rights programme in figures

- **100 young people in civic service** trained in the promotion of the rights of the child and non-discrimination carrying out awareness-raising actions and active in 22 *départements* and 2 metropolises committed to supporting the programme.
- **28 delegates responsible** for supervising the Youth Ambassadors for Rights active in their areas.
- **Over 500 operating locations** hosting children and young people who have been made aware of their rights.
- **3,000 interventions** involving children and young people, mobilising the institution's tools and resources, and the current catalogue of 40 activities on the themes of the 12 rights of the child and discrimination.
- **Almost 60,000 children and young people met** for the 2018/2019 school year.
- **14,000 individuals met** in 2019 during 150 partner events.

Educadroit in figures

- **63 organisations that have signed** the charter for education of children and young people on the law and rights.
- **150 people trained** in the use of Educadroit tools since 2017.
- **18 "Draw me the law" exhibition games** created in partnership with the Cartooning for Peace association. They are available free of charge all over France: in French Guiana, in Reunion Island, in Amiens, Bordeaux, Nancy, Rennes, Lyon, etc. and in Paris (5 games), upon simple request from the entities wishing to borrow them. In 2019, they were borrowed more than 90 times in total by schools, town hall youth services, *départemental* councils for legal access, and media libraries.
- **160 events** since 2017: neighbourhood festivals, national access to the law days, heritage days, professional days, open days for the judicial protection of juveniles, and UNCRC 30th anniversary celebrations.

b. Making the rights of persons with disabilities effective

Since its creation, the Defender of Rights has taken major action to promote and ensure respect of the rights recognised by the international Convention on the Rights of Persons with Disabilities (CRPD), which came into force in France in 2010. When it was created, the Defender of Rights was appointed by the Government as an independent mechanism responsible for monitoring application of the CRPD.

According to the Convention, discrimination based on disability includes all forms of discrimination, including denial of reasonable accommodation. This principle aims to create real equality, which involves taking different situations into consideration in order to provide suitable responses to them. Treating a disabled person as one would any other person, without taking account of their special needs, de facto results in less favourable and therefore discriminatory treatment.

Progress

Noting that the notion of reasonable accommodation was largely unknown and therefore little respected, the Defender of Rights made use of guides, reports and awareness-raising actions to inform the various actors concerned, in the context employment, vocational training, access to goods and services, and education and access to leisure activities for children with disabilities.

The notion of reasonable accommodation now seems to be better understood and applied. In 2019, in accordance with the Defender of Rights' analysis, the Court of Cassation (Cass. Soc., 4 Sept. 2019, no. 10853 F) in turn recognised discrimination following an employer's refusal to implement the reasonable accommodation necessary to enable a disabled person to remain in their job.

In addition, drawing lessons from the recommendations formulated by the Defender of Rights in its report on "Judicial protection for vulnerable minors" published in 2016, the Act of 23 March 2019 on justice programming and reform 2018-2022 recognised the right to vote, marry, enter into a civil partnership and divorce for all vulnerable adults.

Despite this progress, major deficiencies remain in effective implementation of the rights recognised by the CRPD. In particular, the Defender of Rights is sorry to see that the change in model brought about by the Convention is yet to be taken fully into account in the drafting and implementation of public policies. This finding is particularly concerning with regard to accessibility. Act no. 2018-1021 of 23 November 2018 bearing on development of housing, accommodation and digital technology, known as the "ELAN" (évolution du logement, de l'aménagement et du numérique) law, has reduced certain construction standards, calling into question the "everything accessible" rule applicable to new accommodation, provided for by the act of 11 February 2005 (opinion 18-13 and opinion 18-18).

Defender of Rights' opinion 19-05 on the framework bill on mobilities

While reiterating that it agrees with the framework bill on mobilities' goals, the Defender of Rights considers that several of its focuses need to be improved in order to ensure France's compliance with its international commitments under the CRPD. For example, the question of accessibility to public transport for persons with disabilities is absent from the bill even though it would appear essential in ensuring their right to mobility. In particular, the Defender of Rights recommended incorporating an accessibility obligation for all stopping points on the public transport network, providing for scheduling of when they are to be made accessible so that accessibility

across the entire mobility chain is eventually guaranteed. Furthermore, it recommends that transport conditions of use be clarified upon request and that criteria for access to this type of transport be provided.

The Grenelle "law and disability: towards universal accessibility!" summit

Organised by the national bar council (Conseil national des barreaux – CNB) in June 2019, under the patronage of the Defender of Rights, this conference provided an opportunity to reassert the CRPD's goals and highlight the many obstacles encountered by persons with disabilities when accessing the public justice service. Accessibility to establishments receiving the public, such as courts or police stations, is not always effective. This is also the case with access to public services' websites, as is pointed out by the Defender of Rights in its report entitled "Dematerialisation and inequalities in access to public services", published in January 2019. Similarly, the lack of disability-related training for professionals involved administration of justice may be at the origin of stigmatising behaviour or discriminatory decisions based on a negative representation of disability. On this occasion, the Defender of Rights highlighted the need to train such personnel in the context of the transfer of labour disputes to ordinary courts as from 1 January 2019.

Monitoring of the United Nations Convention on the Rights of Persons with Disabilities

The Defender of Rights intervened in Geneva on 23 September 2019 during the pre-session on examination of France's initial report on the CRPD, organised by the United Nations Committee on the Rights of Persons with Disabilities. In the context of the pre-session, and in view of the France's upcoming examination in 2020, the Defender of Rights provided the Committee on the Rights of Persons with Disabilities with a list of points regarding France's report, on which it considers it essential to obtain certain clarifications.

France's report will be examined by the Committee on the Rights of Persons with Disabilities in August 2020 and, with this in view, the Defender of Rights will publish its alternative report on implementation of the Convention and the State's compliance with its international undertakings.

The partnership convention with the French national funding agency for autonomy (Caisse nationale de solidarité pour l'autonomie – CNSA)

On 12 February 2019, the Defender of Rights and the CNSA signed a partnership convention formalising the cooperation between the two institutions that had already existed for several years. In the context of their respective missions, the Defender of Rights and the CNSA contribute to promoting access to rights and equal treatment across the territory for all persons with disabilities or in loss of autonomy, regardless of their disability or age. The partnership convention aims to organise collaboration between the two institutions in order to develop common actions on protection and promotion of the rights of persons with disabilities or in loss of autonomy.

C. Mobilising the public authorities and civil society

To a large extent, the respect for and effectiveness of rights depend on the commitment of professionals, who can modify their practices, and the mobilisation of public authorities, which can improve public policies to support these developments and propose legislation that embodies these values. Knowledge is a major lever of action. Reorganisation of the State's departments should not lead to decreasing or removing the rigorous critical analysis capacities that it has developed over the years, in particular with regard to access to rights, justice and security, and access to healthcare.

Highlighting the difficulties of access to rights and discrimination

The Defender of Rights is a privileged observer of the difficulties of access to rights, thanks to the referrals that it receives. Its decisions reveal the prominent problems that users on French soil face. In addition, the studies that it carries out or supports enable new challenges regarding access to rights to be highlighted, the mechanisms at work to be better understood, and the impact of the public policies pursued to be assessed.

The Defender of Rights' surveys on difficulties in accessing rights

In Spring 2016, the Defender of Rights launched a major survey among the general population on access to rights. Developed with the French national institute of demographic studies (Institut national des études démographiques – INED) and the Observatory of non-take-up of rights and services (Observatoire des non-recours aux droits et services - ODENORE, National Scientific Research Council [CNRS] Pact), it aimed to pros objective was to carry out a situational analysis of the difficulties encountered by the population in terms of access to rights in four of the institution's fields of expertise: discrimination, rights of the child, security ethics, and relations with public services. All of these analyses are collected in the publication entitled "Inequalities in access to rights and discrimination in France " published in two volumes by La Documentation Française.

Volume 1, published on 4 December 2019 contains researchers' contributions, and volume 2, which compiles the Defender of Rights teams' analyses, was published in February 2020.

The work reveals the French population's level of (un)awareness of their rights, determines the profiles and socioeconomic determinants of those most exposed to the non-respect of their rights and to discrimination, and identifies the reasons behind non-take-up. It provides a worrying situational analysis that corroborates the Defender of Rights' reports, opinions to Parliament, decisions and recommendations.

The work's publication was accompanied by the Quetelet network's provision, via the socio-political data centre, of data from the "Access to rights" survey in order to contribute to the public statistics service and enable the survey to continue to be used by other researchers.

The Defender or Rights stressed the difficulties encountered by the populations of Overseas France in the study entitled "Overseas French inhabitants faced with challenges in accessing rights. Equality issues with regard to public services and non-discrimination".

On the occasion of its "Focus on Rights!" ("Place aux droits !") operation in the Antilles in November 2018, the institution launched a call for testimonies from Overseas French residents in order to learn more about the difficulties in accessing public services and any potential discrimination of which they are victims.

"Focus on Rights!" at Saint-Denis, Reunion Island, September 2019

In addition to the 1,000 testimonies collected, over 1,500 people from *départements* in Reunion Island, Mayotte, Guadeloupe and Martinique were questioned in the context of a telephone survey between 10 December 2018 and 24 February 2019. The results were published on the occasion of the new edition of the "Focus on Rights!" operation which took place from 30 September to 3 October 2019 on Reunion Island then in Mayotte.

Beyond the problems of unemployment, education and the environment, the results of the survey reveal the scale of inequality in accessing public services and the prevalence of discrimination in Overseas France: 40% of the people questioned during the telephone survey think that people are often or very often treated unfavourably or discriminated against in their *département*. The most commonly cited discrimination criterion is origin and skin colour, well ahead of sexual orientation, state of health or disability.

Discrimination linked to origin particularly affects indigenous populations, which suffer from greater social precariousness and higher levels of unemployment. It is the inhabitants of Mayotte and French Guiana who state that they have encountered the most discrimination and difficulties during their administrative procedures.

Contributing to the modification of professional practices

In order to support the change in the practices of professionals and implementation of its recommendations, the Defender of Rights is developing tools and training modules, bringing together the associations and representatives of the professions concerned, employers, lessors, justice system personnel, police officers and physicians alike.

Tools developed by the Defender of Rights

The Defender of Rights has developed a series of tools dedicated to the fight against discrimination in employment. Whether it is a matter of LGBT rights, equal pay for men and women, specificities of the territorial civil service, management of discriminatory harassment phenomena, or establishment of the right to reasonable accommodation, it has ensured that those responsible have information stressing applicable law and procedures to be followed in order to process reports and develop effective prevention policies.

Furthermore, the "For discrimination-free recruitment" guide, published in June 2019, helps each individual involved in a recruitment procedure to secure their actions by identifying what is prohibited or authorised during the various applicant search and selection stages. It is structured around legal and practical information, drawing on concrete situations handled by the Defender of Rights.

Measuring the effectiveness of awareness-raising actions on changes in professionals' practices

The survey entitled "Measuring the impact of a warning letter from the Defender of Rights to estate agencies" ("Mesurer l'impact d'un courrier d'alerte du Défenseur des droits auprès d'agences immobilières" - "MICADO"), financed by the French Ministry of Territorial Cohesion and Relations with Local Authorities, was carried out by the ERUDITE and TEPP laboratories of the Universités Paris-Est Marne-la-Vallée and Paris-Est Créteil. Initial testing was carried out on estate agencies in France's 50 largest urban areas, in order to measure the prevalence of racial discrimination against potential lessees. 343 of the estate agencies were identified as discriminatory.

Half received a nominative letter from the Defender of Rights highlighting the legal framework, along with the "Renting without discriminating" manual used by real-estate professionals, while the other half were not contacted (control group). Following the initial letters, a new test campaign was carried out with these same estate agencies in order to assess the development of their practices according to whether or not they had received the letter from the Defender of Rights and the guide.

The results, published in October 2019, reveal that discrimination decreased in the estate agencies that were made aware of their behaviour. The positive effects of the Defender of Rights' approach subsided after fifteen months. Use of a correspondence testing protocol repeated for the purposes of assessing public policy constitutes a methodological innovation in research on discrimination. It opens up new perspectives in an area where assessment of the impact of public and private action remains embryonic.

Mobilisation of the Defender of Rights for the training of professionals

Since 2014, the Defender of Rights has structured training courses designed for professionals as a full-fledged promotional activity. It has been particularly invested in the training of police officers and gendarmes. It has also developed training partnerships with new audiences, including security force, employment, legal, and justice system actors, by integrating its interventions into schools' and/or vocational training centres' training models. Finally, training content and methods (classroom, remote and blended-learning) have been diversified and the training of trainers, which in particular

12th Barometer of Perception of Discrimination at work, edition devoted to trade union discrimination, September 2019

requires collaboration with training centres by occupational branch, is now a priority focus.

Amongst the projects carried out in partnership, the Defender of Rights has contributed to the development of the open distance-learning course "Discrimination: : understanding in order to act" overseen by the French national centre for the territorial public service (Centre national de la fonction publique territoriale – CNFPT) and primarily aimed at territorial civil servants (almost 7,000 people enrolled for the 1st edition in Autumn 2019).

Finally, following the publication in 2018 of its study on "working conditions and experiences of discrimination in the law profession in France", the institution has intensified its mobilisation amongst law professionals.
In order to support the law profession's new rules of procedure, which, since 13 June 2019, have included principles "equality and non-discrimination" as a key principle, the Defender of Rights participated in the "harassment and discrimination" training day organised on 26 September 2019 by the Conference of the Bar Chairpersons.

Through its legal portal, the Defender of Rights website also releases all the institution's productions, along with other resources: case law, studies, official and community reports, legislation, tools, etc.

Objectification work carried out by the Defender if Rights through surveys and studies

- Demand for euthanasia and assisted suicide: research report (Besançon Regional University Hospital Centre Inserm CIC 1431, Jeanne Garnier medical home), February 2019
- Homeless adolescents. Growing up in a family in a hotel room (Observatoire du Samusocial de Paris, Université de Tours), February 2019
- Overseas French inhabitants faced with challenges in accessing rights. Equality issues with regard to public services and non-discrimination (Defender of Rights), September 2019
- 12th barometer of perception of discrimination at work. Edition devoted to trade union discrimination (Defender of Rights, International Labour Organisation), September 2019
- Discrimination test in access to housing according to origin. Measuring the impact of a warning letter from the Defender of Rights to estate agencies (UPEM, TEPP, CNRS), October 2019
- Discriminatory refusals to provide healthcare: tests in three medical specialties (UPEM, TEPP, CNRS), October 2019

In progress

- Promoting social housing in deficit municipalities: factors influencing local (non) decisions in France and the United States, ENS-Cachan
- Collective mobilisation of PS25 railway workers against the SNCF: dynamics and tensions of group legal action. CNRS
- Right to asylum for sexual minorities: How to build evidence from the respondent. CERSA / CNRS-UMR
- De-escalation of violence and management of protesting crowds, what structuring in France and Europe today? INHESJ
- Justice, families and convictions: religious silence? CNRS
- Police: fostering good relations with the public and police effectiveness. CESDIP
- Experience of discrimination in higher education and research in France, URMIS
- Children out of school in isolated territories in French Guiana: analysis of the phenomenon and barriers to accessing school, INSHEA/ UNICEF France

Taken from the publication entitled "Access to rights"

- "Inequalities in access to rights and discrimination in France: Researchers' contributions to the Defender of Rights' survey– Volume 1" (La Documentation française, December 2019)
- "Inequalities in access to rights and discrimination in France: The Defender of Rights' analyses- Volume 2" (La Documentation française, January 2020)

The Defender of Rights' European and international meetings

The Defender of Rights is regularly called upon by European and international institutions as an expert on the problems falling within its areas of competence.

It received Leilani Farha, UN Special Rapporteur on the right to decent housing, in the context of an official visit to France from 2 to 11 April 2019 in order to assess implementation of the right to adequate housing and non-discrimination in this field. In her report[3], drawn up under resolution 34/9 of the Human Rights Council, the Special Rapporteur illustrated the importance of access to justice as a means of implementation of the right to housing (prevention of expulsions and right to effective remedy).

2019 was also the occasion for the Defender of Rights to renew his exchanges with the various components of the Council of Europe. In January 2019, he travelled to Strasbourg in order to exchange views with the European Court of Human Rights (ECHR), the Commissioner for Human Rights and the Rapporteur of the draft report on "Ethnic profiling in Europe".

In March 2019, he was heard by members of the French agency for business creation's (Agence pour la création d'entreprises - APCE) commission on equality and non-discrimination on the institution's work and recommendations on three themes: harassment, discrimination connected with disability and its opinion on "Parcoursup".

He also spoke at the "On the road to effective equality" conference organised on the occasion of the 25th anniversary of the European Commission against Racism and Intolerance (ECRI), in the context of the French presidency of the Committee of Ministers of the Council of Europe. His participation enabled stock to be taken of the Defender of Rights work with regard to the fight against discrimination based on origin and religion, along with a timely reminder of the detrimental confusion that exists today between the various public policies on the fight against hatred and radicalisation with regard to questions of integration, respect for secularity, living together, promotion of diversity, etc.

Finally, in December 2019, the institution received a delegation from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in the context of its 7th periodic visit to France. The Committee's delegation was able to gather information on the rights of detainees (violence and difficulties in obtaining an effective investigation, and access to healthcare for detainees) and the conditions for expulsion of foreigners.

[3] Leilani Farha, "Access to justice as a means of exercising the right to housing", 15 January 2019.

d. Informing the public and making them aware of their rights

Communication and information tools for accessing rights

Since the start of its mandate, the Defender or Rights has disseminated knowledge about the areas of law that fall within its areas of competence, and has implemented a strategy to promote the culture of rights.

Various communication and information tools are designed by the Defender of Rights in order to make the general public aware of their rights. The Equality Against Racism (Egalité contre racisme – ECR) information platform enables every individual, whether victim or witness, to learn about their rights when faced with racist comments and violence, along with the preventive action to be taken.

In 2019, in response to the needs of its delegates and community partners, the Defender of Rights published new posters highlighting the prohibition of refusal to rent based on origin, and recruitment discrimination based on pregnancy.

Since September 2019, it has also been disseminating a new pamphlet entitled "Say no to discrimination" aimed at children and young people. Illustrated through situations that are familiar to them, the pamphlet is made much use of by the Youth Ambassadors for Rights (Jeunes Ambassadeurs des Droits - JADE) who exchange on the subject with young people, and is made available to associations and professionals involved in education and working with children.

The Defender of Rights has also drafted a worksheet on the discrimination test's methodology in order to make the testing better known. It is a legal tool, as yet not greatly used by the general public and associations as a means of proof of discrimination, whether in access to employment or to goods and services (access to housing, to a loan, to insurance, etc.). The pamphlet follows on from the amendment to act no.2008-496 of 27 May 2008 regarding admissibility of the situation test in civil proceedings. Victims of discrimination can henceforth present the results of a test in order to fulfil the first stage of modification of the burden of proof that prevails before civil courts.

The Defender of Rights also draws on associations and professionals to extend its action to sectors of the public distanced from the law. In order to better combat non-take-up on the part of the most fragile individuals, the Defender of Rights has produced a guide intended for social workers and associations and adapted to the needs of these professionals. In order to draft it, the institution worked with the national union of actors in education and research actors in social work (Union Nationale des acteurs de Formation et de recherche en intervention sociale – UNAFORIS), the federation of solidarity actors (Fédération des acteurs de la solidarité – FAS), the national union of social action community centres (Union nationale des centres communaux d'action sociale (UNCCAS), and the Ile-de-France regional institute for social work (Institut régional du travail social – IRTS).

A preferential partnership with France Télévisions

On 8 November 2019, the Defender of Rights signed a partnership with the France Télévisions audiovisual group and TelFrance, a production company that produces the daily soap opera *Life's So Sweet* (Plus Belle la Vie), whose objective was to improve people's knowledge of their rights. This undertaking with the public service audiovisual group is structured around two campaigns, the first broadcast in November 2019, and the second in March 2020. Eight sketches, filmed with actors from *Life's So Sweet*, illustrate the concrete difficulties encountered by individuals who call upon the Defender of Rights.

Signature of the partnership between the Defender of Rights, France Télévisions and TelFrance, producer of "Plus Belle la Vie"

The first campaign, broadcast on the occasion of the celebration of the 30th anniversary of the United Nations Convention on the Rights of the Child on 20 November 2019, focussed on the rights of the child, and in particular on access to the school canteen and bullying at school. Two sketches were broadcast on 19 and 20 November on France 2, France 3, France 4, France 5, and France 0, in Metropolitan and Overseas France during peak viewing hours. They were watched by 11.5 million television viewers aged 4 and over and were also the rebroadcast on France Télévisions', the Defender of Rights', and the *Life's So Sweet* soap opera's social networks.

In parallel, from 18 to 22 November, a one-minute-long general-interest film was broadcast on all the France Télévisions group's channels. Performed by actors from Life's So Sweet on a voluntary basis, it highlights the presence of over 500 Defender of Rights territorial delegates in Metropolitan and Overseas France. This short film was seen by almost 31 million viewers aged 15 and over.

"Do you feel lost when faced with the administration? Has a security professional not complied with the rules of good behaviour? Are you a victim of discrimination? Are you seeking to assert the rights of a child?
A free, independent institution, the Defender of Rights, with its 500 delegates, is here to help you ensure that your rights respected.
In every département, near you, in Metropolitan and Overseas France.
With the Defender of Rights, we are all equal."

The assessment made of the campaign highlights a 30% increase in call traffic, all sources combined, between 18 and 25 November. Information requests from the public over the same period increased by over 80%.

The cinema of rights – Promotion of rights through film

"In the furtherance of a cause, the cinema is an essential vector that unites, challenges, and questions. It enables development of texts, practices, and mindsets on the respect for fundamental rights".

Jacques Toubon

Since November 2018, the Defender of Rights has organised a bimonthly cine-debate in partnership with the national centre for cinema and the moving image (Centre national du cinéma et de l'image animée - CNC). The occasion to screen preview showings of films addressing themes linked to the Defender of Rights' five areas of competence. Screenings are systematically followed by a debate with film professionals, qualified individuals, and specialised legal experts from the institution, enabling their respective expertise and visions on the subjects raised in each of the films to be compared.

The "cinema of rights" enables issues that are all too rarely highlighted, but which echo the fundamental rights at the heart of the institution's expertise, to be broached.

Following "Little Tickles" ("Les Chatouilles"), a film about sexual violence against minors directed by Andréa Bescond and Eric Metayer, numerous films have been screened this year: "The Invisibles" ("Les Invisibles"), directed by Louis-Julien Petit, a film about reintegration of homeless women, "Extraordinary" ("Extraordinaires"), directed by Sarah Lebas, Damien Vercaemer and Damien Pasinetti about the pathways of people with autism and Down syndrome, and "French Kids" ("Gosses de France"), a documentary directed by Andrea Rawlins-Gaston with Caroline Le Hello, about the three million minors living below the poverty line. The fifth edition was held last December with the preview screening of the documentary "Men" ("Des Hommes"), directed by Alice Odiot and Jean-Robert Viallet, about the daily lives of inmates in Baumettes prison in Marseilles.

These cine-debates provide a unique opportunity to bring combine promotion of rights with culture. They also enable awareness-raising among the general public, and discussion between a wide range of people from different backgrounds on diverse problems, as well better understanding of the Defender of Rights' missions and actions.

de cette liberté dans les cas déterminés par la loi.

XII

La garantie des droits de l'homme et du citoyen nécessite une force publique: cette force est donc instituée pour l'avantage de tous, et non pour l'utilité particulière de ceux à qui elle est confiée.

XIII

Pour l'entretien de la force publique et pour les dépenses d'administration, une contribution commune est indispensable; elle doit être également répartie entre tous les citoyens, en raison de leurs facultés

XIV

Les citoyens ont le droit de constater par eux-mêmes ou par leurs représentans, la nécessité de la contribution publique, la consentir librement, d'en suivre l'emploi, et d'en déterminer la quotité, l'assiette, le recouvrement et la durée

XV

ciété a le droit de demander co gent publi

XVI

Toute société, dans laquelle la garantie des droits n'est pas assurée, ni la séparation des pouvoirs déterminée, n'a point de constitution

XVII

Les propriétés étant un droit inviolable et sacré, nul ne peut en être privé, si ce n'est lorsque la nécessité publique, légalement constatée, l'exige évidemment, et sous la condition d'une juste préalable indemnité.

PEUPLE FRANÇOI

IV. An institution organised around reception and proximity

a. Receiving and guiding all complainants

Helpless when faced with the difficulties that they encounter, shunted back and forth between standard voicemail messages, many people no longer feel listened to or considered, and no longer know who to turn to in order to resolve their problems. Complainants are confronted with pure and simple closure of helpdesks, leaving them with no opportunity to express their difficulties orally, or are confronted with institutions that impose exchanges exclusively via Internet as they no longer respond to letters.

In this context of decline in local public services and faced with the resulting difficulties in accessing rights, enabling complainants to express their problems via the communication method that best suits them, in writing, over the phone, or in person, taking the time to understand their difficulties and explaining to them how to compile a case file, the necessary documents, where to find the correct form, is essential, sometimes even urgent, and, in all events, a priority for the Defender of Rights.

It explains which cases it may intervene in to each individual and, in the event of it being unable to take action, to whom they should address their requests. It translates administrative responses into comprehensible language and ensures that individual situations have been properly assessed, in their entirety, by the authorities.

Given the various mobilisations, whose scale, frequency and the growing feeling of mistrust of the authorities that they manifest challenges the public authorities, it appears that maintaining forums for listening and discussion is essential. The great increase in requests addressed to the institution shows how strong this expectation is amongst public service users.

+33 (0)9 69 39 00 00: a number dedicated to reception, care and guidance

Accessible Monday to Friday from 8:30 a.m. to 7:30 p.m., the Defender of Rights helpline is, for many, the first point of contact with the institution. The objective is to respond to each individual in order to best orientate them, including when their requests do not fall with the Defender of Rights.' fields of competence

With a call pick-up rate of 95% and average waiting time of seven seconds, the +33 (0)9 69 39 00 00 number appears to provide a service that has become the exception: speaking to someone without having to wait a long time in order to do so.

The difficulties alluded to by callers mainly focus on relations with public services, particularly with regard to social protection, automobile traffic (fines, car registration documents and driving licences), immigration law, problems of discrimination and violations of the rights of the child.

The caller may be an artisan who is unable to obtain his car registration document, which in turn prevents them from working. Or parents faced with a failure to treat their child who has a disability or food allergy, and who are forced to overcome these shortcomings and are beginning to have difficulties with their respective employers. Or a retiree whose pension has not been paid for several months and who is see his savings draining away. Or a young woman side-lined upon her return from maternity leave, who no longer wishes to work at the company in which she no longer trusts but who does not want to just disappear and be mistreated without saying anything.

More than situations, these are, first and foremost, individuals who need to be listened to and require help, who need their words to be hears, taken seriously and considered, fragile people who do not know where to turn.

Guiding discouraged users who do not know how to defend their rights

With regard to the relationship between users and public services, the organic law bearing on the creation of the Defender of Rights stipulates that, prior to referring to it, the complainant must ask request the authority or administration that made the contested decision to re-examine their situation. Yet this procedure, which fortunately still enables certain difficulties to be resolved, is not always understood.

The simple fact of having to put together a case file may appear too complex, and in itself requires time to be spent on explanation in order to help people understand which documents are useful.

If necessary, individuals are asked to put together the documents they possess or make contact with a Defender of Rights delegate, who, during an interview, will explain which documents are necessary and which are not, and so help them to complete their files.

This first stage, which is fundamental in support of and education in access to the law, accounts for a major part of the work carried out by the Defender of Rights, which observes the significant lack of "legal culture" amongst the population on a daily basis, not in the sense of technical knowledge of the rules of law, but in that of people's simple ability to present their situations clearly and compile case files.

Such "first level" education in "law is a major challenge, particularly for the most disadvantaged populations. Whereas public policies sometimes give the impression that they consider "social disengagement" to be inevitable, it is worth bearing in mind that there is not nor can there be an "acceptable loss rate" with regard to rights, social rights in particular.

Finally, when the situation does not fall within the Defender of Rights' areas of competence, for example when it is a dispute with regard to employment with no link to a potential discrimination criterion, or a purely private dispute, callers are directed towards the competent bodies: mediator or dedicated conciliator, legal advice centres, associations, the labour inspectorate, trade unions, etc.

How do you feel about this last year as a counsellor on the Defender of Rights helpline?

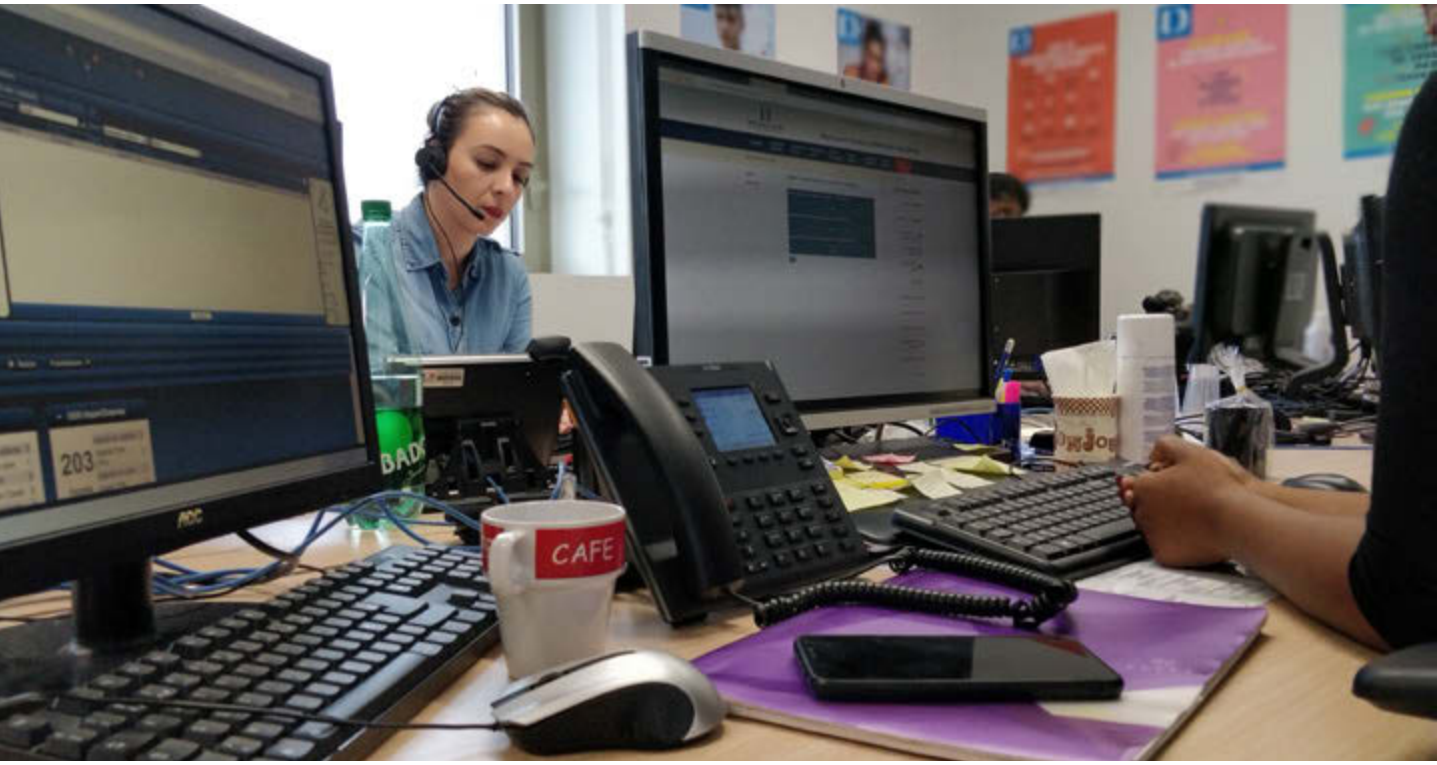
Joris "Since I've been working on the platform, what's struck me most is hearing people's surprise when we pick up the phone and answer the call, and their satisfaction at finally having a sympathetic ear that takes the time to listen to their problems and tries to provide them with a solution. They then express their feeling of being abandoned by other public bodies."

Elarif "2019 seems to mark a turning point with the "everything digital" approach, as many people, particularly the elderly or isolated, feel totally helpless because the public authorities don't provide them with intermediary solutions. It has really become a major concern."

Sine "The goal of dematerialisation, which was to simplify access to public service for citizens, has turned out to be a real administrative quagmire and has added further difficulties to administrative procedures. The representative example being the French National Agency for Secure Documents (Agence nationale des titres sécurisés – ANTS) and the lack of response which backs people into a corner without any means of action."

Jean "In the many years that I've been working on the helpline, I've noticed that people can be more and more aggressive over the phone due to almost total ignorance of their rights. More often than not, this is linked to non-accessibility of adequate public services that seem dehumanised to them."

Nouara "In my opinion, what stands out in 2019 were people who were totally distraught when faced with the cogs in the administrative machine, which seems to grind them up. It was already something that was being expressed, but I have the feeling that it is worsening."



The Defender of Rights' call centre

Referring to the Defender of Rights: allowing free choice of the method of referral

Highly committed to ensuring that the digital revolution taking place does not become a factor of exclusion, the Defender of Rights stresses the right of each individual to choose their communication tools, and that the dematerialised route can in no case be imposed on users.

The Defender of Rights can of course be contacted via an online form at: www.defenseurdesdroits.fr/fr/saisir, as has been the case for several years. It has observed that this contact method, which scarcely accounted for a third of referrals in 2014, is now used by almost two thirds of complainants.

The possibility of contacting the institution by post has not only been maintained, which is an obligation in the context of the texts governing relations with users, but it has also been free of charge since 2017. Complainants simply have to place their case file in an envelope, with no need of a stamp, and send it to: "Défenseur des droits / Libre réponse 71120 / 75342 Paris Cedex 07".

All complaints receive a response and, if necessary, are forwarded on to specialised legal hubs for investigation or to the network of delegates present nationwide, with a view to reaching an amicable settlement.

An institution at the service of everyone and close to everyone

The Defender of Rights' visits to regions

In early 2019, the Defender of Rights set out on a tour of France's regions to meet his delegates and local authorities around a specific theme.

For his first visit, the Defender of Rights went to Saint-Etienne to address the theme of child protection. Each month, he continued his meetings. He then went to Rouen and Le Havre to address the specific needs of persons with disabilities in an inclusive society, to Ajaccio to discuss the difficulties of receiving healthcare in a context of insularity, to Arras and Lens to address dematerialisation and inequalities in accessing public services, to Toulon to address the deprivation of rights suffered by the most vulnerable women, to Angers to address mediation, to Narbonne to address discrimination in employment, and finally to Dijon and Montbard to address the reception and accommodation of foreigners.

He ended his tour of the regions in early 2020 with visits to Vannes, Angoulême and Tours.

These exchanges in the field, with delegates and local, political, institutional, and community actors alike, enabled the Defender of Rights to approach the subjects that the institution handles in more concrete fashion, and to strengthen the delegates' relations with local authorities. These visits are also the opportunity to engage in a virtuous dynamic fostering local promotional actions by delegates, and to contribute to better identification of their actions by local media.

Moreover, through these visits, the Defender of Rights wished to emphasise the institution's proximity to possible complainants and make its location across French soil known to all.

b. Being present across the whole territory with a network of over 500 delegates

Article 37 of the organic law of 29 March 2011 stipulates that the Defender of Rights "may appoint, across the whole territory, delegates placed under its authority, who may, in their geographical jurisdiction, investigate complaints and participate in the resolution of any problems reported, as well as in the actions referred to in the first paragraph of article 34 (information and communication actions). Furthermore, in order to enable prison inmates to benefit from the provisions of this organic law, it shall appoint one or more delegates for each prison".

By providing the Defender of Rights with the possibility to delegate some of its duties to them – in particular that of contributing to the amicable resolution of disputes – the text bestows a legitimacy upon the work of voluntary delegates, making the territorial network an essential component of the institution.

Over these last five years, the place of the territorial network within the institution has been strengthened by the continuous rise in the number of complaints that it takes responsibility for and the significant increase in the number of its delegates, enabling greater accessibility for citizens to assert their rights, in Metropolitan and Overseas France, as well as for the French expatriates. The network role in the institution is the result of innovative and highly effective interaction between the Defender of Rights' central departments and its delegates in the field, which was strengthened in 2019 by the implementation of a network of regional hub managers.

A high level of referrals from Defender of Rights delegates

In addition to the very substantial increase in requests handled by the Defender of Rights' network of delegates between 2014 and 2019 (+27%), i.e. more than 82,147 referrals processed locally over this last year, four observations deserve to be further developed.

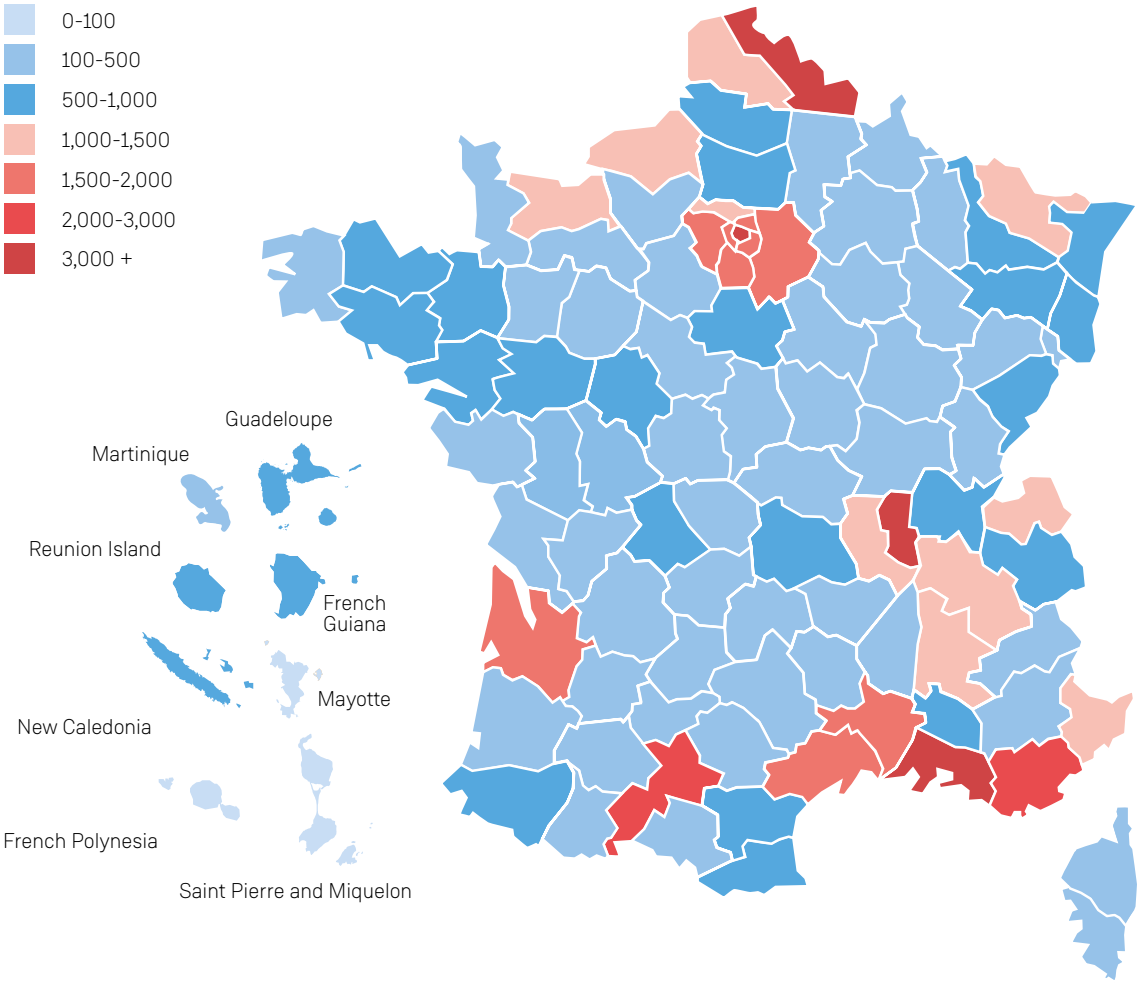
Firstly, the number of complaints processed by delegates, and the number of simple requests for information and/or redirection, were equal in 2014. 60% of complaints today are effectively handled through mediation, i.e. around 50,000 complaints. This progress is a result of greater local knowledge of the Defender of Rights areas of competence, in particular through such daily interlocutors as providers of reception services at helpdesks, social assistance networks and public scribes, for example.

Secondly, it is worth highlighting the success rate. 78,761 requests were processed by the delegates in 2019. Average processing time was 73 days, and 80% of amicable settlements undertaken had favourable outcomes.

Thirdly, the map below of the number of requests addressed to delegates in 2019 per *département* shows how well the institution takes account of needs with regard to accessing rights, through a significant increase in the number of delegates in the main population centres (*départements* in Le Nord, Paris, Rhône, Haute Garonne, Bouches du Rhône and Var, for example) as well as in peripheral areas.

Finally, among the requests for amicable settlement handled by delegates, referrals from people who believe they have been harmed by the operation of a public service should be distinguished. Their number has been constantly increasing over the last five years and accounts for most of the network's activity (94% of complaints).

Number of requests addressed to delegates



The institution is increasingly compensating for human presence in public services, which is gradually tending to disappear, and is tackling the increasing complexity of administrative procedures, accentuated by their dematerialisation.

Hence, by way of illustration, 2019 saw a rise in users' difficulties connected with requests to exchange driving licences and international licences, as well as with post-parking fixed penalties.

Fewer in number are referrals processed by delegates from witnesses or victims of discrimination, individuals who consider that the rights of a child or adolescent are not respected, and regarding situations that call the interests of a minor into question (3% and 2% of complaints respectively).

The main case files processed by delegates in these fields have to do with discrimination in employment in view of disability, health and origin criteria, the rights of the child, complaints relating to support for children with disabilities in school and extracurricular environments, and inequality of access to canteens, for example.

The Institution's officers visit Ajaccio, May 2019

Final area of competence allocated to delegates following an experimental period in 2017 and 2018: individuals who have had the filing of their complaint refused or who have been subject to inappropriate behaviour or remarks by national police officers or gendarmes. 2019 was the first full year for the processing of such complaints by delegates, with 895 case files.

Delegates are not, however, qualified to collect complaints from whistleblowers.

Local processing of case files by delegates in 2019

Relations with public services	47,926	94.3%
Defence of the rights of the child	1,447	2.8%
Fight against discrimination	792	1.6%
Security ethics	675	1.3%
Information	**33,770**	**39.9%**
Relations with public services	20,236	59.9%
Defence of the rights of the child	774	2.3%
Fight against discrimination	662	2.0%
Security ethics	220	0.6%
Other requests	11,878	35.2%
Total referrals	**84,626**	**100%**

"Find a Defender of Rights near you", a campaign to facilitate appeals to delegates all across France

During the Defender of Rights' visits to all of the regions in France, there was a series of dedicated communication campaigns designed to publicise use of Defender of Rights delegates, paying particular attention to the legal support that delegates provide and the fact that the service is free of charge. "Find a Defender of Rights near you" pages were inserted into local and regional newspapers, and a Facebook campaign, with local targeting, was launched. The 13 campaigns carried out resulted in generation of 7,715,096 posts on Facebook, reaching people within a 40 km radius of the towns visited. Taking all media together, the press campaign was disseminated in 411,009 copies of the newspapers concerned, on three different occasions. This represents overall distribution of 1,233,027 copies, excluding Paris.

The campaign led to a rise in numbers of people visiting the institution's website, increasing twofold for the directory of delegates, and a significant increase in numbers of internauts consulting the page. The success of the development of the territorial network shows that this approach met the needs and expectations of the targeted populations regarding access to rights.

Total annual visits to the www.defenseurdesdroits.fr website

Visitors	569,041	799,986	+ 40.58%
Visits	795,034	1,056,954	+ 32.94%
Pages consulted	1,865,506	2,189,732	+ 17.38%

Consultations of the delegate directory page

Visits	40,923	120,721	+ 195%

Deployment of the network of delegates

In January 2015, concerned by inequality in access to rights in France, the Defender of Rights committed to an ambitious policy of recruiting voluntary delegates in order to extend the network beyond the large conurbations and *départemental* capitals, into outlying districts and rural areas.

There were 371 delegates in December 2014, and there are 510 today. New recruitments are planned for 2020. There are now no *départements* or territories with only one delegate, with the temporary exception of Hautes-Alpes, Gers, the Territoire de Belfort, and New Caledonia.

Moreover, in order to ensure better coverage of territories, the number of offices has been increased considerable, from 542 helpdesks in 2014 to 874 today. This deployment has enabled the correction of any inequalities in access to the institution by all members of the public, in particular individuals whose situations of isolation, precariousness or distance from public services makes them vulnerable as far as exercising their rights is concerned. In order to best achieve the objective of access to the law for everyone, some delegates have duty periods on several helpdesks.

By way of illustration, Corsica's two *départements* no longer had any delegates at the end of 2014. There are now four in Ajaccio, Bastia and Sartène, and soon in Corte. Similarly, two years ago, the Côte d'Or had three delegates in the centre of the *département*, in Dijon and in Chenôve.

There are now delegates in Dijon, Chenôve and, in the north of the *département*, in Montbard, and a fourth is to be appointed at the start of 2020, to the south, in Beaune.

During this period, deployment nationwide was facilitated by setup of the network of public service centres, the future France service centres (Maisons France services), along with numerous requests from local authorities to develop their own legal access entities. In parallel, the Defender of Rights increased its physical presence in bodies depending on *départemental* commissions for access to the law (Commissions Départementales d'Accès au Droit): legal advice centres (Maisons de la Justice et du Droit) and legal access points (Points d'Accès au Droit – PADs) that provide legal assistance and high-quality referrals to delegates. Finally, delegates are now active in all prisons, and a network of 101 delegates work in close collaboration with *départemental* centres for persons with disabilities (Maisons Départementales des Personnes Handicapées).

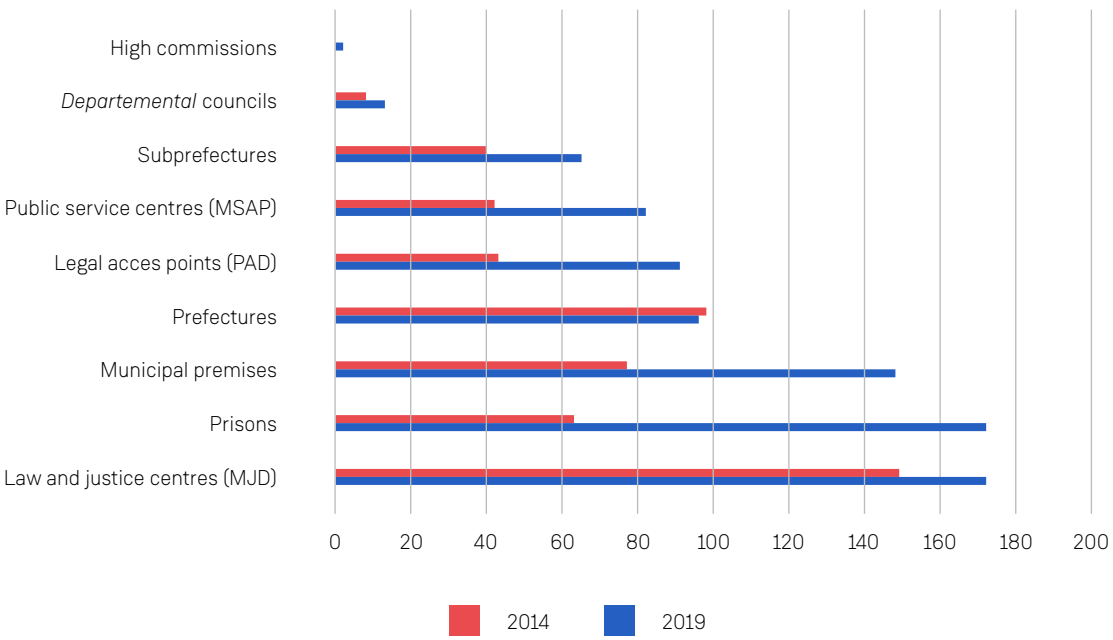
Thanks to their physical presence in legal access bodies and their availability, even before knowing whether or not a request presented to them falls into one of the Defender of Rights' fields of competence, the role of delegates is to listen, and this is particularly appreciated by people who are increasingly confused by administrative complexities.

Delegates, who are at the outposts of the Defender of Rights' role as a "lookout", also provide input for the reports, opinions and studies produced at the head office.

The greater diversity in delegates' missions, going beyond the single mediation mission, has been strongly encouraged by the Defender of Rights over the last few years.

The head office deploys an active legal support strategy. In order to remain fully informed of the many legal developments in the Defender of Rights' fields of competence, delegates are provided with continuous training by the head office which supplements their initial training.

Breakdown of delegates by different types of reception entities



Focus on Rights! Reunion Island, and visit to Mayotte, October 2019

After Toulouse, Lille and the Antilles, the institution visited Reunion Island and Mayotte between 30 September and 3 October 2019 for the fourth edition of "Focus on Rights!". Drawing on the lessons learned from the survey on "Overseas French inhabitants faced with challenges in accessing rights" which in particular highlighted the difficulties relating to operation of public services, the institution wanted to go and meet the inhabitants of Reunion Island and Mayotte in order to raise awareness on the institution and encourage them to use it. This external operation also provided an opportunity to meet institutional, community, and professional actors and discuss the challenges specific to the territory with them.

Some fifteen legal experts from the Paris head office and five Defender of Rights delegates, present all year round on Reunion Island, crisscrossed the *département* aboard a Defender of Rights bus, stopping in four towns: Saint-Denis, Saint-Paul, Le Tampon and Saint-Benoît for free legal advice sessions open to everyone.

In order to enable the inhabitants to come and meet with the legal experts, a major communication campaign was launched, including the broadcasting of two radio spots, around a hundred 12 m^2 posters on the outskirts of the towns, and adverts in the island's newspapers.

In four days, almost 1,000 people were able to speak with a legal expert about their situations and obtain advice. At the end of these meetings, 54 people were referred to a delegate's helpdesk for a more in-depth appointment, and 49 complainants had case files opened at head office.

In parallel to these "open-air" legal consultations, from 29 September to 1 October, Geneviève Avenard, Children's Ombudsperson, and Constance Rivière, General Secretary of the institution, met institutional and community actors from Reunion Island – including legal services, public and private sector employers, elected officials and the regional youth centre (Centre Régional de la Jeunesse – CRIJ) – in order to discuss access to rights on Reunion Island in all institution's areas of competence.

The Children's Ombudsperson and General Secretary, accompanied by three officers from the head office and the regional advisor for Reunion Island/Mayotte, then visited Mayotte, on 2 and 3 October 2019, notably to attend events organised by associations for the defence of children's rights around the 30th anniversary of the UNCRC and meet the Defender of Rights' Youth Ambassadors for Rights in Mayotte, as well as several out-of-school young people supported by progressive education promotion centres (Centres d'Entraînement aux Méthodes d'Education Actives - CEMEAs) a partner association of the Youth Ambassadors for Rights programme in Mayotte. The General Secretary also exchanged views with State services, the hospital centre, the family allowance fund (Caisse d'allocations familiales – CAF), Mayotte social security fund (Caisse de Sécurité Sociale de Mayotte – CSSM), Mayotte's local education authority, elected officials, regarding the *département*'s special difficulties in terms of accessing rights, notably in children's access to education children, the right to health and the fundamental rights of foreigners, subjects on which the Defender of Rights has continued to take action since its creation in 2011.

Finally, this visit provided an opportunity to expand the network of Defender of Rights delegates in Mayotte with the arrival of a new delegate, acting in line with a more general trend of increasing the network of delegates in Overseas France. There were 18 delegates in 2015, and there are now 27: an increase of 2 delegates in Martinique, 2 in French Guiana, 1 delegate in Reunion Island, 1 in Saint Pierre and Miquelon, 1 in Polynesia, 1 in Mayotte and 1 in New Caledonia, to which 1 additional delegate in Guadeloupe and 1 in Saint Martin will be added in mid-2020.

Delegates' involvement with prisoners

At the end of 2019, 152 delegates were active in one or more prisons. In 2014, 62 delegates manned regular helpdesks in prisons. Of the 184 current institutions, 172 benefit from the presence of a delegate, including the 6 institutions for minors.

The 12 institutions still without a delegate helpdesk are the 9 semi-custodial centres and 3 Overseas French establishments with very few inmates.

The main reasons behind referrals to delegates are connected with everyday life in prison, loss of belongings during transfers, prison canteens, external medical visits not carried out, access to work and vocational training, remuneration, upkeep of family ties, access to healthcare, and renewal of residence permits.

A leaflet on "Exercising your rights during imprisonment", 110,000 copies of which have been printed, is given to each detainee upon their arrival in a prison.

A delegate's testimonial

"The Defender of Rights draws its strength from innovative interaction between its central departments and its delegates in the field. The latter (...) are a real local public service, in the literal sense of the term, as they receive almost 78% of the individuals who contact them in person at their helpdesks (other referrals are quite evenly distributed between the Internet, telephone and mail). As volunteers, they are independent, but rely on the Defender's central departments, (...) which provide them with the advice and legal expertise that they require, and may take back control of the most complex cases.

This effective cooperation between national and local contributes to thought on violations of rights and the best ways to combat them. It enables the Defender of Rights to support its interventions through concrete examples at national level. It also nourishes many thematic studies such as the "Fight against benefit fraud: at what cost to users?" report, which inspired measures in the Act on a State at the service of a society of trust (État au service d'une société de confiance – ESSOC), and the "Dematerialisation and inequalities in accessing public services" report published last January.

Extract from the "The Debate" ("Le Débat") review no. 206 September-October 2019, Noël de Saint-Pulgent, delegate in Paris, The user faced with public services.

Seminar of Defender of Rights' delegate advisors on disability, June 2019 | © Jean-Bernard Vernier/JBV News

Seminar of delegate advisors on disability and prisons 24 and 25 June 2019

For the first time, the Defender of Rights gathered all the 101 disability delegate advisors together to discuss themes at the heart of the complaints addressed to them, such as reception of persons with disabilities, links with *départemental* centres for persons with disabilities (Maisons départementales des personnes handicapées – MDPHs), and deconstruction of representations of disability for a more inclusive society.

Delegates had the opportunity to exchange views amongst themselves as well as with the main institutional and community actors in the disability sector. During the day, the "Drôles de compères" company, a theatre group composed of individuals with mental disabilities, performed scenes with the audience leading up to the roundtable.

152 delegates manning helpdesks in prisons were also brought together for discussions with head-office employees, in the form of workshops, around case files that they were handling in prisons: access to health and professional training, respect for ethics by the security forces, rights for detained foreigners and children, etc. Notable attendees on this occasion were the Chief Inspector of Places of Deprivation of Liberty and the Director of Prison Administration.

"Focus on Rights!" in Saint-Denis, Reunion Island, September 2019

c. Devolving in order to strengthen territorial proximity network

In 2019, the Defender of Rights set about reorganising management of the territorial network in order to decentralise part of its work, to improve support to delegates, and achieve a symbiosis between the national head office and the territorial network.

12 experienced legal experts on the Institution's payroll located in Metropolitan and Overseas France between September 2019 and February 2020. The missions of these "heads of regional hubs" are to provide sustained legal support to delegates, coordinate the processing of case files and actions promoting equality and recognition at regional level.

This decentralisation has several objectives.

As previously indicated, the Defender of Rights must be able to cope with the constant increase in referrals, whether they are addressed to the network of delegates, or to the head office.

Although the territorial network is growing in unprecedented fashion, delegates, who handle around 80% of case files, must resolve ever more complex situations and deal with increasingly longer response times from administrations. The same is true for cases addressed to the head office. Yet the institution refuses to select complaints. Access to rights, which is at the heart of its missions, must remain universal. The organisation must be able to face up to this increase without filtering.

As shown in the Defender of Rights 2018 Annual Activity Report, the evanescence of public services is jeopardising access to rights. Yet beyond the recommendations that the institution has issued to the public authorities for a number of years, the organisation of an institution that is so close to the daily realities of complaints must transform in the light of these changes.

Development of the Defender of Rights' decentralised work intends to provide the institution with the means to best respond to the challenges of the distancing of delegates through strengthened proximity and the need to support delegates' and Youth Ambassadors for Rights' access to rights activities nationwide.

Promotion of rights nationwide

In the exercise of their mission, each delegate also undertakes local recognition actions in order to raise awareness of the Defender of Rights, its opinions and decisions (see table below), and the tools and guides that it develops for the information of civil society stakeholders and economic operators. Delegates also carry out actions to promote rights by carrying out public information and awareness-raising missions, responding to requests from institutional and community stakeholders with regard to access to rights, non-discrimination and children's rights, as at the end of November 2019, on the occasion of the 30th anniversary of the United Nations Convention on the Rights of the Child.

Actions to promote rights by delegates in 2019

	2019	%	Since 2014	2014
Relations with public services	300	20%	+ 28%	234
Promotion of the rights of the child	334	23%	+ 6%	315
Prevention of discrimination	199	14%	- 22%	255
Defender of Rights' awareness actions	635	43%	+ 14%	559
Total actions	1,468	100%	+ 8%	1,363

VII

Nul homme ne peut être accusé, arrêté, ni détenu que dans les cas déterminés par la loi, et selon les formes qu'elle a prescrites. Ceux qui sollicitent, expédient, exécutent ou font exécuter des ordres arbitraires, doivent être punis; mais tout citoyen appelé ou saisi en vertu de la loi, doit obéir à l'instant: il se rend coupable par la résistance.

VIII

La loi doit établir que des peines strictement et évidemment nécessaires, et nul ne peut être puni qu'en vertu d'une loi établie et promulguée antérieurement au délit, et légalement appliquée

IX

Tout homme étant présumé innocent jusqu'à ce qu'il ait été déclaré coupable, s'il est jugé indispensable de l'arrêter, toute rigueur qui ne seroit pas nécessaire pour s'assurer de sa personn doit être sévérement réprimée par la loi.

V.

An institution concerned about its employees' working conditions and thorough in its budgetary management

2019 saw completion of job transfers to the Prime Minister's Department of Administrative and Financial Services, connected with pooling operations facilitated by the institution's establishment on the Ségur-Fontenoy site. In total, 17 positions to do with support functions will either have been transferred (9 positions over 3 years), redeployed internally (5 positions), or abolished (3 positions). In terms of operation, the results of operations to regroup services are positive in that they have generated almost €2.2M in savings on rent alone, and €0.7M for its overall annual operation. However, efforts made to ensure virtuous, economical management, recognised and hailed as such by the national representation and including a broad streamlining of work methods and reorganisation of its organisation chart, reached their limit in 2019.

Since its creation, the Defender of Rights' increase competences have not been offset by the creation of jobs necessary to ensure a regular sustained increase in its activity, to the tune of +40.30% since 2014 and have also required almost constant resources to be drawn on in order to:

- Continue the increase the number of its delegates, volunteers responsible for reception, guidance and processing of complaints in the field
- Create and locate heads of regional hubs, in Metropolitan and Overseas France, officers at head office responsible for facilitating exchanges between the head office in Paris and delegates, coordinating the processing of case files locally, contributing to the actions to promote equality and recognition, and representing the institution in their regions (9 officers out of 12 located in 2019)

Four positions were created in 2019, one to monitor the procedure of processing case files relating to the testing of mandatory prior mediation, and the other three positions to contribute to the institution's decentralisation in Metropolitan and Overseas France.

It is important to note that the average number of case files dealt with by legal experts increased from 187 in 2014 to 218 in 2019, representing an increase of 16.9%, whilst, at the same time, the simplest case files were dealt with prior to being assigned to an investigation hub.

In 2019, the Defender of Rights human resources policy at head office was mainly geared towards improving working conditions, preventing occupational risks, and lifelong learning.

The Institution's staff: a few figures

On 31 December 2019, the Defender of Rights' head office had 226 employees, comprising 166 contract staff, 50 civil servants, and 10 officers made available by other external bodies. The employment ceiling was saturated and the employment blueprint respected. Over the course of the year, the institution also hosted 73 interns, mainly from universities and grandes écoles, most of them assigned to investigation departments.

The percentage of women at the Defender of Rights, 77%, remains significantly higher that of men, and far higher than the percentage of women in the civil service, 62%, in the State civil service, 55%, and in the private sector, 46% [data from the Key figures of the 2019 civil service, published by the Directorate-general for government administration and the civil service (Direction générale de l'Administration et de la Fonction publique – DGAFP)].

Workforce by status at 31/12/2019

Head office employees	
Fixed-term contract (CDD)	60
Permanent contract (CDI)	98
Short contract	08
Secondment	50
Availability free of charge	04
Availability reimbursed on Item 3	06
Total	226

Territorial delegate and facilitator workforce	
Average over the financial year	510

NB: volunteers, territorial delegates and facilitators are not remunerated or provided with equipment by the institution, but they receive a fixed allowance to cover expenses that is not charged on the payroll.

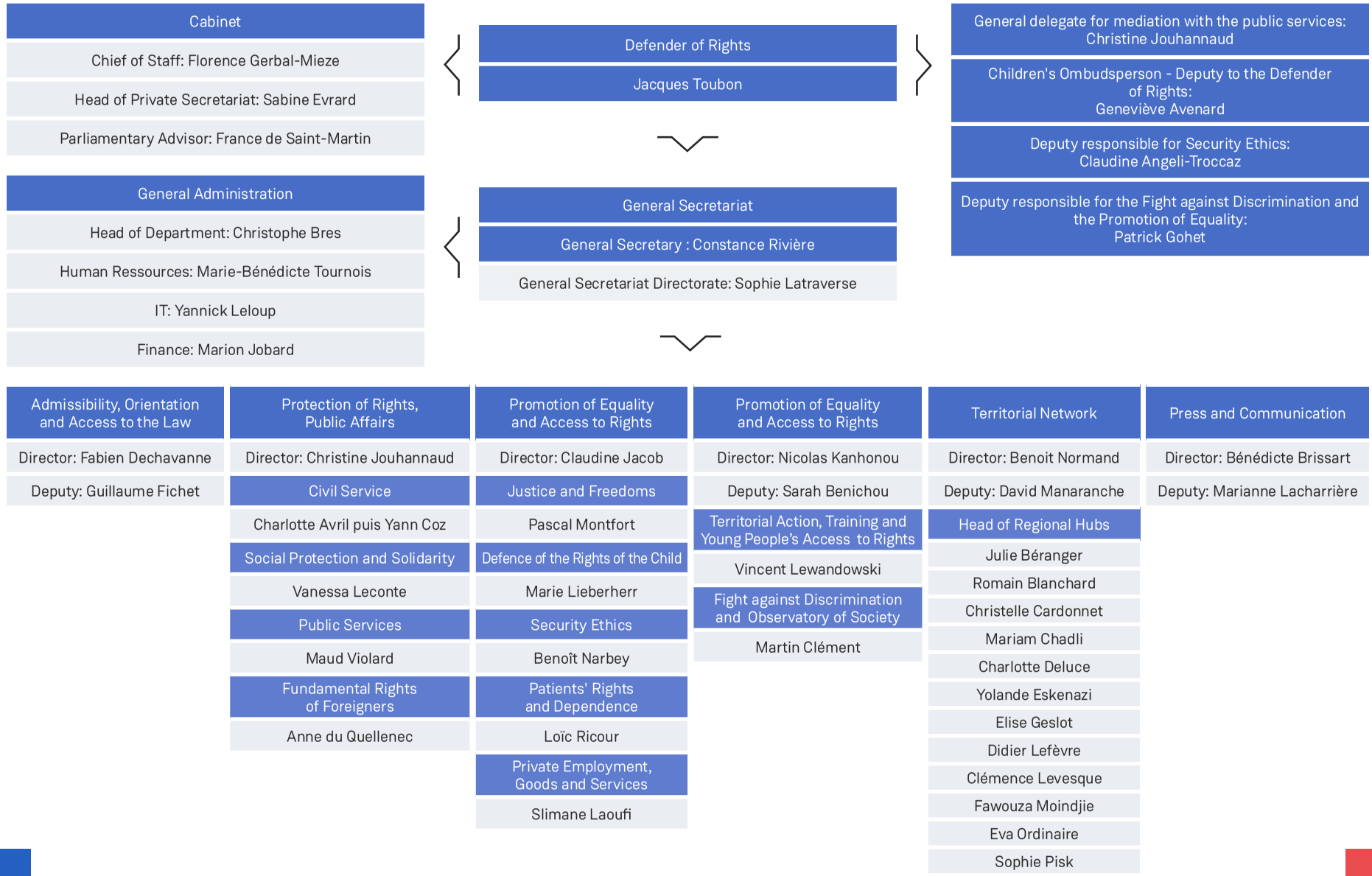
Men/Women Breakdown at 31/12/2019

Women	175
Men	51
Total	226

Breakdown by hierarchical category and gender

	Women	Men	Total	% Women per employment category
Category A+	15	15	30	50%
Category A	116	26	142	82%
Category B	32	5	37	86%
Category C	12	5	17	71%
Total	175	51	226	

The institution's organisation chart in 2019



a. Improving working conditions and the health and safety of employees

Drafting of the institution's single occupational risk assessment document and the its contractual agreement with an occupational health and safety inspector

A collaborative approach, combining prevention actors and staff representatives, has enabled the Defender of Rights to draw up a single occupational risk assessment document (document unique d'évaluation des risques professionnels – DUERP). This document is divided into five work units grouping the occupational risks common to each of them.

The various risks listed are mostly to do with organisation of work and/or human factors. The other risks relate to the physical atmosphere of the workplace, equipment and the workstation itself, travel, and maintenance to be carried out. The DUERP will be complemented in 2020 by inclusion of sections on the building, which are currently being drafted by the Prime Minister's Department of Administrative and Financial Services.

In parallel, the institution has also entered into an agreement with an occupational health and safety inspector who carried out an initial visit of the premises mid-year, and whose report enabled the institution to identify certain points for improvement, and on which it has already been able to make progress. The two risks identified as being the greatest were dealt with: acquisition of an alarm device for employees working alone, intended for officers responsible for document archiving or management in the basements, and accreditation in the prevention of electrical risks for all employees who work in the institution's server room.

The introduction of these new documents should enable the institution to draw up a real occupational risk prevention policy, covering psychosocial risks in particular. The drafting of an occupational risk prevention plan constitutes one of the institution's major areas of development for 2020.

Risk prevention and improvement of working conditions is also carried out via a training mechanism adapted to the needs of the institution and its employees, and fostering career development.

In 2019, 161 employees benefited from one or more training courses for an overall training budget of €142,336. The training delivered comprised 63 group sessions, mainly focusing on legal matters, and 14 individual sessions to prepare for diplomas or competitive examinations. The priorities of actions undertaken in previous years were maintained, in particular with regard to:

- Training in the field of risk prevention (training of members of the health, safety and working conditions committee [Comité d'hygiène, de sécurité et des conditions de travail – CHSCT], electrical accreditations, musculoskeletal disorders, and first aid),
- The increasing demand for skills assessments, the number of which has doubled, as well as access to validation of prior experience mechanism,
- Development of personalised career support, which is now no longer only aimed at employees impacted by department pooling or reorganisation.

A new management framework

In 2013, the Defender of Rights developed rules of procedure aimed at promoting a human resources policy along with collective and individual management of its tenured and contractual staff.

The last two years have been devoted to internal thought on development of the management framework, taking particular account of the profound changes brought about by act no. 2019-828 of 6 August 2019 on transformation of the civil service.

The draft management framework's main focuses resulted in general joint discussion on the practice of the 2013 management framework in order to adapt it to the institution's HR context and policy. It is notably a question of redesigning job categories (salary scale [espace indiciaire de rémunération – EIR]) with creation of additional categories in order to enable real development on the part of employees. The lower index limit, salary scale ceilings, and performance bonus have been raised and re-evaluated. The salary re-evaluation system was established through creation of a dedicated body, the remuneration committee. In addition, the promotion procedure has been adapted and modernised in order to support employees and their career paths.

Finally, promotion and mobility will be criteria that are taken into account in salary re-evaluation. The new management framework came into force in January 2020.

Telework, improved work-life balance

The institution has had an effective telework system since 2017. This method of working, initially offered to employees for just one day a week, was expanded in 2018 to make two days of telework a week possible. At 31 December 2019, the institution listed 132 teleworkers, 60% of the institution's workforce.

2019 also provided an opportunity to supplement equipment enabling introduction of telework , where necessary and for eligible duties in the event of exceptional circumstances arising. This new possibility has ensured continuity of activity as well as equality amongst employees when faced with events beyond their control, such as public transport disturbances.

This new working arrangement was enshrined in discussions carried out by the institution on employees' working conditions and the occupational risks (isolated work) to which they are exposed when carrying out their missions.

b. Managing budgetary resources with a commitment to controlling public expenditures

In 2019, the total of the appropriations opened over the 308 “Protection of rights and freedoms” programme amounted to €21,846,504 in commitment authorities €21,877,577 in payment appropriations. The total payroll allocation (item 2) was subject to a 0.5% buffer and administrative appropriations to a 3% buffer, to which a 3% contingency management reserve was also added.

Of the total appropriations made available, 15,637,211 of appropriations spent were dedicated to staff expenditures for head office employees.

99% of the operating, investment and intervention expenditures were spent after deduction of €222,286 corresponding to a reinstatement of appropriations carried out following a settlement agreement, the sum of which is subject to a report order on the 2020 financial year.

These expenditures include payment of indemnities representative of costs allocated to territorial delegates and facilitators, which constitute the largest item of expenditure of this nature.

While continuing with its proactive policy on the promotion of rights, the Defender of Rights is endeavouring to rationalise its operating costs, with a focus on controlling public expenditures and transparency, by making use, whenever possible, of the pooled interministerial procurement contracts concluded by the Prime Minister's departments, and of the Union of public purchasing groups (Union des Groupements d'Achats Publics – UGAP).

In €	Staff expenditures (Item 2)*	Other expenditures (outside item 2)		Total budget	
	AE=CP	AE	CP	AE	CP
Initial Finance Act (LFI)	15,997,739	6,340,241	6,340,241	22,337,980	22,337,980
Budget available	15,917,750	5,928,754	5,959,827	21,846,504	21,877,577
Budget consumed	15,637,211	5,672,881	5,185,324	21,310,092	20,822,535
Budgetary reinstatements (Deferment provided for)	280,539	33,587	555,217	314,126	882,756
Unused budget	280,539	33,587	555,217	314,126	882,756
Execution rate	98%	99%	90%	99%	96%

* Excluding territorial delegates and facilitators

Breakdown of operating expenditures by main budgetary items in 2019

43% Compensation of territorial delagates

15% Communication, partnerships, events

14% Running cost

10% Reimbursement of officers made available

6% Web hosting and development

5% IT

4% Trainee bonuses

2% Studies

1% Youth Ambassadors for Rights

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Publisher:
Jacques Toubon

Publication Director:
Constance Rivière

Design and Production:
Defender of Rights,
March 2020

Photo credits :
Christophe Fouquin,
Jean-Bernard Vernier (JBV
News), Regine Lemarchand,
Mathieu Delmestre,
Jacques Witt, Valérie Koch,
François Ménassé (Wild
production), Colas Declercq

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