

## Annual Report 2008



LE MÉDIATEUR  
DE LA RÉPUBLIQUE

# AN IMPORTANT PLAYER IN THE DEFENCE OF PUBLIC FREEDOMS

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

The figures provided in this report concern the year 2008.  
The report was completed on 30 January 2009.

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# EDITORIAL



**Jean-Paul Delevoye,**  
Mediator of the French Republic.

**It has never been so difficult to live individually.** Government and its public authorities are not sufficiently aware of this fragility of society.

Listening to and supporting citizens in their daily activities are important factors of social appeasement. This is the basis for the actions developed by the Mediator of the French Republic, his central services, and delegates in public organisations. The willingness to listen, new to some administrations, has known some considerable progress.

The recognition of the Mediator of the French Republic as an actor of reforms is the crowning achievement for a tenacious engagement with members of Parliament and government, and the constant desire to make elected representatives aware of field realities. Moreover, the contribution of the Mediator of the French Republic is sought by work groups and parliamentary commissions. (National Assembly's law commission) Chairman Warsmann on simplification of laws, the Bauer group on police and Gendarmerie files, the Ballardur committee on modernisation of institutions, the Guinchard commission on the distribution of litigation, the Simone Weil commission on fundamental rights: all these commissions have used proposals and recommendations made by the Mediator of the French Republic. Furthermore, the law on prisons has also been enhanced with observations made in prisons by the network of delegate Mediators of the French Republic.

**Trust and dialogue are at the heart of the efforts made by the Mediator of the French Republic** to correct the poor relations between society and government. The Healthcare Security and Safety unit, which today reinforces the

powers of the institutions, is an illustration thereof. Withholding information in this area is particularly harmful and may make our fellow citizens to believe that the public service gives priority to certain corporations to the detriment of the defence of public health. Now we ought to face facts, together. We must take up together the challenges facing us in this respect.

An embodiment of the political willingness to listen, the Mediator of the French Republic is both a proposal force among elected representative and a questioning force. His interventions aim to clearly pose questions that call for a public debate. This is a fundamental democratic mechanism because the decision of a judge alone cannot bring in a lasting, satisfactory solution. It is, for instance, regrettable that politicians have failed to take a position on the case of stillborn babies. This is an issue which must be thrown open to public debate. Sooner or later a political decision will have to be made.

**Nevertheless political life cannot just be limited to voting in laws while neglecting their implementation.** The sensationality of some ambitious decisions should not mask the difficulties of their application. In 2007, the reform of the guardianship of protected adults ushered in much hope. But then what have we done with the 20 months planned for its implementation by 1<sup>st</sup> January 2009? Today, the departments and public prosecutor's offices do not seem to be well prepared for it. A law which remains unapplied is a bad law.

2009 will mark the evolution of the Mediator of the French Republic towards the Human rights Defender we have been calling for. The Mediator

of the French Republic contributes actively in preparation for it. His proposals to lawmakers and to the government aim to promote a just balance between the exercise of public authority and individual protection. A particularly in-depth reflection is currently being made on the power to make recommendations in all fairness. The purpose of said reflection is to propose solutions that will help handle some cases not provided for in the law, while respecting the lawmaker's spirit. The present report contains many examples in this respect.

In this 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights, the Institution has reinforced its actions on this issue. As early as January 2008, the Mediator of the French Republic worked closely with Council of Europe's Human Rights Commissioner on a series of initiatives, including the contribution to the mechanism of control of the application of decisions taken by the European Court of Human rights.

On the international scene, the Mediator of the French Republic has confirmed his commitment in favour of continued dialogue between States, based on the independence of their mediators. In December 2008, the second meeting of Mediterranean mediators and ombudsmen on the challenges of a common area brought together 23 countries, including Israel and the Palestinian Authority, the Arab League, the Council of Europe's Human Rights Commissioner, etc.. This independent initiative proves that, even in periods of conflict, it is possible to maintain forums of dialogue where Human rights institutions continue a dialogue that underline the fact that every person has the right to be respected like the others. ■

## P. 11

### The new healthcare-related mission of the Mediator of the French Republic

The Mission for the development of mediation, information and dialogue for healthcare security and safety (Midiss) has joined the team of the Mediator of the French Republic, in order to inform users and promote mediation between patients and healthcare professionals.

## P. 14

### Reinforced collaboration with Council of Europe's Human Rights Commissioner

In 2008, the Institution of the Mediator of the French Republic contributed immensely to the execution of decisions of the European Court of Human rights.

## P. 18

### Development of exchanges with the Mediterranean area

In 2008, relations between the Mediator of the French Republic and the Mediterranean world were strongly developed through the creation of a network of Mediterranean mediators and ombudsmen.

## P. 26

### Towards a Human rights Defender

Inspired by the examples of his European counterparts, the Mediator of the French Republic manifested, during his audition by the Balladur committee, his will to promote a "Fundamental Human rights Defender" made up of several independent authorities striving for the protection of Human rights and liberties.

## P. 34

### Absence of response: a call to order required

According to the day-to-day observations made by the Mediator of the French Republic concerning relations between constituents and administrations, it is frequently difficult for citizens to obtain an answer from the administration...

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### Legal insecurity is developing

The Fundamental Human rights Charter recommends that respect of Human rights be part of the standards imposed on administrations. Therefore, the Mediator of the French Republic emphasises on the "right to good administration" for each citizen.

## P. 58

### «Excessive debt»: the Mediator's proposal

In keeping with his fight against "excessive debt", the Mediator of the French Republic has made several reform proposals aimed at improving the effectiveness of the excessive debt handling procedures.

## P. 59

### Legal expertise in the medical field: striving for more credibility of justice and medicine

There are recurrent criticisms of the quality of medical expertise, in which the credibility of justice and medicine is called to question. The Mediator of the French Republic has, therefore, made some reform proposals concerning each stage of the expertise process.

## P. 60

### Pension: a missed target for 2008

In 2008, the Mediator of the French Republic made about ten reform proposals in support of the national assessment planned by the government. The Mediator of the French Republic has noticed that none of his proposals met with a response from public authorities...

## P. 62

### Supporting family mediation: encouraging shared custody

The Mediator of the French Republic made several reform proposals in support of family mediation, to promote responsible shared custody and facilitate the work of family judges.

## P. 63

### Disability: some progress, but still much dissatisfaction

In March 2008, the Mediator of the French Republic was auditioned by the supervisory committee on disability policy, whose task is to compile a report on the concrete implementation of the disability policy and propose necessary readjustments.

## P. 64

### Asbestos: it is time to stop the studies and take action!

Workers suffering from asbestos-related diseases are still offered unequal protection based on their insurance schemes. Moreover, the absence of coordination between these different schemes has turned out to be very prejudicial to mobile workers.

# THE YEAR IN FIGURES

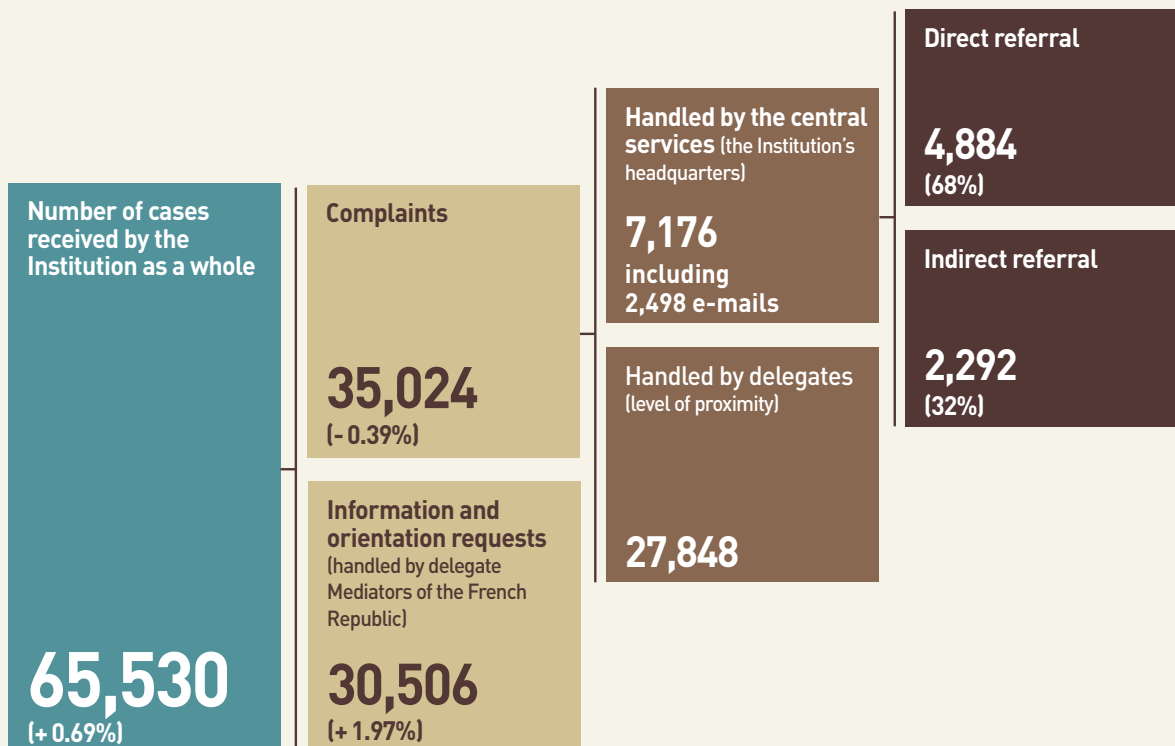
## THE INSTITUTION'S OVERALL RESULTS

In 2008, the number of cases referred to the Mediator of the French Republic, the central services and delegate Mediators increased by 0.69% compared to 2007, with a total of 65,530 cases received.

Information and orientation requests received by delegate Mediators of the French Republic rose by 1.97% compared to the previous year. The institution handled 35,024 complaints, 7,176 of which were handled *via* the central services of the Mediator of the French Republic, in Paris.

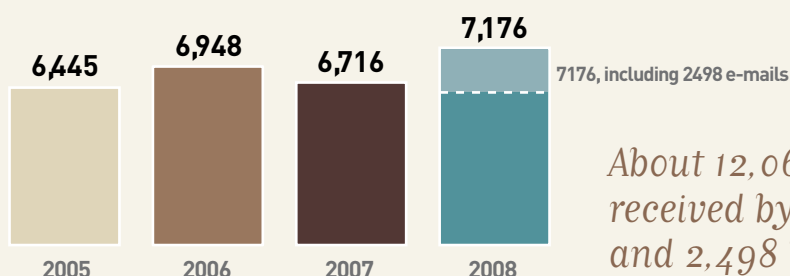
In 2008, 32% of the complaints received by the central services were sent to the Mediator of the French Republic in line with the indirect referral procedure, through a member of Parliament or a senator.

*Note that this percentage includes 66 cases subsequently regularised by the Parliament (i.e. 2.8%).*



## ACTIVITY OF THE CENTRAL SERVICES

## Number of complaints received



*About 12,068 complaints were received by phone and 2,498 by e-mail*

## Methods used to refer complaints to the Institution's headquarters

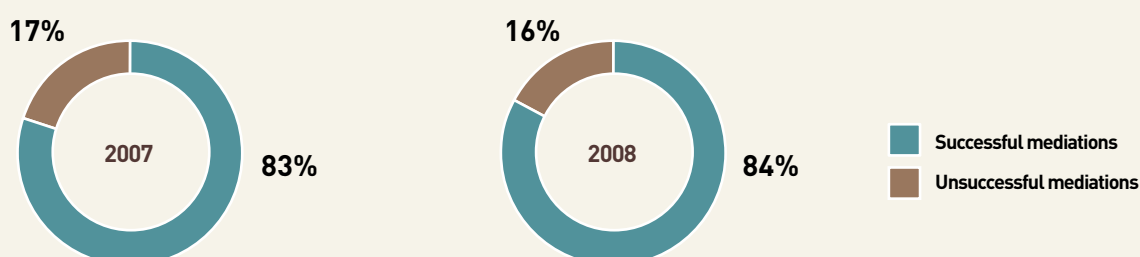
For the first time in the report of the Mediator of the French Republic, the number of e-mails is included in the statistics of cases received. In the 2009 action plans, the institution intends to increasingly handle them as specific cases.

The number of e-mails received by the services of the Mediator of the French Republic reflects, among others, our fellow citizens' desire or need to refer cases directly to the Mediator of the French Republic.

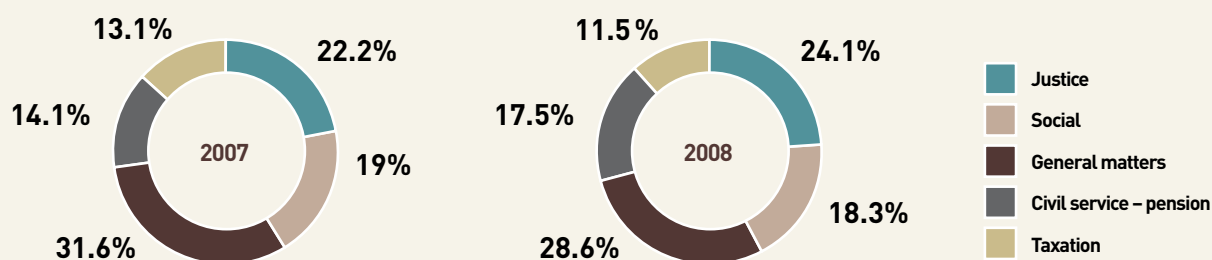
Beyond this question, the number of cases arriving at the central services tends to be decreasing. This can be explained in several ways. 2006 and 2007 had been characterised by a high rise in the number of cases pertaining to police fines, natural disasters and energy-saving tax incentives. The stability of practices and reactions in these different areas has limited remarkably the massive inflow of complaints. Moreover, thanks to the effectiveness of the work done by the internal

mediators in each public service, only complex cases that cut across several public services were submitted to the Mediator of the French Republic. Finally, the huge proportion of information and orientation requests still being handled by our delegates in the field shows that new efforts can still be made to improve public services.

## Rate of successful mediations



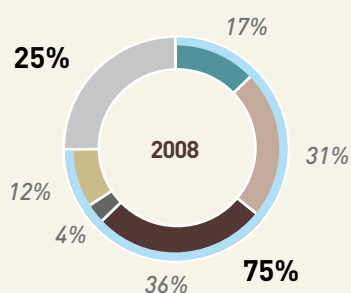
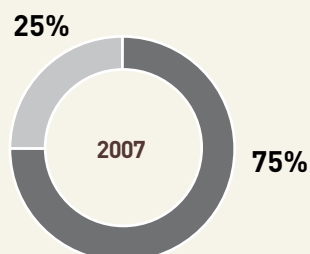
## Breakdown of cases closed, by field of intervention



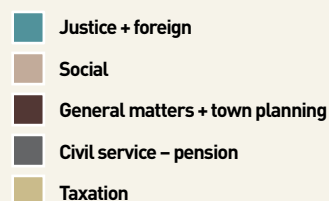
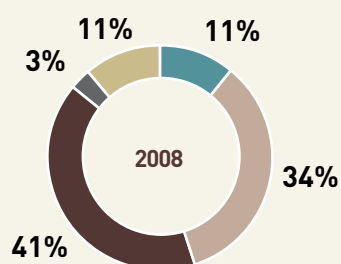
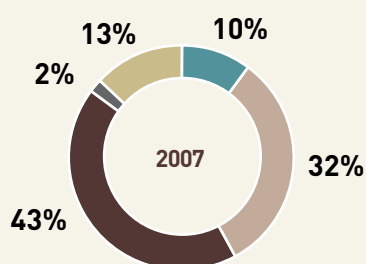


## DELEGATES' ACTIVITIES

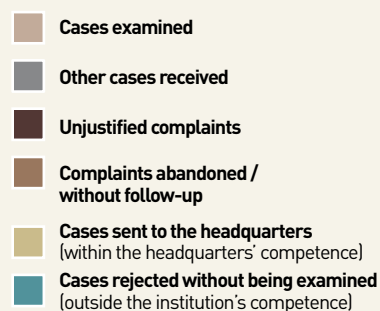
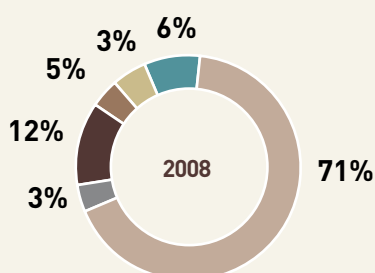
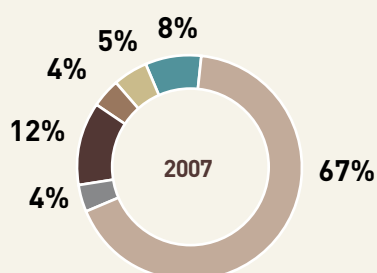
### Information – fields concerned



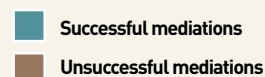
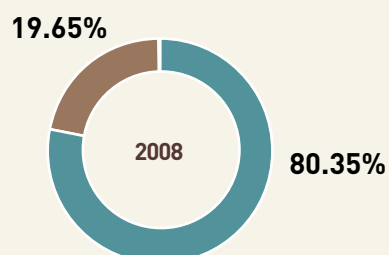
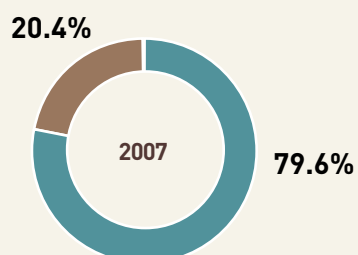
### Breakdown of complaints, by field of intervention



### Complaints handling



### Complaints – the delegates' success rate



# TABLE OF REFORMS

## ADOPTED REFORM PROPOSALS

COMMENCEMENT YEARS	SUBJECT-MATTER	COMPLETION DATE
2001	Harmonising welfare payment frauds	29/04/2008 <i>Partial adoption</i>
2004	Improving the rights of regional and hospital employees automatically sent on sick leave	28/11/2008 <i>Full adoption</i>
2005	Paternity leave for stillborn babies	07/02/2008 <i>Full adoption</i>
2005	Pension scheme for notary clerks and employees	17/03/2008 <i>Full adoption</i>
2005	Access of State and regional authority-employed nurses to executive ranks in the public healthcare sector	03/12/2008 <i>Full adoption</i>
2005	Early reimbursement of carry-back debts	15/01/2009 <i>Partial adoption</i>
2007	Improving the social welfare scheme of people employed within the framework of the Cesu system (chèque emploi service universel-paying for services rendered by private persons by cheque)	13/11/2008 <i>Full adoption</i>
2007	Condition of inactivity giving right to the disabled adults' benefit (AAH)	07/01/2009 <i>Full adoption</i>
2007	Legal remedy for tax rescript	15/01/2009 <i>Full adoption</i>

## UNADOPTED REFORM PROPOSALS

COMMENCEMENT YEARS	SUBJECT-MATTER	COMPLETION DATE
1997	Pension scheme of functional workers	06/03/2008
1999	Giving access to and calculating health insurance, maternity and disability benefits	09/06/2008
2003	Retranscription of paternity acknowledgements	28/07/2008
2004	Reunion of refugees' families	04/03/2008 <i>Dropped</i>
2004	Work accident pension of repatriated workers	19/03/2008
2006	The response time to be given to tax authorities	28/04/2008
2006	Reinforcing the fight against illegal paternity acknowledgements	19/03/2008

## OPEN REFORM PROPOSALS

SUBJECT	COMMENCEMENT DATE
Disability insurance scheme of State-employed civil servants	21/04/08
Reviewing the survivors' pension benefits within the national scheme	02/05/08
Distrainability of pension increment to assist a third party	06/05/08
Increasing the duration of insurance for a father who has raised his children alone	28/05/08
Calculating the average annual salary to determine the amount of pension benefit	29/05/08
Calculating the average annual salary for people with multiple pension schemes	29/05/08
Recognising foreign civil unions in France	29/05/08
Validating periods of internship for supplementary pension	09/06/08
Automatic application of the account balance privileged from seizure	11/06/08
Precarious situation of supply secondary school teachers	20/06/08
Increasing the insurance benefit of parents of disabled children	01/07/08
Pension scheme of international cooperation volunteers	08/07/08
Going on early retirement for long career: case of part-time civil servants	08/07/08
Early retirement of some disabled civil servants	08/07/08
Reform of legal and medical expertise	08/07/08
Retroactive affiliation to the general social security scheme for the periods of military service abroad or in the overseas territories.	08/07/08
Access to real-estate data	28/07/08
Integration of old students of the long international cycle of ENA (Administration National School)	01/09/08
Access of secondary school teachers to the latest indices	01/09/08
Tax exemption for television sets hired by detainees	01/09/08
Management of transfusion related disputes by the French blood authority	01/09/08
Collection of deferred income by persons not liable to tax	15/09/08
Authenticating driver's licences issued abroad	20/10/08
Reforming the graduated employer aid in favour of senior-citizen employment	23/10/08
Simplifying access to the profession of goods transporters using light vehicles	28/10/08
Reinforcing family mediation by the judiciary	15/11/08
Modifying the attrition rate	26/11/08
Allowing PACS partners of civil servants access to death benefit (PACS = partnership formed within the framework of the civil solidarity pact)	09/12/08

The vocation of the Mediator of the French Republic to take Human rights problems into account was confirmed these past few years. By making access to the judge a major focus of his actions, the Institution helps to restore citizens' trust in public authorities. The extension of his scope of activities with the new healthcare security and safety unit is also in keeping with this objective. However, Human rights problems must also be brought to the European and international scene. A guarantor of compliance with the decisions of the European Court of Human rights, the Mediator of the French Republic also promotes strong dialogue in the Mediterranean area. The Institution is heading towards a major evolution with the integration of the Human rights Defender into French constitution.

...

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# MAIN DEVELOPMENTS IN THE ACTIVITIES OF THE MEDIATOR OF THE FRENCH REPUBLIC

## Reinforced missions

### HEALTHCARE SECURITY AND SAFETY UNIT: THE NEW HEALTHCARE DIMENSION OF THE MEDIATOR OF THE FRENCH REPUBLIC

Created in 2006 by the High Authority on Healthcare (HAS), the Mission for the development of mediation, information and dialogue for healthcare security and safety (Midiss) first focused on information and the development of mediation for nosocomial infections.

Increased in 2007, its range of activities now covers all issues that may affect the security and safety of patients.

The purpose of this organisation is to restore confidence between the medical world and users of healthcare services, and to help improve healthcare security and safety. Its main functions are to inform users

and healthcare professionals, provide mediation support when dialogue is cut, alert authorities, and make return of experiences for prevention purposes.

Today, most healthcare-related complaints are channelled to mediation structures within healthcare organisations, or to the regional conciliation and indemnification commissions (CRCI) created within the scope of the amicable indemnification of medical accidents.

Now, several recent studies have shown that these systems do not meet the growing mediation needs. This is all the more so since despite the Kouchner law of 04 March 2002,

which recognises the place of users in the healthcare system, the fundamental human rights of patients still remain too theoretical and are handled unequally. Finally, the European commission is currently drafting a directive aimed at clarifying the rights of patients.

It is in this context that the attachment of Midiss to the Mediator of the French Republic was envisaged together with HAS and confirmed by a mission letter from Roselyne Bachelot, the Minister for Health. A Healthcare security and safety unit thus exists within the mediation institution since January 2009.

### REFORM OF PRISONS: A CLEAR SUPPORT

Thanks to the generalisation of the experiment started in 2005, forty four thousand detainees have direct access to a delegate Mediator of the French Republic. This large presence is an irreplaceable observa-

tion field for the situation of prisons and conditions of access to law. It also highlights the existing room for progress. There are four priorities that require urgent attention: access to healthcare, access to law,

management of detainees' personal belongings and practices in terms of obtaining or renewing stay permits. If the Mediator of the French Republic has been able to express his concerns to public authorities ►



- by asking that the opportunity offered by the preparation of the prison-related law be seized to remedy the situation, it is, of course based on the concrete experience made by his delegates as illustrated by these four cases.

### Access to healthcare

Since he was suffering from cancer, Mr M. was transferred to a prison so he can be treated with radiotherapy at B. hospital. However, this detainee was suffering too much from having to return to the prison every evening because the very painful side effects of his treatment. He asked the prison administration, in vain, for permission to stay at the health unit of B. hospital, reserved for sick detainees. He then referred the matter to the delegate Mediator of the French Republic.

This latter wrote to the prison administration immediately, asking it for the reasons why Mr M.'s request had been rejected and asked that his situation be re-examined. Shortly thereafter Mr M. was admitted into the care unit of B. hospital.

### Access to law

The simple fact of facilitating administrative procedures for prisoners is non-negligible progress in terms of access to law. Thus, a detainee had been trying for months to recognise the three children he had had with his partner. He had filled in the relevant documents with the prison's integration and probation department, and a letter signed by the director had been sent to the public prosecutor. Since his request had remained without response, he sought the help of the delegate Mediator of the French Republic. After a first contact by phone with the civil status officer handling the case, the delegate Mediator learned that the request was waiting for approval by the public prosecutor's office. He immediately wrote to the public prosecutor to enquire about the progress status of the case. This magistrate failed to reply to his letter, but transferred his authorisation to the town council, as well as the civil status officer's requisition required to write the certificate inside the prison.

### Management of personal belongings

This case illustrates the anomalies observed in the management of detainees' belongings. These malfunctions fuel conflicts which are difficult to resolve in the absence of real traceability. Mr X., extradited from Belgium, was held for three days in a first prison before being transferred to a second prison. Mr X. declared that he had not seen his luggage in the first prison and that he had paid €69 with his debit card so it could be sent to him at his new destination.

Upon receiving his luggage, Mr X. noticed that several items were missing, including a computer, a digital camera and some clothes. He contacted the first prison through a social worker, but did not get any response.

He then sent a registered letter asking for the intervention of the public prosecutor, but still obtained no reply.

When the matter was referred to her, the delegate Mediator of the French Republic wrote to the director of the first prison. Nevertheless, the prison administration asked for a material proof that his luggage had been registered by the prison registry during the detainee's short stay there... Informed by the delegate Mediator about this reply, Mr X. declared cynically: *"It's my word against theirs"*. Therefore, when a requestor has not kept any material proof of his or her claims, it is difficult to act effectively based on his or her assertions.

### Stay permits

Mr H. was born in Morocco. He arrived in France in September 1976. He is married to a French citizen and has a child, born in France. The ministerial decree on expulsion which he was subject to was abrogated in April 2005. Currently held at the detention centre, he holds a stay



permit issued on 10 October 1991 by the prefecture and which had expired on 9 October 2001. For his reintegration, Mr H. wished to prepare for the driver's licence exams while in detention and to take the theoretical high way code exams. The documents compiled by social workers were rejected by the prefecture, arguing that the requestor must produce a valid identity card. He then applied for an identity card, but his request met with refusal, justified (verbally) that a stay permit was not issued to a foreigner in prison. When the detainee referred the matter to him, the Mediator of the French Republic tried in vain to find a solution with the foreigners section of the prefecture, then decided to take an appointment with the head of the citizenship and stay permit section of the prefecture, as well as with the person in charge of driver's licences at the Regional Equipment Department (DDE). Finally, the DDE accepted Mr H.'s file as it was, without a valid stay

permit, but the prefecture refused to renew the detainee's stay permit. Mr H. was able to register for the preparation of the driver's licence exams, but the more general question of issuing or renewing a foreign detainee's stay permit remains unresolved. The prefecture's refusal may be understandable for a foreigner whose fate depends on the expulsion commission, but it is less understandable for so-called «protected» foreigners, like Mr H., who is married to a French citizen and who has a child born in France.

 You can find all the cases handled by delegate Mediators on **WWW.MEDIATEUR-REPUBLIQUE.FR**

The difficulties encountered by detainees inside prisons were relayed by the Mediator of the French Republic to the National Human Rights

Commission (CNCDH) during debates on the draft prison law, with a view to adopting the opinion and study of the CNCDH on this issue. The Mediator of the French Republic participated actively in the drafting of this opinion, making access to law and the right to information his priorities. He has demonstrated that the application of these two principles not only helped appease conflicts inside prisons, but also enabled detainees to be considered more as individuals with rights, regardless of whether they are French or foreigners, staying legally or illegally in France, because deprivation of freedom is not tantamount to deprivation of rights. At plenary sessions, the recommendations of the Mediator of the French Republic were unanimously adopted by members of the CNCDH and included in the opinion and study of the draft prison law.

## **PUBLIC DEBATES: A CONTRIBUTION OF THE MEDIATOR OF THE FRENCH REPUBLIC INCREASINGLY HEEDED**

2008 was characterised by the contribution of the Mediator of the French Republic to many work groups and parliamentary commissions to which he was invited to share his experience, reflection and proposals. ■

 You can find all these contributions on **WWW.MEDIATEUR-REPUBLIQUE.FR**

## Human rights: reflection and increased number of actions

The initial function of the Mediator of the French Republic is reinforced by his active commitment to the defence of Human rights, particularly intensified in the course of 2008, the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights.

### A SUPPORT MISSION REQUESTED BY COUNCIL OF EUROPE'S HUMAN RIGHTS COMMISSIONER

After several auditions held within the framework of the introduction of a general controller of prisons, the Mediator of the French Republic organised, together with Council of Europe's Human Rights Commissioner, in Paris on 18 January 2008, a conference entitled "Deprivation of freedom and Human rights", to which were invited all the European ombudsmen, national Human rights institutions, representatives of international organisations, as well as representatives of national and international associations working actively in defence of Human rights.

Thanks to this collaboration, the Mediator of the French Republic has become a privileged interlocutor of the Human Rights Commissioner. In fact, at the Commissioner's request, the Institution of the Mediator of the French Republic has been of immense help in improving the control of the execution of decisions of the European Court of Human rights. Faced with a large number of requests, the European Court of Human Rights is indeed in need of assistance to ensure proper execution of its decisions. It is within this framework that the Human Rights Commissioner has asked the Mediator of the French Republic and the National Human Rights Commission (CNCDH) to participate in a pilot project. Other participants include the mediators of Austria, Northern Ireland, and Belgium.

The Mediator of the French Republic participates in this pilot project in three ways:

1. He sends to Council of Europe's ministerial committee any communication about the state of execution of decisions taken by the European Court against France (content of the law made necessary by the decision, compliance of this law with the Court's jurisprudence, appreciation of the effectiveness of the measures taken, etc.).
2. When the French law seems inadequate or insufficient, the Mediator of the French Republic may use his recommendation and reform proposal power, or even his injunction power in case of inexecution.
3. Finally, the Mediator of the French Republic performs a legal watchdog function for European Court decisions, to prevent possible violations

by France of the laws provided for in the European Convention.

The pilot project implemented in 2008 was attached to the rulings made by the European Court on Gebremedhin vs. France and Taïs vs. France.

The work on the Gebremedhin ruling pertaining to detention centres and appeals corresponds to a major theme on which the Institution of the Mediator of the French Republic has gained recognised expertise.

The reflection made jointly with the CNCDH has shown that the French law of 20 November on immigration control, integration and asylum only meets partially the expectations resulting from the Gebremedhin ruling. While bringing in the necessary legal explanation, the two

#### CASE TAÏS VS. FRANCE DATED 1<sup>ST</sup> JUNE 2006

The European Court of Human rights found France guilty, pursuant to Article 2 of the European Convention on Human rights pertaining to the right to life, both substantially (failure by the State to fulfil its obligation to protect the life of persons in detention, due to the absence of effective police and medical surveillance) and procedurally (the French authorities had failed to investigate properly the circumstances surrounding the death).

#### CASE GEBREMEDHIN VS. FRANCE ON 26 APRIL 2007

The European Court of Human Rights ruled against France in accordance with Article 13 of the Convention regarding the right of appeal: insufficiency of the jurisdictional guarantees given to a foreigner, within the framework of asylum procedures at the border; since the asylum-seeker did not have access to a suspensive right of appeal at the detention centre, he did not have his actual right of appeal.

institutions have expressed to the ministerial committee their desire for France to be asked to improve its legislation.

On the other hand, for the Taïs case, the Mediator of the French Republic and the CNCDH have submitted a report on the issue of re-examining a criminal law procedure, expressing their agreement with the position of the French Foreign Minister, and considering that the French code of criminal procedure was compliant with the European Convention on Human rights and fundamental freedoms.

Furthermore, the Mediator of the French Republic was invited by the Human Rights Commissioner to participate in a workshop on the rights of prisoners. The purpose of this meeting was to guide participating countries in their effort to introduce a national mechanism against torture (MNP) at the national level. In fact, the countries have two options: creating the MNP within the institution of the mediator or ombudsman, or creating an independent institution. France has chosen the second option by creating its controller general of prisons.



## A REINFORCED PARTNERSHIP WITH NHRCS AND NGOS

Member by right of the National Human Rights Commission (CNCDH) whose mission is to make recommendations to the government on draft laws affecting Human rights and public freedoms, the Mediator of the French Republic was particularly active in this commission throughout 2008. In addition to the joint actions taken within the framework of the European pilot project, his services participate in all CNCDH sub-commissions: education of handicapped children, immigration, prison law, the Edvige file, Human rights and changes in society...

The Mediator of the French Republic is also a board member of the World Human Rights Forum, a function

he has accepted for two years. He participated within this framework, in July 2008, in a roundtable entitled "local governance, democracy, Human rights".

On 25 November 2008, the Mediator of the French Republic organised a meeting of board members and of the scientific committee in order to choose the topic of the next World Human Rights Forum which will take place in 2010.

The Mediator of the French Republic also received the director of the Action France unit of Amnesty International. They made a joint reflection on the future Human rights Defender and the content of the constitutional amendment.

After his nomination, the controller general of prisons met with the Mediator of the French Republic on several occasions.

Since both institutions intervene in prisons, they are bound to work on closely related issues. Therefore, the Mediator of the French Republic has signed a cooperation agreement with the controller general, with a view to defining the modalities of their cooperation.

Moreover, the Mediator of the French Republic also held discussions with the Human rights ambassador in charge of working out an action plan for the French diplomacy in terms of Human rights. ►



- The Mediator of the French Republic was also invited by the club “Now in Europe” to give a speech on his experience in prisons, at the workshop entitled “Detention and Human rights in France today”, organised at the Sainte-Anne hospital in Paris, in December 2008.

He was equally received by the National association of prison visitors within the framework of the debates and controversies arising from the draft prison law.

Finally, the Mediator of the French Republic was invited by France

Terre d'Asile to share his and his delegates' expertise on the issue of receiving foreign public in French administrations.

## DRAWING MORE ATTENTION TO THE RESPECT OF FUNDAMENTAL HUMAN RIGHTS

In his position as protector and defender of constituents' rights and Human rights in general, the Mediator of the French Republic does not hesitate to reassert certain principles and fundamental freedoms each human being is entitled to, regardless of his or her origin, nationality (legal or illegal) situation, and religion. Therefore, he strives actively, himself and through his delegates in the field, for the application and respect of the principle of good administration and good governance, so that each individual, no matter his or her legal status, can exercise and be informed about his or her rights. Moreover, he emphasises on the fact that every individual must be allowed access to a judge, under every circumstance and without conditions, in order to restore his or her most fundamental freedoms.

### **The Roms: between racism and Human rights violations**

In July 2008, the Romanian People's advocate expressed his concern to the Mediator of the French Republic regarding the situation of Romanians and Roms in France, and about the discriminations they are faced with. The Mediator of the French Republic notified the CNCDH about this remark and both institutions decided to alert the Prime Minister directly. In a long letter sent to the head of government, both organisations pointed out the acts of racism and discriminations suffered by Romanians and Roms and

deplored the inequality of treatment between European citizens. A study conducted by the CNCDH highlighted the existence of violations of the fundamental rights of Roms, especially in terms of housing, access to healthcare and education, freedom of movement and protection of minors. While the European Union was examining the situation of Roms in member States, after the summit meeting on this issue held on 16 September 2008 under the French presidency, the CNCDH and the Mediator of the French Republic wished to remind the government of its commitments at the Community level concerning the situation of Roms and Romanians in general.

### **Euthanasia: between respect for the patient and strict control of practices**

Topical issues are always an opportunity for the Mediator of the French Republic to emphasise on the need to respect the fundamental Human rights. This was the case in the spring of 2008 with the debates around active euthanasia. Underlining the difficult balance between the emotion resulting from these debates and strict application of rules, the Mediator of the French Republic called for a softening of the law based on the 2005 Leonetti law: softening the law based on “strictly controlled euthanasia” in which rigour and extreme vigilance would also lead to the respect of the patient's wish.

### **Secularism: (re)affirming the freedom of religion**

At a time when certain events can be regarded as incitement to discrimination or religious intolerance, the Mediator of the French Republic is warning against the urge to introduce in national and international laws the notion of “offence for blasphemy”, which has been foreign to French law for some two centuries now.

He draws attention to the fact that the just balance between freedom of expression and respect of each person's beliefs and convictions, indispensable for the working of democracy, must sometimes imply some necessary restrictions governed by law to ensure public order, national security, public health or morality. The Mediator of the French Republic regularly draws attention to the need for vigilance against ideas that encourage religious intolerance or incitement to discrimination.



## MEDIATOR OF THE FRENCH REPUBLIC AND HUMAN RIGHTS PROTECTION IN AND OUTSIDE FRANCE

### FRENCH NETWORK

- National Human Rights Commission
- Experts
- **THE MEDIATOR OF THE FRENCH REPUBLIC**

ASSOCIATIONS

### EUROPEAN NETWORK

- Network of European mediators
- Legal watchdog ECJ<sup>(1)</sup> / ECtHR<sup>(2)</sup>
- Council of Europe
  - Office of the Human rights Commissioner
  - Ministerial committee Execution of ECtHR decisions

### GLOBAL NETWORK

- Association of Francophone Ombudsmen and Mediators (AFOM)
- International Organisation of Francophone Countries (IOFC)
- Association of Mediterranean Ombudsmen
- International Ombudsman Institute
- Bilateral Cooperations
- The UN/Office of the High Commissioner for Human rights
- Arab League

*(1) European Court of Justice*

*(2) European Court of Human Rights*

## A wider international scene

### A GRADUAL AND CONSISTENT APPROACH BASED ON MUTUAL EFFORTS

2008 was also characterised by a strong growth in the international presence and audience of the Mediator of the French Republic.

Spontaneously called upon by a good number of institutions for assistance or cooperation, the Mediator of the French Republic gives priority to concrete actions aimed at spreading good practices in the field of mediation and Human rights. Above all, he wants his actions to be useful to the institution receiving him, and

in line with France's position vis-à-vis the country in question. Using as basis the big principles of good governance and Human rights, he makes proposals on good practices through clear and demanding education on the need for an independent mediation institution. That was why in 2008, the Mediator of the French Republic ensured that his approach was directly relayed by experts of the Institution going to the countries where his help was

needed to share their experience on the handling of cases but also on issues like disability or access to law in prisons. To effectively promote French expertise abroad, the Mediator of the French Republic tries to consolidate links between operators such as "France Cooperation International" and institutions like the Council of Europe and European Commission.

### IMPLEMENTING A TRAINING PLAN WITH (AFOM)

Secretary general of the Association of Francophone Ombudsmen and Mediators (AFOM) since 2005, the Mediator of the French Republic has been re-elected for two years (2008 and 2009). In 2008, within the framework of a partnership agreement with the Moroccan mediation institution, Diwan Al Madhalim, and with the support of the International Organisation of Francophone Countries (IOFC), this association, which had approximately 60 member institutions, including 18 African countries, initiated with the Mediator of the French Republic a training program on mediation practices, meant for officials of AFOM.

The first session, held in Rabat on 26 and 27 May 2008, was attended by participants from Benin, Burkina Faso, Ivory Coast, Gabon, Mali, Morocco, Niger, Central African Republic, Democratic Republic of Congo, Senegal, Seychelles and Togo, as well as four mediation experts from Burkina Faso, Senegal, Morocco and France, around the issue of complaint acceptability, processing procedures, analysis and follow-up... Another session was held on 27 and 28 November 2008. In fact, this initiative aroused a lot of interest even outside the Francophone countries, due to its practicality and effectiveness. The South African

mediator thus wishes to relay the principle of this training to the Association of African Ombudsmen and Mediators (AAOM) of which he is the executive secretary. It is also noteworthy that in 2008, the Association of Francophone Ombudsmen and Mediators also made a very concrete contribution on the themes "Mediator", "Justice" and "governance" in the report on "The rule of law, democracy and Human rights in the Francophone area", presented by the IOFC secretary general at the Francophone summit held in Quebec in October 2008.

### DEVELOPMENT OF EXCHANGES WITH THE MEDITERRANEAN AREA

In 2008, relations between the Mediator of the French Republic and the Mediterranean world were also strongly developed within the framework of the network of Mediterranean ombudsmen. The aim of this non-political initiative is to maintain and develop a forum for

dialogue based on the independence of mediators, even when States are engaged in a conflict. In Marseilles on 18 and 19 December 2008, the Mediator of the French Republic organised, together with the Moroccan institution Diwan Al Madhalim, the Spanish People's Defender, and

with the support of the International Organisation of Francophone Countries, the second meeting of the Mediterranean Ombudsmen network on the theme "Mediterranean Ombudsmen: the challenges of a common area". In addition to the 23 Mediterranean countries, including

Israel and the Palestinian Authority, this meeting was attended by many regional and international organisations such as the United Nations Human Rights Commission, the Arab League, Council of Europe's Human Rights Commissioner, the European Mediator and the French ambassador on a mission for the Union for the Mediterranean.

Open and professional debates on the place of mediation institutions in the institutional landscape, the levers for the promotion of Human rights and questions pertaining to migrations in the Mediterranean basin offered an opportunity for debates and exchange of experiences. Thanks to a report on the member mediation institutions of the network, it was possible to present the situation of each institution with regard to international conventions and the need of each institution in terms of information and training. Participants, who are not part of the "network" but of the "association" created at the meeting thus continue their joint effort to improve the defence of citizens and promote democracy and Human rights in the Mediterranean area.

As the secretary general of the AFOM, the Mediator of the French Republic was invited to the congress of the Association of African Ombudsmen and Mediators (AAOM) organised by Libya. The Mediator of the French Republic wishes to contribute to the develop-

ment of close relations between the different African, Arabophone and Francophone areas.

This is also an objective of the concrete and education-oriented Rabat initiative. Finally, the Arab League, in its quest to develop Human rights structures in Arab countries, invited the Mediator of the French Republic, who then went to share the French experience at the third international Human rights conference organised in Cairo on 1<sup>st</sup> and 2<sup>nd</sup> December 2008 by UNESCO and former United Nations secretary general, Boutros Boutros-Ghali, in the presence of

the secretary general of the Arab League and the secretary general of the association of Francophone countries.

In October and December 2008, the Mediator of the French Republic also went on an official visit to Qatar, where he had been invited to the Arab forum on Human rights. The Chairman of the national Human rights committee in Qatar, on his own part came to France to meet the services of the Mediator of the French Republic, visit a detention centre and discuss with the CNCDDH and the junior minister in charge of foreign affairs and Human rights. ►



► **EUROPE: SUPPORTING A HISTORICAL NETWORK AND OPENING UP TO THE CENTRAL AND EASTERN EUROPEAN COUNTRIES**



A member of the network of European Union mediators, the Mediator of the French Republic maintains regular relations with his counterparts in all the European countries. The cooperation on a network, especially *via* a European intranet network, allows an irreplaceable exchange of information and experiences.

Examples: during the reflections made in France regarding the future of the “Human rights Defender”, a certain number of questions were referred to other European

institutions concerning their practices; some Community law provisions were also debated upon, while some visits made it possible to directly and concretely understand the solutions applied in the different countries. In June 2008, the Mediator of the French Republic went to Albania and Macedonia upon their mediators’ invitation (both mediators are members of the AFOM and are striving to move their institution closer to the authorities there). The Mediator of the French Republic met with the heads

of State and shared his experiences during a conference organised by the European Commission’s delegation in Macedonia on the prevention of torture.

During his visit to Uzbekistan in June 2008, the Mediator of the French Republic met with the President and was delighted with the release, thanks among others to his intervention, of some political prisoners, including Mrs Moutabar Tadjibaeva, the Human rights Defender. Mrs Tadjibaeva was later awarded the Human rights prize of the French Republic for her action, by a jury of which the Mediator of the French Republic was a member.

Following the cooperation agreement signed in June 2008 by the Mediator of the French Republic and the Mediator of Uzbekistan, this latter came to France in October. The delegation visited a prison, met with the CNCDH, the children’s defender (Défenseur des enfants) and some members of Parliament. This is a good example of the “step-by-step” policy.

On 4 December 2008, the Mediator of the French Republic went to Auschwitz, in Poland, with all the European mediators, to celebrate the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights. ■

# From Mediator of the French Republic to Human rights Defender

By incorporating the title “Human rights Defender” into the constitution, the constitutional law of 23 July 2008 on the modernisation of institutions of the 5<sup>th</sup> republic reflects a major proposal of the Balladur committee to which the Mediator of the French Republic had contributed immensely. The incorporating Act, planned for the second semester of 2009, shall determine the modalities for the intervention of the Human rights Defender, and specify the role and powers of existing independent authorities. It may be useful in this respect to point out two basic principles that characterise the institution of the Mediator of the French Republic: independence and the power to make recommendations in all fairness. The moral authority resulting therefrom places the institution above any partisan debate and offers an opportunity for dialogue that is favourable for in-depth reflections on the quality of the law and the inherent power.

## THE BASES: INDEPENDENCE AND EQUITY

### The meaning of independence...

Law No. 73-6 of 3 January 1973 institutes in Article 1 the independence of the Mediator of the French Republic, who “*shall not receive any instructions from any authority*”. This notion is also reflected in Article 2, which stipulates that “*the Mediator of the French Republic shall be nominated for six years by ministerial council decree*”. Article 3 underlines the institution’s freedom of action and reflection. Compared to the traditional institutional authorities (legislature, executive, judiciary), the Mediator of the French Republic is an independent and original authority, thanks to this legal basis. The institution cannot be used for any permanent, personal or collective strategy, since the six-year mandate is not

renewable. This same mandate is irrevocable, thus guaranteeing the institution’s freedom of speech and action. In the day-to-day mediation

practices, the institution’s recommendations are not construed as a legal constraint, but as the result of a reflection made in complete inde- ►

### LAW OF 3 JANUARY 1973

**ARTICLE 1:** The Mediator of the French Republic, an independent authority, shall, under the conditions laid down in this Act, receive complaints concerning the working of government offices, local authorities, public establishments and any other bodies vested with a public service mission, in respect of their dealings with the public. Within the limit of his competence, he shall not take orders from any other authority.

**ARTICLE 2:** The Mediator of the French Republic shall be appointed for a period of six years by decree of the Council of Ministers. He may only be removed from office before term if he is no longer able to perform his duties, as established in accordance with the conditions laid down by decree of the Council of State. His term shall not be renewable.

**ARTICLE 3:** The Mediator of the French Republic shall be immune from prosecution, arrest, detention and judgement in respect of any opinions he may voice or any acts he may accomplish in the performance of his duties.



- pence. Free from any political calculation, attached to no particular supervisory ministry, the authority appears here as basically moral, which reinforces the credibility of its lines of argument.

The proof is that in a certain number of cases the action of the Mediator of the French Republic has helped find alternative solutions that guarantee both respect of law and respect of persons, whereas complainants had initially not been heeded by people who were supposed to listen to them (amicable settlement boards, conciliators, etc.). In these cases, the in-depth analysis of the questions posed, by the experts of the Mediator of the French Republic, often highlights the elements known but not taken into account or wrongly interpreted until then.

This was the case for Mrs P. Following a sick leave prescribed by her doctor on 1<sup>st</sup> February 2006, Mrs P. was indemnified by the national health insurance office (CPAM) for the first six months. However, the CPAM refused to continue paying the daily benefits beyond the sixth month of sick leave, arguing that Mrs P. had not met the condition of work duration required by Article R. 313 of the Social Security Code, i.e. 800 hours of work as employee or similar, within the twelve calendar months or 365 days preceding the sick leave, including at least 200 hours in the first three months. Contesting this decision, the complainant referred the matter to the amicable settlement board, which confirmed the decision of the national health insurance office. She then sought the help of the Mediator of the French Republic. After an in-depth analysis of the case, the institution noticed that Mrs P., who had started work again, was still entitled to the maternity leave benefits payable to her prior to this sick leave, for a period of one year. There-

fore, as her sick leave had ended in June 2005, she was entitled to the daily benefits until June 2006. Since her sick leave had started in 2006, when she still had the right to said benefits, she had to be paid the benefits. Regarding the extension, without interruption, of her sick leave beyond the sixth month, Mrs P. must be paid the daily benefit as well. The CPAM reacted to this argument by regularising the file and paying the daily benefits for the contested period, from 1<sup>st</sup> August 2006 to 30 June 2008.

Another case in the field of taxation. Following a confusion made by the administration between the date of subscription and date of premium payment, the beneficiary of a life insurance policy contested, for the taxable part, the rectification of the right of transfer by death. The tax conciliator maintained the position of the administration, the director of tax services as well. The intervention of the Mediator of the French Republic showed that the tax administration had always had all the information it required to actually assess the situation, despite the error. In line with the analysis of the Mediator of the French Republic, the director general of taxes decided in favour of granting a relief for the tax in question. These cases highlight not only the technical expertise of the lines of argument developed by the Mediator of the French Republic, but also the independence with which he appraises the overall situation, and the moral authority which makes it possible for him to be heeded. In a good number of cases, the information at the disposal of the conciliator is the same as the information given to the Mediator of the French Republic. One may then wonder why the complainant's good faith was not believed earlier as shown by the case of Mr S., manager of a tem-

porary employment agency, who was receiving cash through money order from the temporary employment agency J. When controlled, this latter could not convincingly justify these amounts transferred. The tax administration taxed these sums as income distributed to Mr S., a decision contested by Mr S., arguing that the sums were redirected to workers from the temporary employment agency. Considering that Mr S. did not produce proof of coincidence of the funds from the temporary employment agency with the sums sent on behalf of the agency to the temporary workers, the administration upheld its decision. Since the tax conciliator had also maintained the position of the tax authorities, Mr S. sought the help of the Mediator of the French Republic. This latter argued based on the fact that the complainant had succeeded in producing an array of clues proving the reality of money transfer between the company and his agency then between his agency and the temporary workers, as well as the coincidence between the amounts received and transferred. In fact, the Mediator of the French Republic underlined the fact that a global approach over the year and not on monthly basis was more respectful of the actual working of the company, and that in the end, the evidence produced by the complainant corresponded to 98% of the amount retained by the tax authority! The director of the tax administration, who shared the analysis of the Mediator of the French Republic, accepted to give a relief on the tax refunds.

### **Equity: between law and morality**

#### **→ EQUITY: EXCEPTIONAL POWER**

The power of the Mediator of the French Republic to make recommendations in all fairness is stipulated in

the law of 3 January 1973 (Article 9). It is the only independent authority empowered by law to make recommendations in all fairness. At a time when the word “equity” has become a buzz phrase in all discussions, it seems pertinent to point out the bases of the institution’s power, provided by law, to make recommendations in all fairness, sometimes ignored by State authorities and sometimes also wrongly sought by complainants asking for an “equitable situation” whereas they are not in an “inequitable” situation. To prevent any ambiguity, the power of the Mediator of the French Republic to make recommendations in all fairness was specified as years went by. Justice Minister René Pleven thus addressed members of Parliament in 1973: *“We are attempting a new organ transplant... It is an original legal institution in our public law and differs from the pattern we are used to... We have carefully seen to it that the Mediator [of the French Republic] completes and prolongs the action of the existing control organs – jurisdictions and Parliament –, without competing against or performing double work with them”*. In 1976, Pierre Schiele, the draftsman for the draft law at the Senate, explained the introduction of the notion of equity as follows: *“The current Article 9 (before the modification dated 24/12/1976) is incomplete; in some cases, in fact, if the admini-*

*nistration has acted inequitably, it is in keeping with laws or regulations which do not allow it any freedom of action. If it acted differently, it would be liable to sanctions from the administrative judge. In this situation, which*

*the administrative law qualifies as “tied competence”, it is important to allow the Mediator of the French Republic to propose a solution that resolves in all fairness and not legally the situation of the complainant”*. ▶



► → **HELPING TO MAKE DECISIONS,  
TAKING INTO ACCOUNT THE HUMAN  
DIMENSION**

The Mediator of the French Republic is free to decide when to make a recommendation in all fairness. Requests for a solution in all fairness has a very exceptional character and can only be handled on a case-by-case basis. The Mediator of the French Republic then examines, from the point of view of equity, the situation in which the application – or absence – of a law has serious or disproportionate consequences.

- This taking of position vis-à-vis the administration is generally the same thing as acknowledging the fact that it has actually applied the law correctly, but is desirable, in view of the exceptional human consequences thereof, to be flexible in its application. When the administration contents itself with applying the law strictly, the Mediator of the French Republic may also help it to “take a good decision” by encouraging it to refine its reflection to handle some special cases more adequately.

- In other cases, the Mediator of the French Republic may ask the administration not to act only in its own interest, but to take account of the repercussions of its decision on an extreme individual situation. Moreover, Article 9 of the law instituting the Mediator of the French Republic also enables him to propose legal reforms to public authorities if he notices that certain laws result in “inequitable situations”.

→ **USEFUL READING FOR THE ADMINISTRATION BUT WHICH GIVES RISE TO “DEADLOCK SITUATIONS”**

Notwithstanding Article 9 of the law dated 3 January 1973, the administration may sometimes reject the solution of equity proposed by the Mediator of the French Republic, preferring to hide behind some articles of law. This is in particular the case of the tax administration which sometimes fails to take into account the individual dimension of some situations that call for a solution in all fairness. The case of Mrs S. is a typical example of this type of inflexibility. Mrs S. started a psychology activity in 1990. She opted to liable to VAT and paid this VAT in 1990. In 1994, she asked her tax office about the repercussions of the VAT exemption, subject to diploma, for professional psychologists, psychoanalysts and psychotherapists. During an appointment, she explained her situation to her tax inspector. This latter told her that she was concerned by the exemption and that she would take care of regularising her situation. The inspector actually modified the Medoc database containing the list of professionals subject to VAT and, from a data-processing and legal point of view, removed Mrs S. from the list of professionals liable to VAT. The effect of this Medoc database modification is interruption of the transmission of pre-identified turnover by the administration. Following some reservations made by her accountant in 2007, Mrs S. contacted the tax office to check the pertinence of

the exemption granted to her. The tax office noticed that she did not actually meet the diploma criteria set by the lawmaker in order to be exempted. It then subjected Mrs S. to VAT for 2007 and required her to pay arrears of VAT for 2004, 2005 and 2006 based on immediate taxation.

Mrs S. accepted the initial error made by the tax office and, thus, the need to regularise her VAT situation for the future, but contested the reminders sent to her for the previous years. However, despite her observations, the tax office maintained its position. She then sought the help of the Mediator of the French Republic.

The Mediator decided to intervene in all fairness, considering that one of the conditions for mediation had been fulfilled: inequitable financial consequence for the user (the 2004, 2005 and 2006 VAT reminders should not be recovered from the patients. They would reduce the income made in the course of these same years). The situation to be handled was specific and exceptional for the following reasons: the exemption from VAT was not due to an error on the part of the taxpayer but due to the initiative of a tax officer, who is solely empowered to modify the Medoc database. In terms of taxation, taxpayers' good faith is presumed: since the administration did not produce the proof that her error was due to wrong information given by Mrs S., the error was attributable to the administration. Therefore, the retroactivity of the exemption cancellation seemed to violate the principle of equity. Moreover, it was Mrs S. herself who had drawn the attention of the administration to the error in question. She did not have any reason to worry about it before then: the legislation applicable to her profession had not been modified since 1993 and not more

**LAW OF 3 JANUARY 1973**

**Article 9 – Paragraph 1:** When he considers that a claim is justified, the Mediator of the French Republic shall make such recommendations as he deems necessary to resolve the difficulties referred to him and, where appropriate, shall make any proposals which may improve the workings of the organisation or body concerned.

than the conditions in which she exercised her profession since this same date. Finally, it is noteworthy that by taxing Mrs S. immediately, the administration was reproaching her of failing to file tax returns that the administration itself had stopped requesting for! The lawmaker would probably not have accepted this iniquity.

Article L. 247 of the tax procedure code forbids any VAT related relief. However, this prohibition is basically due to the tax collector role played by the taxpayers. They are, therefore, considered as having collected the tax during each business transaction. Since the tax has been collected and held by the taxpayer, he or she is obliged to pay it... There are certainly some cases in which this tax may not have been collected out of ignorance, but the prohibition of relief is justifiable since each taxpayer is supposed to know his or her tax obligations. Now, if Mrs S. had failed to collect the tax, it was simply because the tax administration had placed her out of the VAT application field. The Mediator of the French Republic, therefore, asked the administration for a relief in all fairness of the calls for VAT from 2004 to 2006. The tax administration replied that pursuant to Article L. 247 of the tax procedure code, it was not allowed to grant any relief and that this provision constituted an obstacle to a relief in all fairness.



It has to be noted here that the criteria for the principle of equity retained by Paul Legatte, a former member of the Constitutional Council and Mediator of the French Republic from 1986 to 1992, is a model of reading, analysis and self-censorship required for the action in all fairness by the Mediator of the French Republic, in order to avoid arbitrary power, on the one hand, and to avoid impeding administrative actions, on the other hand. It is also a frame of reference for the administration in order to evaluate the inequitable consequences of applying the legal standard to the individual, to guide him to decide on the corrections to be made, and to relieve him of any

responsibility, for instance, towards control organs (inspectorate of finances, the State Audit office), which do not have to interfere with solutions retained in all fairness as a result of recommendations by the Mediator of the French Republic. ■



You can find Paul Legatte's criteria for the principle of equity and the recommendations made in all fairness by the Mediator of the French Republic on

**WWW.MEDIATEUR-REPUBLIQUE.FR**



## TOWARDS A HUMAN RIGHTS DEFENDER

The report presented to the French President on 29 October 2007, by the committee charged with reflecting and making proposals on how to modernise and readjust the institutions of the 5<sup>th</sup> Republic, presided over by Edouard Balladur, proposed the creation of a “Fundamental Human rights Defender” comprising several independent authorities that strive to protect Human rights and freedoms. Moreover, inspired by the examples of his European counterparts, the Mediator of the French Republic, Jean-Paul Delevoye, had indicated during his audition by the Balladur committee, his desire to promote such an evolution.

Thus, constitutional law No. 2008-724 of 23 July 2008 provides in its Article 41 a new Article 71-1 of the Constitution pertaining to the creation of a Human rights Defender:

**“ Art. 71-1. – The Human rights Defender shall see to the respect of Human rights and freedoms by government administrations, regional authorities, public establishments as well as by any organisation vested with a public service mission, or to which the incorporating Act assigns some powers. Cases may be referred to the Human rights Defender, in accordance with the specifications of the incorporating Act, by any person who deems him/herself prejudiced by the working of a public service or an organisation mentioned in Paragraph 1. Cases may be referred to the Human rights Defender immediately. The incorporating Act shall define the nature and modalities of the intervention of the Human rights Defender. It shall determine the conditions in which the Human rights Defender may be assisted by a colleague in exercise of his powers...).”**

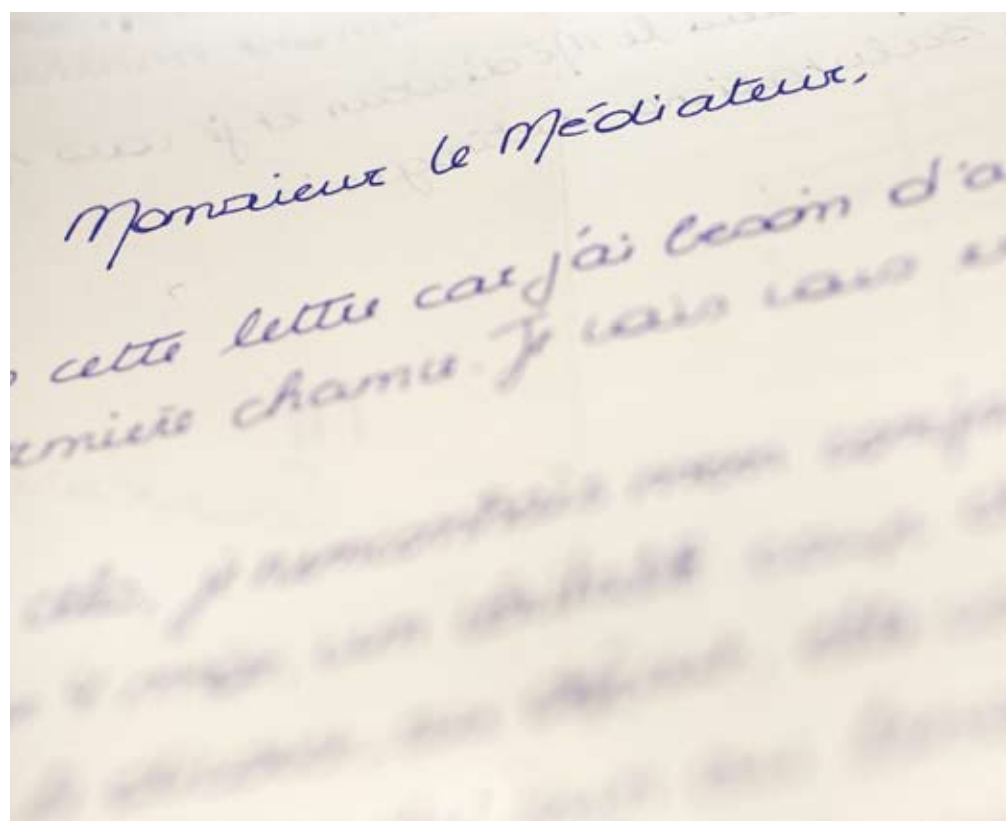
The activity fields of the Human rights Defender shall, therefore, be fixed by an incorporating Act which will soon be drafted and which will define the powers of the future institution. The government has specified, during parliamentary debates on the draft constitutional law, that the Human rights Defender would replace the Mediator of the French Republic and would be vested with “a moral authority and reinforced powers”.

Since the beginning of his mandate, the Mediator of the French Republic has been striving for a more comprehensive application of his current powers, as defined by the law of 3 January 1973, before envisaging some new prerogatives.

### Reinforcing the current powers of the Mediator of the French Republic

Several methods of increasing the powers of the institutions must be

explored in order to confer on the future Human rights Defender some means of action that are consistent with one another. The first measure would be to allow cases to be referred directly to the Human rights Defender. It is all about making the law consistent with the practice: more than 68%, i.e. 4,884 of the complaints arriving at the headquarters of the Mediator of the French Republic are sent without any « parliamentary filter », even though they are regularised later. Today, this formality is often misunderstood by the constituents and the proximity allowed by direct referral would offer better access to law. This is evidenced by the immediate dialogue encouraged by the action of delegate Mediators of the French Republic. The “DCRA” law of 2000 already allows direct referral in terms of reform. Therefore, extending this measure to complaints filed with the Mediator of the French Republic





seems to be the logical sequence of the this law which is in line with the policy on reform implemented by the State in order to improve relations between administrations and citizens. Moreover, it is noteworthy that cases may be referred to the national mediators of 23 out of the 27 European Union countries, just like the European Mediator.

Some powers vested by the law of 1973 on the Mediator of the French Republic must be specified for the Human rights Defender. This is the case for the differences between the administration and its agents, governed by Article 8 of the law of 1973 the interpretation of which is delicate. In fact, this law stipulates that *“The differences which may arise between the administration and organisations mentioned in Article 1 and their officials may not be referred to the Mediator of the French Republic. The provisions of this article shall not apply to these officials at the end of their functions”*.

Thus, and although these provisions do not specify this explicitly, the sphere of activities of the Mediator of the French Republic has been gradually extended to any claims that do not concern hierarchical relations, including the difficulties about the officials' social rights. The current field of intervention of the Mediator for the French Republic concerns access to public functions, competitive exam conditions, sta-

tutory sick leave and the inherent conditions for reintegration, disputes arising in connection with social security contributions and litigation after termination of an official's function, especially relating to pension rights.

The current wording of Article 9 of the law of 1973, which stipulates in its Paragraph 4 that *“The Mediator of the French Republic shall be notified about the response to his interventions. In the absence of a satisfactory response within a fixed deadline, he may make public his recommends and proposals (...)”* poses the problem of the means at the disposal of the Mediator of the French Republic to denounce “recalcitrant attitudes” or “non response” since, having no coercive power, he only exercises a “magistrature of influence”. Therefore, it would be more judicious to propose that in the absence of a satisfactory response within two months, the Human rights Defender should be able to give an official notice to the organisation in question within a specific deadline. If this official notice remains unheeded, the Human rights Defender may then publish his recommendations in a special report in the Journal Officiel.

Concerning the power to take disciplinary actions and criminal proceedings, Article 10 of the 1973 law provides that *“In the absence of a*

*relevant authority, the Mediator of the French Republic may, on behalf of this latter, take a disciplinary action or, if necessary, criminal proceedings against any official in charge or, if need be, refer a case to the criminal court”*. Since these provisions have never been implemented, the need to adapt them seem to be obvious. In fact, a lot of questions exist concerning the application of this law and, in particular, concerning the opportunity for the Mediator of the French Republic to take such proceedings.

Moreover, would the exercise of this power not be considered as an administrative decision expressing grievances, which would imply possible appeals? Therefore, it is necessary to wonder about the pertinence of this power conferred on an institution such as the future Human rights Defender. The power to inspect and access documents should equally be reinforced for the benefit of the Human rights Defender. Pursuant to Article 12 of the law of 1973, *“Ministers and any public authorities must facilitate the task of the Mediator of the French Republic. They shall authorise all officials under their authority to reply to any questions they are asked and to any requests made by the Mediator of the French Republic to appear before him; they shall allow the inspection authorities to carry out any verifications and* ►

- *investigations requested by the Mediator of the French Republic within the scope of their competence. Such officials and inspection authorities must either reply or accede to such requests. They must take all necessary steps to ensure compliance with these requirements (...)*“ As mentioned already, the requests of the Mediator of the French Republic do not have any binding character and, thus, remain subject to the “good-will” of the authorities in question. The Human rights Defender should,

therefore, be expressly empowered to carry out himself verifications on site and on documentary evidence. He should also be able to hear any person whose assistance he deems useful. In the same logic, Article 13 of the above-mentioned law, which provides that “*The Mediator of the French Republic may ask the minister in charge or the relevant authority to send him any document or file concerning the case he is investigating*”, should be reinforced so that the communication right of the Human rights Defender

will not be restricted to documents concerning individual complaints referred to him, but will be extended to any documents pertaining to the exercise of his missions.

Finally, and it is an important point, the power to make recommendations in all fairness must be clarified. Only the practice has made it possible to define this so particular power since Article 9 of the law of 1973 contents itself with stipulating that

*“When he considers that a claim is justified, the Mediator of the French Republic shall make such recommendations as he deems necessary to resolve the difficulties referred to him and, where appropriate, make any proposals which may improve the working of the organisation or body concerned”.*

It would also be necessary to fix the conditions for using this prerogative defined, among others, by Paul Legatte with a view to avoiding any arbitrary power. The first condition is respecting the wish expressed by the author of the rule of law, which makes the Mediator of the French Republic to accept an iniquity resulting from the application of a law when it seems that it has been identified and accepted by the author of this law. The second condition for recommendation in all fairness consists in checking whether the proposed solution is compatible with the spirit of the law in question. The intervention of the Mediator of the French Republic should not violate the rights of third parties either. More generally, recommendation in all fairness may only be proposed if the situation in question is exceptional and really inequitable, and if the financial consequences of the solution can be borne by the community.

Moreover, considering the principles applicable in terms of the responsibility of officials with power to authorise payment, and of public accountants, recommendations in all



fairness with financial consequences shall not be accepted without resulting in a release from responsibility. Therefore, such a provision should be added to give its efficiency to this original power of the Mediator of the French Republic.

### New powers

Beyond reinforcing the current powers of the Mediator of the French Republic, the Human rights Defender may be given new powers. The opinion of the Human rights Defender could be sought on any draft law pertaining to human rights and freedoms, just like the opinion of the Halde is sought on all draft laws concerning the fight against discriminations, and on the promotion of equality. The human rights defender could also be empowered to seek the opinion of the Council of State on the legality of some existing application texts that give rise to disagreements and inconsistencies. The illegality of an application text would then be considered as constituting a malfunction in the sense of Article 6 of the 1973 law. The example of tax circulars clearly illustrates this theory, since the difficulties often resulting therefrom could be solved through a decision of the Council of State. The report submitted to the Budget minister by Olivier Fouquet, chairman of the Finance section at the Council of State, to *“improve the legal security of relations between the tax administration and tax-*

*payers”*, is along this line, by pointing out the little success achieved through the opinion-seeking procedure opened to jurisdictions on *“questions of new laws resulting in a serious problem and which are raised in a good number of disputes”*. In fact, the report underlines that *“the administration and practitioners have given the working group many examples of cases in which, despite the wishes they had expressed, law courts and tribunals have failed to seek the opinion of the supreme court on tax law related questions raised before courts and which would have merited, for legal security purposes, to be settled rapidly. The administration and practitioners are unanimously in favour of seeking the opinion of the Council of State (...)”*.

Moreover, letting the Human rights Defender seek the opinion of the Council of State could have a certain impact, by putting pressure on the administrations concerned. This power would also reinforce the proximity of the institution to the Parliament, and the control of law. Finally, the Human rights Defender could be empowered to appeal to the European Court of Justice (ECJ) and thus denounce violations of Community laws. This power does not seem to pose any legal problems since the Human rights Defender would only content himself with notifying the European

Commission about any violation of Community law, and only this latter would decide on the when to take the matter to the ECJ.

Then remains the question raised by the Ballardur committee on the sphere of action of the Human rights Defender, and the possible merging of existing independent administrative authorities based on the experience gained within the past 35 years by the Mediator of the French Republic. ■

A daily observer of administrative practices and relations between public services and users, the Mediator of the French Republic alerts authorities to the drifts often caused by lack of information, training, means and respect of constituents. These drifts are all the more unacceptable since courageous and exemplary initiatives prove here and there that despite a difficult environment, it is possible to do better. It is all about a state of mind that urgently needs to be improved so as to restore public confidence and the quality of the link between public authorities and fellow citizens.

...

### **Alarming observations confirmed**

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### **Yes, good administration is possible**

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# DAY-TO-DAY MEDIATION ACTIVITIES

## Alarming observations confirmed

Four years after launching the Marianne charter, what has become of the quality of reception in public services? In their daily activities, the services and delegates of the Mediator of the French Republic can only notice, too often, a real distortion between declarations of intention and reality. The “accessibility”, “rapidity”, “courtesy”, “clarity of responses”, “listening spirit”, “rigour” and “transparency” wanted originally sometimes remain a dead letter, to the extent that the Mediator of the French Republic made it one of the themes of his annual convention in May 2008 (“Reception and information in public services”) to which was invited, among others, François-Daniel Migeon, managing director for State modernisation.

### BETWEEN THE RIGIDITY OF DATA-PROCESSING SYSTEMS, THE FEELING OF ARBITRARINESS TAKES SHAPE

#### The breaking link between constituents and the administration

*“Anything can be written on a family record book.”* It was because of this remark, which expresses contempt for an official and for the public service he represents that an attendant at the fines Treasury refused to take account of Mrs M.’s

request. This lady, with a modest background, had just received a letter from the bailiff for the intention of her husband, who had died thirteen years back, asking him to pay a heavy fine. She then went to the Treasury with her family record book on which the death of her husband had actually been recorded. The prefecture refused to issue this same person with an attestation for the sale of a vehicle two years prior to her husband’s death, because the service only stored its records for five years... From a public service beneficiary, the citizen becomes a victim of an arbitrary treatment subject to the unfair good (or bad) will of some officials or services.

*“We are having more and more difficulties with the administration. It is very difficult to reach them by phone; you have to communicate by fax... Some services still do not receive the general public... The link is breaking, the telephone platforms do not often facilitate the link. We are arriving at dramatic consequences: cancelled minimum social welfare benefits, interruption of water supply...”. This testimony is not from an isolated individual. It is the observation made by the services of the Mediator of the French Republic, which often have to intervene in emergency situations. In a good number of cases, the inter-* ►

“Society has the right to require any public official to account for his or her administration”.

*Article XV of the 1789 declaration of Human and citizen’s rights.*



- vention of a delegate Mediator of the French Republic is required to restore contact between the administration and constituents, by avoiding automated attendants and call centres. Thus, a tutelary departmental association manages legal protection decisions in its department. Among other things, it manages the budgets of protected persons. In this context, it must frequently intervene at EDF (a French electricity company) to prevent power supply interruptions due to unpaid electricity bills. It often acts urgently and its intervention generally requires several telephone exchanges with EDF.

Since 2006, with the introduction by EDF of an automated attendant and a phone call answering platform, it is impossible to communicate effectively with EDF. The association wishes to have a single contact person with a phone number allowing direct contact. It has made this request at EDF without success. The help of a delegate Mediator of the French Republic is required to obtain from the regional manager of EDF the addresses and direct phone numbers of the relevant EDF commercial representatives to know the situation of destitute persons in the department.

### Varying responses

Mrs A. contested having committed the over-speeding offence she had been accused of. She had an attestation from her employer certifying that she had been present in another department on the day of the offence; she then filed a complaint for usurpation of registration. Despite these strong clues, her steps to contest the offence were in vain. She lodged another complaint with the automatic control processing centre but could not obtain the photographs proving the offence she was being accused of. With two dependent children and a modest income,



Mrs A. was quickly facing a banking ban. The services of the Mediator of the French Republic handled this case urgently and immediately contacted the official of the public prosecutor's office concerned, asking for an examination of Mrs A.'s situation and, possibly, for a cancellation of the fine imposed on her. At the same time the services of the Mediator of the French Republic contacted the Treasury in charge of legal proceedings to ask for their suspension for the time necessary to examine the complaint for usurpation of registration. This request was fully legitimate. Yet, the first official the services of the Mediator of the French Republic got on the phone had simply rejected it. When they called a few days later, these same services spoke to another official who accepted the request. The same administrative service, two different interlocutors, two contradictory decisions?

### Computer and quality control systems manage the mass but reject special cases

The delegates and services of the Mediator of the French Republic are often surprised by the absence of overview manifested by the administration when it comes to handling special cases. Computer systems, like quality certification systems, are designed for mass processing. The tasks, processes, and different players are analysed to check, *a posteriori*, that all the processing steps have actually been taken. Paradoxically, this standardising progress considerably impedes the handling of special cases. When data about a special case cannot be "entered" in the computer because it was not initially foreseen, an external intervention is often necessary, either by a conciliation service, a customer service, or a third party such as the Mediator of the French Republic to

break the deadlock in the handling of this case. A lot of cases handled by delegate Mediators of the French Republic show the impact of the almighty computer system that paralyses the handling of special cases. But very often the computer is – also – used as an excuse to justify the bad will of certain services, with the officials hiding behind the computer “constraints” so as not to respond or act.

They then forget that the computer is just a tool and should not stop users from reflecting and searching for solutions, even if it means bypassing the rigidity of the system, when justified by the public service. Are the officials in charge of receiving and informing the general public trained for this important mission, or simply on the use of a computer? This question is justified, given the difficulties encountered by the users who have contacted the services of the Mediator of the French Republic. A typical example is that of Mrs R. Mrs R. had been receiving from the CPAM, the State health insurance office, a disability benefit which was suspended in November 2004 when she resumed a professional activity. In March 2007, she lost her job and again asked to be paid her disability benefit, a request that was rejected. In July 2007, she moved and asked for her file to be transferred. This could not be done; The CPAM sent her the following explanations: “On

*22 August, your file was actually transferred. But it was returned to us for regularisation before transfer. As of September 2007, no mention had been possible since we are waiting for an upgrade of our national computer systems. We are obliged to handle your file till further notice”.*

Mrs R. then met with the delegate Mediator of the French Republic, who then contacted the CPAM. She learned that the office in Mrs R.’s original department had been owing her some money, which had prevented the transfer... Her correspondent also informed her that Mrs R. was still entitled to her disability benefit. She advised her to take the matter to the department’s amicable settlement board, which she did immediately.

In a first phase, the CPAM acknowledged the receipt of her request and informed her in a letter dated 4 December that the matter would be presented at the session of 10 January 2008. Unfortunately, she was notified in another letter that her request was not going to be presented to the commission on 10 January because “*further inter-service information was required before her case would be examined, which postponed the presentation of her case to a later date.*” Thanks to the help of two delegate Mediators, the case ended up being examined, and the dispute settled.

The extreme rigidity shown by the examining services handling the case of young Mr L. is edifying. On 15 March, Mr L. received his invitation to sit for the BTS exam (the advanced convocational diploma exam) in May. He noticed that the invitation concerned a written exam for Spanish and not English language. He immediately went to the examination service to ask for a correction of this apparently registration error. His request was rejected on 21 March. So, he referred the matter to the delegate Mediator of the French Republic in his department. This latter immediately called the academic mediator and faxed him the file on the same day. The academic mediator immediately forwarded the file to the mediator of the Education ministry. His deputy called the delegate Mediator at 17:00 so he can ask Mr L. to make his request officially in writing, saying that a letter from the establishment would not superfluous. Mr L.’s father was notified about this immediately, and he booked an appointment with the director of the establishment for the next day. On Saturday, 5 April, two letters were sent to the mediator at the Education ministry, one from Mr L., the other from the director of the establishment accepting to take account of the error. Time was passing. By the end of April, the delegate Mediator called the mediator at the Education ministry, who asked ►

- him to exercise some patience. On 25 April, Mr L. informed the delegate Mediator by phone that he had received a copy of a letter sent by the head of the higher education to the mediator at the Education ministry. Said letter confirmed

the rejection of his complaint in the name of equality of treatment and explained that, considering the number of registrations and the responsibility requested of the candidates, no error was corrected after the month of January for an

exam taking place in May and June. Which public service does the Education ministry claim to be responsible for if it refuses to correct anomalies occurring while inviting candidates to exams, in January?

## ABSENCE OF RESPONSE: A CALL TO ORDER REQUIRED

One may be led to believe that the absence of response from the administration is due to special and exceptional situations. Apparently, this phenomenon also applies to requests from the Mediator of the French Republic, which may result in violating the law.

### Response: a legal obligation

Replying to information or re-examination requests made by the Mediator of the French Republic or his delegates is not a matter of individual goodwill. It is a legal obligation - an obligation which a certain number of public services do not seem to understand. A typical example is the case of small towns where the mayor often works with a small team, especially in case of problem of building permit in which personal financial stakes are often very high for the users...

*"Some mayors do not have a specific idea of what the Institution of the Mediator of the French Republic is all about. They do not understand very well the role of a delegate Mediator of the French*

*Republic. We often have the problem of non-response from mayors. Our delegates must then cite the law of 3 January 1973",* reports the regional service of the Mediator of the French Republic. In fact, it is necessary to highlight the fact that very small towns do not always have the means to quickly integrate all the changes in legislation, which are getting increasingly complex. This is why delegate Mediators of the French Republic carry out information campaign in the field by contacting, for example, the departmental associations of mayors. Yet this problem also exists at a higher level, and cooperation between the services of the Mediator of the French Republic and some administrations is not satisfactory. Too long response time or even absence of response despite reminder letters, e-mails or phone calls: these are a few examples.

- Ministry of agriculture. This ministry was first contacted as far back as 18 July 2006; an umpteenth reminder by the Mediator of

the French Republic was made on 6 March 2008. The Mediator of the French Republic received a reply on 19 September 2008, informing him that a reply had been sent to the requestor on 25 March 2008.

- Employment ministry. First referral letter: 10 September 2003. No reply till date despite our reminders.
- Employment ministry. First referral letter: 26 December 2007. No reply till date despite our reminders.
- Ministry of Health. First referral letter: 11 October 2007. No reply till date despite our reminders.
- Ministry of Health. First referral letter: 14 October 2005. No reply till date despite our reminders.

### Reason for the growing silence...

Two reasons may explain the impressive number of non-response from ministries to requests and reform proposals made by the Mediator of the French Republic: poor organisation of the corresponding ministries and low effectiveness of the interministerial committee in charge of following up reform proposals. Two circulars, dated 7 July 1986 and 10 April 1995, specify that the ministerial correspondents of the Mediator of the French Republic shall, among others, ensure that he is informed about the response given to his interventions. Now, experience has shown that these correspondents do not have a clear vision of their role

"All ministers and public authorities must facilitate the task of the Mediator of the French Republic. They shall authorise all officials under their authority to reply to any questions asked of them and to any requests made by the Mediator of the French Republic to appear before him; they shall allow the inspection authorities to carry out any verifications and investigations requested by the Mediator of the French Republic within the scope of their competence. Such officials and inspection authorities must either reply or accede to such requests. They must take all necessary steps to ensure compliance with these requirements".

Article 12 of Law 73-6 dated 3 January 1973.

"...When it appears to the Mediator of the French Republic that an organisation mentioned in Article 1 has failed to act according to the public service mission entrusted to it, he may propose to the relevant authority such measures as he deems appropriate to remedy this situation. [...] The Mediator of the French Republic shall be kept informed about the outcome of his interventions. In absence of a satisfactory reply within the stipulated deadline, the Mediator may make public his recommendations and proposals".

*Article 10 of law 73-6 dated 3 January 1973, article 10.*

and are not capable of replying as effectively as required to requests made by the Mediator of the French Republic. To obtain the position of a minister and his administration on

a reform proposal, the Mediator of the French Republic is often obliged to ask for the submission of a parliamentary amendment, and/or to alert the media, which implies a

considerable waste of time. These same circulars create the possibility for the Mediator of the French Republic to call an interministerial meeting when his proposals concern several ministerial departments.

In case of persistent disagreement, he may ask for the Prime Minister's arbitration during an ad hoc interministerial meeting presided over by a member of the Prime Minister's cabinet. There is an urgent need to improve the working of this system to make it more compelling for the ministries.

## INFORMATION DEFICIT

### The services are not aware...

A lot of complaints show that the administration does not inform citizens enough both before and after its decisions. Sometimes, the information sent may be incomplete or may not be updated as reported by this delegate Mediator of the French Republic. Born in Tunis of French parents, Mrs L.'s request to renew her identity card was rejected by the civil status office of her town council, arguing that a proof of her French citizenship needed to be obtained from the law court.

Mrs L., who could not understand this reply since the French citizenship had always appeared on her identity card, sought the help of

the delegate Mediator of the French Republic. This latter, confirmed to her that the town council's reply was correct, since a new directive had become applicable shortly before then. She completed the information by explaining to Mrs L. what the law court was, gave her the address of the relevant law court and the list of the documents to produce to avoid any additional procedure... In short, instead of the civil status service, the delegate

Mediator of the French Republic accomplished the information and orientation role which every public service owes the citizens.

### Decision requests are not handled as such

Sometimes, the administration handles a decision request like a simple information request, disregarding the serious consequences of lack of clear and precise information for the user. This is demonstra- ►

*More than half of the requests sent to the Institution correspond to the need for information or orientation not met by the State's services.*



- ted by the case of this cardiologist who wished to set up his business in an urban redynamisation area (ZRU). He wrote a letter to the Treasury of town C., requesting for a written confirmation of his right to tax exemption for his professional income made in this ZRU. On 5 March 2004, he received in response to his request a simple copy of the 1997 and 2001 official report the tax exemption scheme for liberal professions located in a free zone. On 7 March 2004, he again contacted the tax authorities asking for more information about the tax scheme for doctors and the social security contribution exemption applicable to the hiring of a secre-

tary. A too general reply was sent to him ten days later. On 29 June 2006, the cardiologist received from the tax authorities a rectification proposal based on the review of the exemption for the profits resulting from his activity as cardiologist in the ZRU. Reminding the tax authorities about the request he had made in February 2004, the cardiologist asked the tax authorities to abandon these rectifications. The administration acknowledged the fact that there had actually been a request for a decision, but since said request had not been made on the right form, nor sent to the service by registered mail as provided for in the tax procedure handbook

it had been rejected! Contacted by the requestor, the Mediator of the French Republic considered that the non-observation of these formal conditions was attributable to the administration and not to the taxpayer. In the presence of an undisputable request for formal decision, repeated in a second letter, and considering the financial consequences for the cardiologist, the administration must, according to the Mediator of the French Republic, propose to the cardiologist to regularise his request for decision, by sending him the foregoing form and indicating to him the conditions to respect.

Moreover, the letter sent to the cardiologist in February 2004 contained all the information enabling the administration to determine whether the activity was actually eligible for the scheme in question. Therefore, the administration should have informed him before he set up his business that the exemption did not concern liberal professionals but companies. The doctor could have chosen another location. In accordance with the conclusions of the Mediator of the French Republic, the directorate of taxes ruled in favour of a tax relief on the entire additional taxation.

### **Information deficit also for the employer State**

A lot of cases handled by the Mediator of the French Republic reveal how much civil servants themselves lack the information needed to do their work. This is the case for pension. A number of local authorities, especially small ones, are not affiliated to any management centre and have a few officials. These officials seem not to be trained to compile pension documents. The biggest problems handled by the services of the Mediator of the French Republic concern the lack of knowledge of rules by local authorities when





"State authorities must organise a simple access to the rules of law they enact. Providing and circulating legal texts are a public service mission the proper fulfilment of which the public service must ensure".

*Article 2 of law 2000-321 dated 12 April 2000.*

their officials are about to go on retirement. This applies especially to civil servants whose jobs had first been classified as "active category" then as "sedentary category", meaning that they cannot go on early retirement as was previously the case.

The same thing applies to long careers, mixed careers (private/public) and to the duration of six months in a grade during which the officials must have been in service

to benefit from pension benefits calculated for this grade. Thus, sometimes some officials go on retirement after spending five months and some days in a grade and cannot benefit from the pension granted to people in this grade.

This is a serious information deficit, especially since there is no going back once a decision is taken to remove executives' names from the book. Other cases illustrating the lack of information include that of

a retired soldier. He had worked in the private sector, and had regularly notified the pensions service about it. The pension service had ensured him that he had the right to accumulate his pension with the remuneration of his activity. But since the law had changed, and the retired soldier had not been informed about it, his military pension was suspended and he was ordered to reimburse the pension amount for the period in question. The Mediator of the French Republic intervened and obtained full remission of the excess amount, given the retired soldier's financial situation and good faith.

## WHEN THE HUMAN DIMENSION OF CASES ARE FORGOTTEN...

### **You cannot imagine the consequences!**

Beyond the irritation resulting therefrom, the absence of response may lead to serious financial losses for the user.

Within 20 months, Mrs N. had written seven letters in vain to the public prosecutor, asking for a copy of the report compiled by the Gendarmerie when her husband had died accidentally through drowning. Her lawyer had also intervened twice, without success. His son had gone personally to the law courts but could only obtain a

promise of response within eight days, but then no reply was received after three months! She needed these documents to receive the life insurance taken out by her husband. This case was settled thanks to the intervention of the Mediator of the French Republic: one week later, Mrs N. received the required document. The absence of a response may have yet more serious consequences on people in a precarious situation. This was reported by one of the delegate Mediators of the French Republic. In November 2004, Mrs

D. submitted for her three children an application for French citizenship certificate at the office of the clerk of the court of first instance. As her file was considered as complete, she was issued with a receipt for the application. In January 2007, after several requests at the office of the clerk of the court of first instance, Mr D. reported her situation to the Mediator of the French Republic. Since the content of her file was convincing, a letter was sent to the clerk of the court to obtain information on the situation of ►

- this application filed more than two years ago. Early April 2007, a new letter was sent since no reply had been received, even after several phone calls to the court clerk. Four weeks later the clerk replied that such files were submitted to the Justice Minister for approval before being examined further. The services of the Mediator of the French Republic are still waiting for a reply from the ministry...

Administrative services sometimes seem to totally neglect the consequences of their malfunction. Although to err is human, it may sometimes put the user in an extreme situation and make him or her a victim of a blind system. The case of Mrs P. speaks for itself. After her husband had died, the civil status office of her town council made a mistake on the death certificate by failing to indicate the right place of birth. Since she had been unable to accomplish the normal formalities so as to regularise her situation at her bank and the national pension fund due to disparity between the information held by these organisations and her husband's death certificate, Mrs P. filed a rectification application with the town council. The civil status of the N. town council recognised its error and on 23 July 2008 sent a request for rectification of this certificate to the public prosecutor at the court of first instance. In the absence of a reply to her request, Mrs P. referred the matter to the Mediator of the French Republic on 22 August 2008. The Mediator of the French Republic intervened immediately at the civil status office of the court of first instance. Mrs P.'s request was granted in the course of September 2008 and she could thus sort out the administrative formalities pertaining to the loss of her husband.



### **(Un)worthy of a Human rights country?**

The testimonies sent to the Mediator of the French Republic often reflect deplorable reception conditions at some prefectures: *"the conditions in which stay permit applicants are received at the sub-prefecture are unworthy of a Human rights country. To gain access to the immigration service of the sub-prefecture, you have to stand on the queue far before 06:00 in the morning, on the street, whether it is raining or snowing, to obtain around 09:00*

*one of the rare waiting ticket distributed everyday by police officers who are not bothered with the basic rules of politeness while talking to the applicants. The waiting then continues inside, until around 13:00, after seven waiting hours, an official informs you with a sorry smile that you have to come back because your file has not been processed... We went through this ordeal three times between June and October 2006, accompanied by our little daughter each time. This amounts to 20 hours of waiting*

*for zero result. Which French citizen would accept to wait that long to obtain an identification document?"*

Another testimony: *"For the past two weeks, my girlfriend has been sleeping in front of the prefecture in order to obtain a travel permit for her daughter who is a minor. My friend already holds a stay permit. Can you help us?"*

### **What is your fate if the computer does not have any trace of your identity?**

On 28 June 2007, the national health insurance office (CPAM) refused to renew the admission to medical help for Mrs X., aged approximately between 90 and 100 and living in a dependent old people's home (EHPAD). This decision was confirmed by the departmental commission on social welfare, on 12 October 2007, arguing that the resources of Mrs X., a beneficiary (since April 1990) of the pension benefits provided for respectively in

Articles L. 814-1 (old) and L. 815-2 (old) of the social security code were above the statutory threshold for admission. As a result, Mrs X. found herself all of a sudden without social welfare coverage through no fault of hers. This absence of social security coverage and the possible financial consequences thereof seem to be at the origin of a sudden interest shown for her person, whereas since 1948, when she had arrived in France, this person... had been inexistent! In fact, Mrs X., referred to as "amnesic X", benefited, since 16 March 1948 (date on which she had been admitted at a psychiatric hospital after being transferred from the Oran hospital where she had been hospitalised since 10 November 1947 following a collective prefectural order) from State social welfare support. She could not be registered with the national social security office since she did not have any identity. Neither could she benefit from the universal health insurance coverage

(CMU). Now, the pension benefits paid to Mrs X. entitled her to the benefits in kind of the health insurance scheme.

Therefore, the Mediator of the French Republic recommended to the health insurance office to propose some measures giving Mrs X. a permanent right to the benefits in kind of the health insurance scheme, regardless of the absence of any information concerning her identity. This request was heeded. The services of the Mediator of the French Republic comment the case of Mrs X. as follows: *"In this matter, considering the state of Mrs X., in the end she will benefit less than her old people's home from the solution proposed by the Mediator of the French Republic. Thanks to his action, he has thus made it possible for the administrations concerned to settle a matter which would otherwise have remained completely inextricable..."*

## **A SYSTEM THAT PROTECTS ITSELF EXCESSIVELY**

Obviously, some actions of the administration will not be changed through laws but through a change in attitudes towards the user. The user is too often regarded as a swindler. From a service beneficiary, the user turns into a suspect. Suspicion takes precedence over service. Sometimes,

everything seems to be done to avoid rendering the expected service, the first mission of public services. The first reflex is to place obstacles instead of finding the right solution. The attentive reception dreamed of by the Marianne Charter is lacking in a good number of services.

The mediator of the French Republic received several complaints from persons who are unable to provide a copy of their birth certificate since it had been destroyed, especially, after some conflicts. This is the case of Mrs L. who must go to the United States for professional reasons. She ►



- had to urgently apply for renewal of her passport and, thus, went to the civil status office of her town council with her parents' family record book, attesting to her birth in Guinea, in 1957, her national identity card, an attestation from the Foreign ministry to the fact that the civil status register for the year 1957 in her local district had been destroyed at the country's independence, and her old passport.

*"For the user, a change in attitudes may be as important as a change in laws".*

*Mediator of the French Republic*

The town council refused to register her request, requiring her to produce a copy of the birth certificate that she cannot obtain. A first attempt by a delegate Media-

"The Mediator of the French Republic may ask the relevant Minister or authority to send him all documents and files concerning the case under review. Such requests may not be refused on the grounds of secrecy or confidentiality except in the case of secrets pertaining to national defence, State security or foreign policy".

*Article 13, law 73-6 of 3 January 1973 13.*

tor of the French Republic was again met with the obstacle placed by the local authority, which maintained its refusal to forward Mrs L.'s file to the prefecture. Mrs L. then referred the matter to the head office of the Mediator of the French Republic, which intervened at the town council and prefecture. One week later, Mrs L. was issued with a new passport. It is noteworthy that prefectures may issue a new passport in case of emergency, if they deem it justified by the conditions.

Furthermore, the services of the Mediator of the French Repu-

blic are sometimes contacted for demands pertaining to real problems of document preservation by the administrations concerned. In this case, their action consists in helping in the search by the complainants for the evidence necessary for the defence of their rights. Here too, the administrations concerned are asked to perform the checks and investigations required to establish the truth, and to send to the Mediator of the French Republic each document or file, in keeping with Articles 12 and 13 of the law of 3 January 1973.

## THE STATE, A BAD PAYER

The help of the Mediator of the French Republic is often sought concerning payment deadlines involving the State and local authorities, both for the execution of a court decision on financial matters or payment for public works giving rise to the payment of interests that aggravate the local authority's debt.

Regarding the payment of fines imposed on public authorities, Decree 2008-479 of 20 May 2008 has created a new regulatory framework. Its major innovation is the reduction from four to two months the deadline given to the State and local authorities to issue the order to pay the sums they are condemned to pay by a court decision.

Thus, a local authority had been condemned through a ruling of 12 June 2006 to pay a transport com-

pany a sum plus interests at the official rate. The local authority filed an appeal against this ruling. Despite an official notice by the company's lawyer, followed by a request for immediate registration of the debt with the department's prefect, this debt remained unpaid. In accordance with Article 11 of the law dated 3 January 1973, the Mediator of the French Republic enjoined the mayor of the town to pay the amount owed as quickly as possible. By imposing on its suppliers very long payment deadlines (close to one year instead of 45 days!), the administration put them in extremely difficult situations which might lead to bankruptcy. We should not forget that during this period, the company not paid by the State must pay lateness penalties for

taxes and social security contributions not paid within the stipulated deadlines due to lack of income. Although some administrative services cite lack of allocation as justification for their debts, we ought to underline here that they are responsible for their organisation. Therefore, it is their duty, if required, to ask their tutelary ministry for their budget allocation in relation with their public service delegation agreements.

A company entrusted with removing and impounding vehicles testified about these difficulties. The company N. had encountered some difficulties obtaining regular payment for its services by the prefecture of a department within the framework of the service delegation agreement signed with the State on 10 May 2007. By the end

of September the payment arrears for invoices issued since December 2007 had amounted to more than €120,000. The company had been able to cope with the payment of salaries, but had been unable to pay the required social security contributions, thus aggravating the lateness penalties payable to the social security organisations, and threatening the sustainability of the company.

In October, the company then referred the matter to the Mediator of the French Republic. This latter intervened at the prefect so the invoice of December 2007, amounting to €20,496.60, could be paid urgently. He also sought the help of this authority to obtain an additional delegation from the Interior Ministry in order to settle a substantial part of the debt to repair companies in this department. Since then, several payments have been made into the company's account.

In Paris, a temporary employment company contacted the Mediator of the French Republic to put to an end the failures by various health and public assistance organisations of the Paris hospital to pay the invoices for the costs inherent in the provision of their temporary workers. In fact, despite several unheeded reminders and orders to pay, these organisations were owing it approximately two million euros by the end of November 2007.





- At that time, the company had had to borrow money to pay the temporary workers in question and was filing a petition for bankruptcy. While presenting the expected payment details, the manager of the company wanted the delegate Mediator of the French Republic to help sort out the situation with the director of the debtor hospital. Considering that individual interventions in ten hospitals would not guarantee the success of the intervention, the Mediator of the French Republic decided to report this malfunction to the Director general of public assistance – Paris hospitals. In a letter, the Director general assessed the seriousness of the situation and took measures to have the owed amount paid quickly.

The handling of the case pertaining to the “*indemnification of deportation orphans and victims of despoliation resulting from anti-Semitic laws applicable during the occupation period*” and “*indemnification of victims of barbarian acts during the Second World War*” are also affected by serious delays. The amounts at stake probably has something to do with it: over 100 million euros budgeted for 2009. The law is applicable since it exists, but the delays are due to the hesitations as illustrated by this testimony made by a service of the Mediator of the French Republic: “*Out of the 19 cases handled in 2008, we have received two positive replies [...]. Concerning the*



*other cases, five of them (loss of parents who were victims of anti-Semitic persecutions or killed due to resistance) we have not yet received any replies, whereas they had started being examined more than one year ago. The demand was rejected for seven*

*of them, since the circumstances surrounding the death of the parents during the war had not been recognised as barbaric acts. As for the last ones, they are awaiting the prime minister's decision or a possible amendment of existing laws”.*

The Mediator of the French Republic may, in the event of failure to execute a court decision which has acquired force of *res iudicata*, enjoin the body or organisation concerned to comply with the decision within a period stipulated by himself. If this injunction is not complied with, non-execution of the court decision shall be the subject of a special report presented in accordance with the conditions laid down in Section 14 and published in the *Journal Officiel*”.

Article 11, law 73-6 of 3 January 1973.

## LEGAL INSECURITY IS DEVELOPING

The fundamental Human rights charter, adopted on 7 December 2000 by the European Union, provides that respect of Human rights shall be part of the standards imposed on the administration and determine the legality of its acts. The “right to a good administration” proclaimed by this Charter is also based on the notion of legal security. The objective is to protect citizens, among others, against the inconsistencies or complexities of laws and regulations, or their too frequent changes, which are sources of legal insecurity. The principles of security and the corresponding requirements guarantee good administration as they protect citizens against the risks inherent in misunderstandings, misinterpretations, discriminations and administrative errors, with the resulting trail of complaints, disputes and inequalities. The legal security requirement also confers more protection on the fundamental freedoms, *via* the “backstop”. In accordance with this principle, the legislature may only question public-freedom-related situations within certain limits. Thus, it would be possible to bypass the non-retroactivity of law, except in case of important reasons of public interest. In France, although no provision explicitly guarantees legal security and good administration, it is important to underline

the fact that the preamble to the Constitution and its reference to the Declaration of Human rights, whose Article 15 institutes the right for society “*to ask for an explanation from any public official of its administration,*” is an integral part of constitutionality. An entire set of rules and standards tends towards legal security, yet legal insecurity may manifest itself in different forms as illustrated by the case below.

### **Delays in processing can put people in situations of legal insecurity**

Without identity card, without passport, deprived of civil status, citizens may find themselves in situations of insecurity. For months or years, it may be impossible for them to move freely outside the country. This type of legal insecurity is not rare for some French citizens born outside Metropolitan France. This is the case for French citizens of Mayotte origin who sometimes cannot obtain their civil status document before two years. In 2008, the Mediator of the French Republic intervened twice at the civil status review commission, in Mamoudzou, to speed up the issuing of rectified birth certificates required by the complainants to renew their national identity card or passport. Generally, in case of particular

difficulties, the central office of the civil status service may be led to seek the opinion of the public prosecutor of the court of first instance of Nantes. In this case, the delay is longer. In fact, the average processing time then changes to 24 months, considering the number of cases submitted to this court. What then will be the case when it takes over responsibility for DNA tests, as provided for in the law of 20 November 2007? The more or less long delay in visa delivery, for which the consular authorities have considerable decision powers, is also a source of legal insecurity. In this field, the principle is that if the administration fails to reply within a period of two months, this should be considered as an implicit refusal. Now, the different cases handled by the services of the Mediator of the French Republic have shown that the administration cannot reply within two months, unless it is all about an implicit rejection decision.

The problem is particularly manifest within the framework of visas issued for family reunion. Even if the prefect approves said family reunion, the issuing of the visa may be delayed. In case of refusal, the requestor has two months to appeal to before an appeal commission. However, if this commission decides in favour issuing a visa, ►

- the minister is not obliged to respect this decision... In this case, the requestor may take the matter to the Council of State within two months, starting from the date of this decision.

**When the administration itself restricts – or widens – the legal application fields**

Some administrative behaviours, disregarding the hierarchy of standards and the fundamental role of

the law, contribute to the development of a feeling of arbitrariness among users. One of the recurrent malfunctions concerns town councils. They require from users more documentary evidence than stipulated by the regulation when these latter request for a national identity card or passport. Although the regulation is very clear about the documents to ask for, the town councils where the applications are submitted and the prefectures that

examine these applications tend to add other conditions. This may be a source of further and unjustifiable difficulties for the users. A simple example: the regulation does not absolutely require that the copy of a birth certificate be less than three months old; this document, by its nature, is not supposed to have a duration of validity, as affirmed by the Interior ministry to the services of the Mediator of the French Republic. This same ministry has undertaken to remind town councils, prefectures and sub-prefectures that, even as a precautionary measure, they should not fix some conditions that do not exist in laws. Some town councils even go farther than that, rejecting telephone bills or rent receipts issued by private lessors as proof of domicile.

Users also encounter administrative practices not justified by law, in the field of taxation, especially tax credit for home equipment. Note that a law cannot be retroactive but the administrative instructions thereon may lead to retroactivity due to the conditions they contain. This is the case of Mr and Mrs M. They had sought the opinion of the tax authorities on the eligibility of an air/air heat pump in their main home for tax credit, in accordance with the equipment-related expenses provided for in Article 200 of the general tax code. The tax authorities had communicated to them the decree of 12 December 2005, applicable on the date of request, which defines the technical characteristics required to benefit from the tax credit, then rejected their request based on an instruction of 18 May 2006, which required for the first time that all the rooms in the house be equipped. This instruction adds a condition not contained in the law or in the decree of 12 December 2005. Since the law and decree are the only sources of law which can be used as evidence against taxpayers,



this instruction seemed illegal to the Mediator of the French Republic, and its application by the tax authority constituted a malfunction that justified his intervention.

Finally, the administration did not apply this instruction. The Mediator of the French Republic also used the opportunity to draw the minister's attention to similar anomalies, whereby tax administration wrongfully restrict the application field of a tax credit.

### **When the administration says yes, then no**

The Mediator of the French Republic handled a number of cases in which requestors had to deal with a change of opinion by the administration, very often without their being notified about it in advance, resulting in a restriction of rights they thought had been granted, and in complete incomprehension of these U-turns not always justifiable by law. It has to be underlined here that the user is supposed to legitimately have confidence in the action of the administration. When this latter has taken a decision on a user's case, it should not change its mind. Yet it does so quite often, causing legal instability with all the inherent risks.

It is noteworthy that legal security implies precise elements, without change of situation between the time of request and the time, some months later, of administrative

control. Nevertheless, the taxation section of the Mediator of the French Republic has had to handle several cases illustrating this type of legal insecurity. Although appeal is not possible in terms of indirect taxes, the Mediator of the French Republic intervened several times to defend, in the field of law, the idea of rescript, as illustrated by the case of this brewery: in 2005, Mr B., a manager, had within the scope of the production and sale of a new alcoholic drink, asked the General Management for Customs and Indirect Taxes (DGDDI) for its opinion on the applicable indirect tax. Based on the information given to him and analyses made by its services, this directorate had informed Mr B. that the new drink was not liable to the so-called pre-mix tax, provided for in Article 1613 B of the general tax code. In 2007, the Customs investigation service reversed its position, arguing that the drink was not wine but a wine-based drink. It also accused Mr B. of providing incorrect information about the drink in question. Result: an order to pay the sum of €2,685,794. When this case was referred to him, the Mediator of the French Republic reminded the tax administration that in the absence of proof of the inexactitude of the information provided during the request for rescript, a change in the composition or method of producing the drink, the DGDDI did not

have any right to collect the tax. This opinion was heeded, because the brewery benefited from the tax rescript procedure provided for in Articles L. 80 A and L. 80 B of the tax procedure handbook. The prior opinion-seeking procedure, respected by the brewery, actually constituted a rescript.

It should be noted, though, that the administration has the right to withdraw individual decisions giving rise to entitlements, within four months if such decisions are illegal. However, even when they are fully legal, these withdrawal decisions can have some damaging consequences for complainants. Two examples: one concerning a student's scholarship request, and the other in field of town planning. A scholarship amount, granted to a student nearly four months earlier, was withdrawn from the student's account. Since the scholarship amounted to €2,170, which was a very big sum of money for a student, and since the administration had acted very late by issuing a reimbursement order almost after the four-month deadline, the student, ►

Rescript is an administrative act issued in writing by an authority in its own field of competence, which gives an answer to a question asked by an individual or corporate body.





- not well informed about his rights might be extremely penalised. After the intervention of the Mediator of the French Republic, the administration of the Education ministry accepted to re-examine the student's case. Another example: some buyers had signed the final bill of sale in view of the valid town-planning certificates declaring the building of a home possible. Now, these town plan-

ning certificates were affected by withdrawal orders due to illegality within the authorised deadline, and the buyers were then informed that the property they had just bought was in reality unconstructible. Although, in keeping with the administrative jurisprudence the acquisition charges, loan charges, and fees payable for compiling mortgage guarantees and bank guarantees were reimbursed,

the buyers found themselves with a sum of money tied down on a land on which it was not allowed to build a house and which may be difficult to sell...

Finally, it is important to point out the fact that in the face of errors which may be committed by social security organisations, there are amicable procedures for compensating for losses suffered by insured parties. The responsibility of these organisations cannot be assumed voluntarily, and a jurisdictional decision has to be sought to prove the fault and losses. An example: for health insurance, a medical examiner may declare a person fit to resume work. If a health insurance office fails to notify said person about this and continues to pay the cash benefits, since the beneficiary did not receive any notification, he or she cannot notice the error, contest the decision or resume work in accordance with the doctor's decision. If six months later the health insurance office orders the beneficiary to reimburse the excess payment he or she had received for six months, arguing that it has a medical certificate on work resumption, the insured party is obliged, even if the health office recognises its mistake later, to take the matter to the social security tribunal (Tass) so the error of the health insurance can be recognised and it be condemned to pay damages.

### **When administrations keep passing the buck**

Sometimes, users are sent from one administration to the other, which still implies solving the problem encountered by the constituent. Tossed back and forth from one service to the other, this latter finds him/herself in a situation of complete legal insecurity regarding the handling of his or her case. The services of the Mediator of the French Republic had had to handle



the complex case of Miss J., who had some difficulties obtaining the transcript for a judgement made in an exequatur procedure (transcribing into French law a judgement rendered in a foreign country). In a ruling of 2 October 2002, a French court of first instance pronounced the *exequatur* of this simple adoption ruling. In a letter dated 19 May 2004, the central civil status service of Nantes (SCEC) was requested to record this decision in their registry. In a letter of 25 May 2004,

the SCEC informed Miss J.'s lawyer that transcription formalities would only be started upon the request of the public prosecutor of the court that had made the ruling. In a letter dated 1<sup>st</sup> June 2004, the lawyer sought the intervention of this court. On 23 June 2004, this magistrate replied that he was not empowered to take this decision, and that the SCEC should refer the matter to the public prosecutor of Nantes instead. When the SCEC was contacted again, it reaffir-

med its previous decision. In 2008, since her request had not yet been heeded, Miss J. sought the help of the Mediator of the French Republic. After a particularly in-depth examination of the file sent to him, and after consultations with the public prosecutor of Nantes and that of the court contacted initially, the Mediator of the French Republic informed Miss J. that this latter had instructed the SCEC to transcribe the decision of 2 October 2002.

## APPEAL DEADLINES TO BE CLARIFIED

A number of complaints handled by the Mediator of the French Republic show the constituents' poor knowledge of appeal deadlines and formalities. To help clarify the deadlines and formalities for appeal against administrative decisions, the services of the Mediator of the French Republic have analysed the different appeal channels available. In addition to the traditional two-month deadline for filing an appeal against an administrative decision,

this analysis also highlights the fact that some laws require that a prior appeal be lodged with the administration; compliance with this obligation is a condition of admissibility of the appeal. Unlike the optional appeals, prior administrative appeals are subject to varying deadlines (from five days to one year). This large diversity may result in a certain confusion. Although these obligatory prior administrative appeals may save users some costly litigation procedures, any error concerning the deadlines they are subject to will force the requestors to abandon their claims.

Therefore, it is apparently necessary, in the users' interest, to inform them better on the procedures to follow and to tend towards

more harmonisation of the prior deadlines and conditions, bearing in mind the constraints inherent in the diversity of the situations. ■



A summary table of these different cases is accessible on

**WWW.MEDIATEUR-REPUBLICQUE.FR**

## Yes, good administration is possible

### LEGAL COUNSELLING CENTRES: A GOOD INITIATIVE UNDER THREAT?

Striving strongly for better access to law, as shown by the presence of his delegates among 44,000 detainees, the Mediator of the French Republic is also highly in support of developing legal counselling centres.

Created by the law of December 1998, the legal counselling centres (MJD) see to the “existence of a local legal counselling centre to help prevent crime, assist victims and provide access to law”. They enable the general public to meet conciliators, jurists, Cimade representatives, as well as delegate Mediators of the French Republic, available in 94 of the 170 existing legal counselling centres. Placed under the aegis of the chairman of the court of first instance, their office hours must be “organised so they can listen to, inform and

direct the general public, as well as assist it in its administrative procedures”.

What is the situation ten years later? Their legal access mission is today highly weakened by budgetary restrictions, unless the regional authorities decide to take over from the State...: closure for several months in a year, reduction of opening hours, restriction of telephone, mail or internet access (that's the limit, when you are supposed to provide quick information to users!): so many shortcomings which fully contrast with the legislator's wish.

So, whereas people are wondering how to bring help to difficult neighbourhoods, it is necessary to reconsider the means and resources required for the MJDs' prevention and conciliation roles.



Legal access is not the same for all, and this is a growing tendency. In fact, other legal counselling centres are being developed, on local authorities' initiative. Public service centre, conciliation centre, mediation centre, legal access centres: all these legal access points (PADs) often reflect another reality: richer towns have better PADs. What about the ones with the most modest means, and most often in the most difficult neighbourhoods?

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

1. Facilitate users' access to services;
2. Receive them attentively and courteously;
3. Reply clearly and comprehensively within a fixed deadline;
4. Process complaints systematically;
5. Record users' proposals to improve the quality of public service.

*Press release of January 2005.*

### COMMENDABLE INNOVATIONS AND INITIATIVES

#### Exemplary reception priority

When an administration no longer makes out time to listen or reply to a citizen it immediately creates a feeling of injustice. Some social welfare organisations are fully aware of this and have started creating internal structures for receiving the general public, or mediation structures, so as to cor-

rect the drifts of “non-reception”. The use of adult relays, initiated by the social security office (CAF) of Seine-Saint-Denis, appears to be a very interesting initiative for all. This CAF, which the Mediator of the French Republic visited in July 2008, tries to receive and listen individually to beneficiaries, despite limited resources, with the

help of a local network of volunteers.

A saving solution in neighbourhoods where a large proportion of the population depends on the minimum social welfare benefits. We also have to commend the efforts made to introduce data-processing tools capable of processing 280,000 files.

*“Reception is time saving and money saving”. This is what motivated the CAF to decide to innovate with these “adult relays”. It saves time because misunderstandings and questions raised are*

handled as quickly as possible, before they give rise to complaints and disputes. It is money-saving because well handled cases prevent excessive payments and save the resources invested later to...

recover them. It is also a success because with this innovation, the CAF assumes in an exemplary manner its desire to better play its public service role. It is all about choosing priorities in relations with the general public: a choice which is based on local awareness and the desire to adapt.



*“Huge progress has been made in terms of the information right provided for in the law of 2003”.*

*Danièle Karniewicz, Chairman of Cnav – the national pension fund.*

Similar efforts are made at the prefecture of Seine-Saint-Denis, sometimes subject of excessive criticisms. The improvements made already by the prefect and his officials to reduce and make the waiting time less uncomfortable for the general public, as well as the planned improvements, show a real desire for progress. However, the Mediator of the French Republic insists on the fact that in the departments faced with such a specific situation as in Seine-Saint-Denis, prefects should have a breathing space in the use of human and financial resources, which is an essential condition for providing a public service really adapted to reality. ►



► **These progressive organisations...**

Even if the progress made differs considerably from one department to the other, a number of developments ought to be commended. Thus, the information efforts made by the tax administration, with better communication and more transparency on the complaint-lodging procedures and means, were taken to another level in 2008 with the processing of fines. The services of the Mediator of the French Republic underlined again, in 2008, the very positive and almost immediate effects of providing better information to users. For long, the handling of fine-related complaints had been resulting in an influx of complaints at the Institution of the Mediator of the French Republic. After many interventions, this latter obtained that a reminder letter be sent to the offender before taking proceedings for non-payment. The impact was immediate: a fall in the number of fine-related complaints handled! Furthermore, a number of organisations have created conciliation and complaint-processing structures. A typical example is the “customer” service of CNAV, the national pension fund, and its network of regional health insurance offices (CRAM), the “conciliation mission” of the national health insurance office (CNAM) and its network of “conciliators” in the State health insurance offices (CPAM), the UNEDIC and its network of correspondents at ASSEDIC (the organisation managing unemployment contributions and payments), the national social security scheme for liberal profes-



sionals (RSI), which has just set up a network of correspondents... Also noteworthy is the fact that some websites provide precise, up-to-date, complete and comprehensible information. This is the case of the pension scheme of local authority employees (CNRACL). The page “*right to information*”, concerning pension-related rules, merits to be known not only by the officials, but also and especially by the employer local authorities! Moreover, we also wish to highlight the progress made pertaining to the Légifrance, GIP infoRetraite (retirement-related information), Cnav- Assurance Vieillesse (old-age insurance), Ameli

– risques professionnels (professional risks) websites...

**Working together successfully**

It happens regularly that the decision of one organisation has some consequences on the benefits paid by another organisation. This is a frequent case encountered by the services working in related fields, such as the CAF, ASSEDIC, and tax administration. These three organisations are improving their systems by sharing a certain amount of data, and sometimes, a solution is found by examining a situation together. Throughout his career, Mr C. had worked with the same employer,



from 1974 to 1994. But this latter had been affiliated to the national health and pension scheme up to December 1986, then to the farmers' scheme. The party in question, who had had his pension entitlements calculated, as of 1<sup>st</sup> July 2001, by the farmers' scheme (MSA) and the regional health insurance office (CRAM), complained of the penalising effects of the change of affiliation scheme by his former employer on the total amount of his basic pension. In fact, since Mr C. had contributed to both schemes in question, each scheme had calculated, in accordance with the existing regulation, the pension amount payable based on the salaries of the best eighteen years in each scheme.

Considering that the contributions made from 1974 to 1986 to the national scheme should be transferred to the farmers' scheme, Mr C. took some proceedings in vain and in the end sought the help of the Mediator of the French Republic. After very many exchanges with the different partners concerned (MSA, CRAM and URSSAF) and their national office, an agreement was finally reached in order for the contributions collected by the national scheme to be transferred to the farmers' scheme so Mr C.'s pension entitlements can be calculated based on his single career, which reflects the reality since he had always worked with the same employer!

### **Partnerships with the Mediator of the French Republic**

The Institution of the Mediator of the French Republic signed some agreements with a certain number of organisations, which have helped considerably to improve relations both with users and the services of the Mediator of the French Republic. The Mediator of the French Republic is, therefore, pleased with the excellent cooperation relations noticed among a number of organisations making it possible to handle quickly and effectively the complaints lodged with him. If possible, exchanges are facilitated through telephone contacts or by e-mail, thus speeding up complaint-handling processes. In 2008, the Mediator of the French Republic signed an agreement with the secretary general of the government for a partnership with the French Documentation service. This service is, among others, in charge of the site «service-public.fr». This French administration portal presents, among others, a series of records and questions-answers, with the possibility of asking a new question there. The French Documentation service wished to work with

the services of the Mediator of the French Republic because, although most questions concern standard information requests, others reflect some recurrent administrative malfunctions for which the Mediator of the French Republic can bring in his opinion and experience. At their first meeting, immediately after taking up office, Jean-Marie Delarue, the general controller of prisons, and Jean-Paul Delevoye thought it was necessary to formalise their relations by fixing in an agreement, the modalities of exchanging useful information between both institutions. This will be the case, for example, when a complaint does not fall within the field of competence of the first authority it is referred to and has to be channelled further.

As their role gets known to the general public, delegate Mediators of the French Republic are increasingly contacted for disputes concerning towns as well. A good number of mayors are today aware of the importance of the flexible and field-oriented mediation of delegate Mediators of the French Republic. Since they often give priority to solutions of good practices, they help reduce ►

*"When it appears to the Mediator of the French Republic that the application of a law or regulations results in injustice, he may suggest such modifications to the law or regulations as he deems fit".*

*Article 9 of Law 73-6 dated 3 January 1973.*



- tension and defuse clashes. A very good number of examples illustrate the effectiveness of this partnership approach.

In Corrèze, a delegate Mediator of the French Republic brought to an end a 23-year dispute by organising a consultation meeting. In Haute-Marne, a solution was found for a landlord who contested the amount of his participation in the cleaning up exercise. By going to the site in the Hautes-Alpes, the delegate Mediator of the French Republic stopped a persistent and unjustified complaint. In Mayenne, the mayor and the delegate Mediator of the French Republic joined forces to convince EDF to end a dispute with a citizen, by accepting a practical solution...

### **An “activator” of good practices**

#### **→ UNEDIC TAKES A FINAL DECISION IN FAVOUR OF PEOPLE UNDER THE JOB SUPPORT AGREEMENT (CAE)**

Sometimes the work done jointly by the services of the Mediator of the French Republic and some organisations help to end some recurrent problems. A typical example is the case of ASSEDIC. This started with the case of Mr G.: after his CAE in a hospital, from 16 October 2006 to 15 April 2008, Mr G. was refused his unemployment insurance benefit. In fact, the hospital referred to the contract of affiliation to the special unemployment insurance scheme, signed with ASSEDIC on 6 December 2005. This agreement provides that in case of termination of the CAE implemented at an employer's, who bears the cost of the unemployment insurance, the employees shall be indemnified by ASSEDIC. Therefore, his former employer argued that since it had contributed to ASSEDIC in accordance with the agreement, it was the duty of this organisation to pay the unemployment benefit to Mr G.. ASSEDIC, on its own part, refused to pay said benefit, based on the stipulations of Article 6 of the

above-mentioned agreement, which provides for the payment of unemployment insurance benefit only for contracts ending before 31<sup>st</sup> December 2007. Since his CAE had ended in 2008, this organisation considered that it did not have to pay...

Thus, no organisation seemed to be able to pay Mr G.'s benefits... When the matter was referred to the Mediator of the French Republic, he placed the user at the centre of the mediation work he wished to do. Result: UNEDIC has decided that the unemployment insurance benefits of persons working under the CAE and who had been affiliated for one year as of 31<sup>st</sup> December 2007 would be payable by ASSEDIC, even if the contract had ended after this date. Taken on 31<sup>st</sup> July 2008, this decision to modify the termination modalities of this agreement of 6 October 2005 was confirmed through the instruction sent to the entire ASSEDIC networks. They must contact public employers who had been affiliated to the special unemployment insurance scheme introduced by the agreement of 6 October 2005, and retrieve all the files of former employees who had been sent a rejection letter... The services of the Mediator of the French Republic is pleased that its good relations with ASSEDIC has helped to solve this problem once and for all, all over France.

### **Exchanges and proposals with the CNAV**

The agreement signed with the CNAV has resulted in very fruitful work, not only in terms of individual complaints, but also in terms of laws and regulations. In the field of pension, in 2008 the Mediator of the French Republic made a certain number of reform proposals which could be formalised thanks to rich exchanges between the Institution and the CNAV (*see the part Retirement in Chapter 3, page 60*).

Going beyond laws to bring constituents back to the right legal track  
Victim of a work accident on 16 June 2000, Mr A. was issued a certificate of consolidation by his doctor, on 17 January 2002. The medical examiner at the health insurance office approved this consolidation, but fixed the partial permanent disability rate at 0%. Since Mr A. had been notified about this decision on 3 October 2002, he contested it before the amicable settlement board (CRA) which on 3 March 2003 confirmed the decision of the national health insurance office (CPAM). He then took the case to the court in charge of disability-related disputes (TCI), which, on a ruling made on 22 April 2005 after expertise, stated that the consolidation was neither granted on 17 January 2002 nor on the day of the expertise and asked him to refer the matter to the insurance office upon consolidation of his state. So, underlining the fact that his letters to the health insurance office had remained without reply, he sought the help of the Mediator of the French Republic. The CPAM contacted indicated that on 29 April 2003, Mr A. had declared himself victim of a relapse of the work accident in question. However, this relapse had been rejected by the medical examiner, since, according to this latter, the lesions presented had been independent of the initial accident. Mr A. was notified about this decision on 5 July 2003. Whereas the usual appeal channel for a medical rejection is amicable expertise, the health insurance office indicated that this decision had to be submitted again to the decision of the TCI. The health insurance office then specified that, by a decision of 27 March 2007, the TCI had, on the one hand, rejected Mr A.'s request for qualification of relapse and, on the other hand, changed, after expertise, the decision of 22 April

2005 by declaring the consolidation effective on 17 January 2002 and maintaining the partial permanent disability rate at 0%.

Nevertheless, since the ruling had been vitiated by material error, a rectification procedure was initiated. It ended in a new ruling dated 4 March 2008, basically confirming the previous judgement. Today the ruling is final, such that notwithstanding the contradictory character of the two expert opinions made in relation to this matter, every legal avenue has now been used regarding the consolidation date of the initial work accident and the corresponding partial permanent disability rate. Moreover, since Mr A. had been on sick leave from 14 March 2004 to 13 March 2007 then placed under second-category disability since then, the existence of disability relating to the general state of Mr A. could explain the conclusions of the first expertise, nullified by the second one. In any case, this decision reveals a medical opinion which is, as such, outside the field of competence of the Mediator of the French Republic. However, recognising that the right track had never been offered to the insurance contributor, the health insurance office, with the consent of its medical examiner, sent Mr A. another rejection letter, thus giving Mr A. a new deadline to seek amicable expertise. The requestor is



henceforth returned to the right legal track, regardless of the long expired deadline.

### **Social rescript is developing**

For years, the Mediator of the French Republic has been underlining the need for “legal security” for all entrepreneurs, to avoid unpleasant surprises that may result in unbearable debts. The notion of rescript, initially implemented in the taxation field, applies to social matters since 1<sup>st</sup> October 2005. Social rescript enables a contributor, in his/her capacity as employer, to ask the URSSAF to give an opinion on his or her situation in view of the points

that often pose a problem. This procedure saves the employer any risk of tax adjustment later. The points which this request may concern are not fully enumerated by law. On 1<sup>st</sup> July 2009, this procedure will be extended, among others, to the social security scheme for liberal professionals (RST).

## ► HUMAN RESPECT AT THE HEART OF MEDIATION WORK

The mediation requests made by the Mediator of the French Republic, heeded by the authorities and resulting in a positive solution in favour of the complainant, show the importance of changing behaviours towards more respect for the individual, and of taking more into consideration his specific situation for which he is not necessarily solely responsible. In a good number of cases handled, it is not at all about departing from the law, but about being flexible in its application when a humane decision becomes necessary.

### Knowing how to take account of a set of clues

Mr R. exercised his right to supplementary pension on 1<sup>st</sup> January 2007. However, the period from 28 April 1968 to 16 February 1969, during which he had received daily allowances for a work accident, had not been validated by the organisation. After trying in vain to provide the proof of reception of the daily allowances, he referred the matter to the Mediator of the French Republic. An analysis of the file showed that the regional health insurance office (CRAM) had actually validated the period in question, since four semester had been calculated for each of the two years on the career statement. Then Mr R. produced proof of reception of daily allowances from 30 August 1968 to 17 February 1969, through the statement he had been issued with at that time by the national health insurance office, and thanks to the stub of the money order dated 23 January 1969 concerning the payment of the daily allowances from 7 November 1968 to 15 January 1969. Finally, all these four documents showed that the work accident gave him the right to indemnification dated 29 April 1968. Although Mr R.



was unable to produce an attestation for the daily allowances for the period from 28 April to 30 August 1968, it appeared logical that he could claim the daily allowances at the start of his sick leave.

The Mediator of the French Republic argued along these lines at ARRCO and asked for the period in question to be validated on presumptive grounds, which the organisation did and then reviewed Mr R.'s case.

### Honest citizens that ought to be listened to

Mr and Mrs T., bakers, had fallen victim to fraud. While Mrs T. was hospitalised, they had entrusted a counsellor with the management and organisation of the sale of their business premises. This latter had embezzled the entire amount resulting from the sale before disappearing from the country. Therefore, it was impossible to execute the sentence pronounce against him. This embezzlement placed Mr and Mrs T.

in a state of complete impecunioussity, preventing them from living normally. Without any savings, they were left only with their main home for which they continued to pay a mortgage. Since his retirement benefit as a craftsman was very low, Mr T., aged 73, was obliged to work at night as bakery help. In the sense of Article L. 247 of the tax procedure handbook, the couple was in financial difficulty and even poverty which might lead to their marginalisation if they had to sell the only property they had. Thanks to the intervention of the Mediator of the French Republic at the Budget ministry, they were able to obtain a relief for the amount they had been owing as income tax and social security contributions for 2000.

### Being more attentive to certain devastating effects

Miss R. was employed in May 1991 under an open-ended contract as caretaker with service accom-

modation. Fifteen years later, following an outbreak of fire in one of the flats in the building, Miss R. offered to temporary accommodate the person affected by the fire. Three weeks later, she asked her to move out, but this latter complained to Miss R.'s employer who dismissed her for gross misconduct. In its ruling, the industrial tribunal considered that the events did not constitute any real or gross misconduct and ordered the employer to pay Miss R. more than €27,000. Meanwhile, the employer had given Miss R. a notice to vacate her service accommodation, since she was no longer an employee. He obtained from the court of first instance her expulsion within two months and the obligation to pay €850 for occupying the flat! Saddled with debt, jobless, waiting for an imminent expulsion, with a dependent, 11 year old child, Miss R., with the help of her counsellor, requested several times for formal notification

and, thus, execution of the decision of the industrial tribunal.

Informed about this humanly unjust situation, the Mediator of the French Republic intervened at the industrial tribunal which then issued a notice of this tribunal's decision shortly thereafter.

In December 2006, Mrs J., aged over 60, received from the Defence ministry an arrears of military survivor's benefit amounting to €26,125. This sum corresponds to what she had been entitled to over the previous four years. However, this retroactive benefit penalised her considerably from the point of view of taxation and placed her in a particularly difficult financial situation, preventing her from living normally, since it generated an exceptional tax on the 2006 income. Had the benefit been paid to her regularly on their due dates, Mrs J. would not have been liable to tax. In addition to this tax, there were

also the council tax and television tax which Mr J. had been exempted from in the course of the previous years. In terms of social benefits the personalised housing allowance (APL) to which she had been entitled till then was cancelled.

Moreover, she had remained without income for more than one year, since her adult disability benefit had been stopped when she turned 60 and the survivor's pension benefit had been delayed... Without savings or patrimony and with €641.75 monthly income, Mrs J. found herself in a very precarious situation. The Mediator of the French Republic then asked the director of tax services in Mrs J.'s region to kindly re-examine her situation from a point of view of equity and on humanitarian grounds, insisting on the need to find a just solution to this humanly difficult situation. The Mediator of the French Republic also intervened at the social security office.

## WHAT IF WE CHANGED OUR MIND-SET?

Astonished, the services of the Mediator of the French Republic active in the field underline the spirit of suspicion which too often characterises the relations between the administration and its users. A closed world in which the procedures consists more in checking actions than helping in taking clear

decisions. Should the purpose of the public service not be to do everything to offer constituents the service they are entitled to? Even though massive processing has considerably improved the plight of a large majority, the principle of equality of rights should impose taking into account, in these same

extraordinary situations, some special cases in which the user alone must assume responsibility for errors not necessarily attributable to him or her. This calls for a different vision of things and a change of mentality. ■

At a time when new policies are taking shape, on retirement, minimum income, healthcare, etc.; at a time when the legislature is gradually taking account of big changes in society: excessive debt, guardianship, shared custody, mobility, etc; at a time when the consequences of healthcare-related tragedies, such as that of asbestos, are recognised, full attention should be focused on the implementation of political decisions. Now, it is regrettable that the sensation caused by some laws that raise much hope among the population ends up in dissatisfaction, deception or even anger. The Mediator of the French Republic strives for actual implementation of the lawmaker's decisions. There should not be any inapplicable law.

...

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# OUTLOOK FOR 2009

## POLITICS AT A STANDSTILL

### **Asbestos: a vague action by the government**

In return for a reduction in their lifespan, workers exposed to asbestos may benefit from a special early retirement scheme, the early retirement benefit for asbestos workers (Acaata), until they fulfil the conditions for full-time pension benefits. In reality, what do we see? Asbestos workers still suffer the same unequal treatment, depending on their schemes. Moreover, the lack of coordination of these different schemes is detrimental to workers with a mobile professional background. The Mediator of the French Republic has made reform proposals in this respect, which were reflected in his activity reports for the previous year. None of the relevant ministries (Health and Labour) has reacted to it. Moreover, the amendment proposing a harmonisation of the schemes in PLFSS 2007 has been rejected by the government... The report of April 2008, written by the working group on the reform of the system created on the government's initiative and presided over by Jean Le Garrec, has not been followed up. The 2008 social security law provided for some measures to rectify the conditions for granting the Acaata, but the application decree has not yet been published. As for PLFSS 2009, it provides for pure and simple cancellation of companies' contributions to the early retirement pension fund for asbestos workers (see also page 64).

### **Recognising foreigners' civil unions**

Unlike married couples, foreigners who have signed a partnership agreement in their country cannot have their union recognised in France. It is also impossible for them to sign a PACS since two foreigners wishing to conclude a PACS must present civil status documents issued by their country of origin and indicating that they are single! Which they are not. The proposal made by the Mediator of the French Republic in June 2008 received the support of the Justice minister. According to the Justice minister, *"in principle there is no obstacle against these partnerships being effective in France, provided they are in keeping with public order"*. The services of the Justice minister, together with the Mediator of the French Republic, worked out a rule on legal conflicts which tends to

allow the recognition and effectiveness of these foreign partnerships in France. However it is taking an eternity to take a decision thereon; the amendment submitted to the National assembly has been postponed, since it had been rejected by the government... Therefore, France is hampering the free movement of persons within the European Area.

### **Flat-rate income assessment: the Prime Minister must arbitrate**

Since March 2001, the Mediator of the French Republic has been drawing the attention of public authorities to the highly inequitable impacts of the system of flat-rate income assessment, applied to determine the right to family and housing benefits when the applicant's actual income for the reference year (i.e. year N – 2 prior to the request) is low, or even zero. This method leads to a fictitious income reconstitution which, for employees, consists in multiplying the salary for the month prior to the grant by 12. When this method is applied, some people, who due to their low income level the reference year, would be entitled to the maximum benefit amount are paid less benefits or even deprived of their benefits! The Mediator of the French Republic has recommended complete abandonment of this assessment method, and applying to everybody the common law rule which consists in taking account of the actual income made by the requestor in the period under consideration.

Since then, not only has there been no progress in this reform, but it has also been regressed! In fact, the flat-rate assessment has been confirmed by a decree. Savings made: 27.44 million euros. This situation resulted from disagreements between the ministries in favour of dropping the assessment method (ministry of social affaires and High Commissioner for solidarity) and those against it for financial reasons (Budget, Housing). The Mediator of the French Republic has asked the Prime Minister to arbitrate on that.

## Proposals made in 2008, to be followed up in 2009

### EXCESSIVE DEBTS: THE MEDIATOR'S PROPOSALS

In keeping with his commitment in terms of the fight against excessive debts, the Mediator of the French Republic has made several reform proposals to the relevant ministries. They aim to improve the effectiveness of the methods used to process existing excessive debts, in order to make both borrowers and lender organisations responsible, and give more support to excessively indebted persons by ensuring that they have a better social follow-up. Moreover, the mediator of the French Republic is currently reflecting on the modification of the attrition rate, with a view to reducing the interest rates applicable to the different loan categories,

especially those applicable to revolving credit.

The Mediator of the French Republic has called for a reflection on the consequences of having one's name on the national record of incidents of reimbursement of loans to individuals (FICP). In fact, the current system lacks consistency and readability, given that the durations of registration in the FICP vary according to type of procedure used. It is desirable that the duration of registration in this record be in accordance with the duration of the recovery plan, and that a debtor's name be removed from the record upon reimbursement of the due amount or, at least, that it be mentioned

that the debt that had led to the incident has been affected by the effects of expiry. Finally, credit organisations should be obliged to systematically consult the FICP before issuing a loan; this would encourage the development of responsible lending.

The Mediator of the French Republic is pleased that the report of the mission mandated by the Economic minister and the governor of Banque de France – the French central bank – and charged with reflecting on changes to be made to the FICP has taken into account his proposal to remove from it in advance the names of persons who, although they have only obtained a partial cancellation of their debts, have paid their debts in full, and those whose debt is extinct.



Improving the working of the FICP and the principle of lender's responsibility will be the focus of the draft law on the transposition of the European directive dated 23 April 2008 pertaining to consumer credit contracts. This draft law, prepared together by the Economic minister and the high commissioner for active solidarity, should redefine the law applicable to consumer credit. It is expected to be submitted to the Parliament by the end of the first quarter of 2009, and it is within this framework that the Mediator of the French Republic intends to defend his proposals. Moreover, the Mediator of the French Republic proposed, in June 2008, the automatic application of unattachable account balance (SBI). The decree of 11 September 2002 instituting the SBI allows anybody liable to an attachment of bank account to ask his or her bank to keep, for one month, a

maximum feeding amount equal to the monthly minimum social welfare allowance for a beneficiary, provided this amount is available in the account. Said person must make this request in writing at the bank within 15 days of the attachment. The purpose of the proposal is to make automatic the activation of the SBI upon attachment and without a prior request. The request by the account holder would have to be made within one month after the attachment. This measure has been reflected in an

*“Passive excessive debt is increasingly affecting the middle class, which notices more brutally than others a general reduction in their resources, especially employees, traders and retired persons”.*

*Éric Sander, Chairman of Cresus Alsace  
Chairman of the French federation of Cresus associations*

amendment by Jean-Luc Warsmann, chairman of the law commission at the National Assembly, within the framework of his propo-

sal on simplifying and clarifying the law and reducing the procedures, adopted in first reading by the National Assembly.

## **MEDICAL AND LEGAL EXPERTISE: FOR BETTER CREDIBILITY OF JUSTICE AND MEDICINE**

There are recurrent criticisms of the quality of medical expertise, especially when performed within the framework of a legal dispute, in which the credibility of justice and medicine is called to question.

An outcome of a collective reflection made with qualified personalities, including medical experts, the reform proposals submitted by the Mediator of the French Republic to public authorities concern each phase of the expertise procedure: selecting and appointing experts, giving them initial and further training, guaranteeing the independence of experts and impartiality of expertise, controlling the quality of expertise, actual

implementation of the principle of counter-expertise, remuneration of experts and the cost of expertise for the citizen seeking justice. Some of the proposals made are:

- Creating a national expertise commission in charge of compiling and managing a national list of legal experts, especially in the medical field;
- Requiring that the expert declare, prior to each appointment in a case, the absence of any conflict of interests;
- Instituting a legal incompatibility between the functions of a legal and medical expert and a medical examiner for an insurance company;
- Giving priority to the collegiality

of expertise in complex cases;

- Creating a real legal service for control of expertise operations within each court;
- Reinforcing the expert's right to access all information required for his or her mission, with more effective sanctions for any health-care establishment or professional failing to communicate the required medical information;
- Increased transparency and better harmonisation of fees, since the judge in charge of the expertise operations can make his or her own verifications. All these proposals were submitted to the Justice minister in July 2008, but no reply has been received till date. ►

## ► PENSION: A MISSED TARGET FOR 2008

The pension reform provided for a “big agenda” in 2008 to assess the overall implementation of the measures taken in 1993 and 2003. From the numerous individual complaints referred to him, from the recommendations of field observers and proposals of the national pension fund (CNAV), the Mediator of the French Republic compiled a set of reports and made about a dozen reform proposals (14 since 2005) in order to fully contribute to this national assessment. All these proposals were cited in the report entitled “The 2008 agenda on pension”, written by Mr Denis Jacquat on behalf of the social affaires commission of the National Assembly. The Mediator of the French Republic has grouped his proposals together around six major themes: calculating the average annual salary (AAS), survivor’s pension benefits, child-related increments in the national scheme, child-related bonuses in the civil service, extending the contribution periods, early retirement for long career. Some examples of proposal merit to be cited. Since the law of 22 July 1993, the AAAS is calculated using the best 25 salary years, but then only the full calendar years, from 1<sup>st</sup> January to 31 December, are taken into account, which excludes almost systematically from it the pension start year for which contributions are then made in vain. The Mediator of the French Republic has proposed to include in it the average salary the salaries received in the retirement year, if they are among the best years. Moreover, taken into account without distinction in the 25 best years are incomplete years (four quarters of contributions) and years disrupted by unemployment, illness,

maternity or part-time employment, provided a quarter can be validated, which brings down the overall average. There is a proposal to introduce a factor of proportionality for the incomplete years. Finally, the current calculation method penalises the workers that have contributed to the different schemes since the rule of the best 25 years is applied to each scheme according to the relevant duration of activity, which almost leads to retaining all the years for each scheme, including the least remunerated ones.

It is necessary that the best 25 years cover the entire career, including all the schemes. Another inequitable situation in the national scheme is denounced regarding fathers that have raised their children alone. The social security code provides that female insurance contributors benefit from an increase in the duration of their insurance by one quarter for the entire year during which they have raised a child, within the limit of eight quarters per child.

Male contributors are only entitled to an increase in the duration of insurance if they have taken a child-rearing leave, in which case the increment is equal to the duration of this leave. This principle is contrary to the principle of equal treatment between men and women. The court of appeal has had to take a decision in the case of a man who had produced evidence of having raised his children alone. The Mediator of the French Republic proposes to extend the increment in the insurance duration to male contributors that have raised their children alone and only one or more children. Finally, in the civil service, for children born or

adopted before 1<sup>st</sup> January 2004, male and female civil servants shall be granted a bonus, provided they produce proof of continued work interruption for two months within the framework of a statutory leave pertaining to the child. This condition, which corresponds to a maternity leave, is rarely fulfilled by men and even less by adoptive mothers for whom the leave for adoption only exists since 1978, or by female teachers who had put to bed during the summer holidays and who had not taken any statutory leave. Here too, the Mediator of the French Republic proposes that this injustice be remedied.

All the proposals were sent to the Labour ministry and other relevant ministries before July 2008. The Mediator of the French Republic has noticed that none of his proposals has met with any response from the public authorities. Unfortunately, the famous 2008 agenda, provided for by the law of 2003, will not result in any concrete important measure, and the examination of all the different pension schemes has been postponed to 2010, with the conclusions of the report by the POC (Pension orientation council), charged with presenting the impact of the solutions which would consist of an in-depth overhaul of the current system.

## **Pension: 14 proposals which have not yet produced any results**

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### **→ Early retirement / contribution period for ACCRE beneficiaries**

Proposal made in 2005, reiterated in 2008 – reply proposing a buyback of the periods in question

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### **→ Sharing the civil servants' survivors' pension benefits**

Proposal made in 2006, reiterated in 2008 – rejected or postponed till the 2010 agenda

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### **→ Bonuses for services taken into account while calculating the old-age pension benefits of female civil servants with one or more adopted children**

Proposal made in 2006, reiterated in 2008 – rejected or postponed till the 2010 agenda

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### **→ Survivors' pension benefits under the national scheme: making effective the distribution of the share of a dead beneficiary to his or her living beneficiaries**

Proposal made in 2007, reiterated in 2008 – reply on 7 August 2008 from the Labour ministry announcing the conduct of computer expertise on the problems encountered by the offices, but also mentioning a possible redefinition of the rights on an absolute prorata basis of the duration of the union within the framework of the 2008 agenda.

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### **→ Reviewing the survivors' pension benefits within the national scheme**

Proposal made in June 2008 - rejected.

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### **→ Increasing the duration of insurance for a father who has raised his children alone**

Proposal made in June 2008 - rejected.

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### **→ Calculating the AAS – average annual salary (last year and incomplete years)**

Proposal made in June 2008 - rejected.

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### **→ AAS for people with multiple pension schemes**

Proposal made in June 2008 - rejected.

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### **→ Validating the periods of vocational training internship (supplementary pension)**

Proposal made in July 2008 - rejected.

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### **→ Early retirement of some disabled civil servants**

Proposal made in July 2008 - rejected.

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### **→ Pension scheme of international cooperation volunteers**

Proposal made in July 2008 – positive response from CNAVTS has remained without any effect.

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### **→ Early retirement of part-time civil servants for long careers**

Proposal made in July 2008 - rejected.

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### **→ Increasing the insurance benefit of parents of disabled children**

Proposal made in July 2008 - rejected.

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### **→ Retroactive affiliation to the national scheme of military services made abroad or in the overseas territories before 1989**

Proposal made in July 2008 – positive reply from the Defence minister has remained without any effect.

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## ► SUPPORTING FAMILY MEDIATION: ENCOURAGING SHARED CUSTODY

Although included in the Civil code, thanks to the laws of 4 March 2002 on parental authority, and of 26 May 2004 reforming divorce, legal family mediation, which many observers and practitioners find quite positive, still plays a very marginal role in the handling of these conflicts. Considering the extent to which mediation can defuse family conflicts and encourage responsible custody-sharing while facilitating the work of family judges, the Mediator of the French Republic has made several proposals to generalise the mediation structure

The reform control committee: facilitating inter-ministerial decision-making.

res to each court of first instance by giving them the necessary resources and empowering family judges to firmly ask parents to reach agreements through mediation, in the interest of their children. Finally, the relevant magistrates and family lawyers ought to be made aware of family mediation, so they can get to know the advantages of mediation better and become partners in this process.

In his contribution to the work of the Guinchard commission on the distribution of litigation, the Mediation of the French Republic had presented different reform possibilities. Some

of them were reflected in the report sent by the commission to the Justice minister on June 2008. The Mediator of the French Republic has also sent this reform proposal to the Justice minister and to the Family minister and his State secretary. Both ministers have expressed their intention to work towards reinforcing family mediation, with a view to establishing communication and finding solutions favourable to children. These announcements are expected to be fulfilled in 2009. ■



See page 9 for the 28 reform proposals made in 2008.

The follow-up of the reform proposals made by the Mediator of the French Republic is subjected to active control, in various forms. The Mediator of the French Republic may use his own instrument, by asking the inclusion of a reform proposal in the agenda of an inter-ministerial committee in charge of following up his reform proposals.

The inter-ministerial committee thus encourages dialogue between officials of the Mediator of the French Republic and representatives of the ministries in question. It makes it possible to assess the progress of the proposals, to debate on their legitimacy and, if necessary, obtain the prime minister's arbitration. Nine reform proposals made between 2001 and 2007 were entered on the agenda of the inter-ministerial committee meeting of 22 January 2008.

## A more vigilant Mediator in 2009

### DISABILITY: SOME PROGRESS BUT STILL MUCH DISSATISFACTION

In March 2008, the Mediator of the French Republic was auditioned by the supervisory committee on disability policy, whose task is to compile a report on the concrete implementation of the disability policy and propose necessary readjustments. The Mediator of the French Republic was particularly attentive to this issue.

In 2006, he placed one of his delegates in each departmental handicapped people's home (MDPH). Moreover, within the framework of his mediation missions, the Mediator of the French Republic sometimes examines complaints from disabled persons or from their relatives or friends.

Although the law of 11 February 2005 on equal opportunities and rights, participation and citizenship of disabled persons has ushered in some progress, implementation difficulties are many and some adjustments still need to be made in the use of some new systems. The problems of disabled persons' access to employment remains a major source of concern. A lot of inconsistencies generate considerable obstacles in terms of disabled persons' return to work.

The finance law for 2009 has removed one of the obstacles, by doing

away with the condition of professional inactivity for at least one year in order to be able to be entitled to a disabled adults' benefits (AAH) for persons with a 50 to 79% disability rate. The Mediator of the French Republic had recommended this reform himself. Several cases referred to the Mediator of the French Republic highlight this other paradox: the increase in the salaries of disabled employees in work-based support establishments or services (ESAT), and resulting from the increase in the minimum wage, on the basis of which is calculated the "guaranteed payment" they are entitled to, may sometimes lead to... a fall in their overall income due to a decrease in their AAH which may be above the increment received!

Note that to the public supports ("integration allowance", "employment allowance", "recruitment premium", "flat-rate grants") is added a muddle of help offered by Agefiph... The Mediator of the French Republic is calling for an evaluation and simplification of these incentives and grants to ensure the same level of minimum income for all disabled persons, regardless of whether they are beneficiaries of minimum allowance or AAH with additional extras.

The education of disabled pupils and reception of disabled youths in the appropriate structures is a major issue underlined by the law of 11 February 2005. This is also seriously guaranteed by judges who henceforth penalise insufficient action by the State in this area. Despite all these, this aspect still gives rise to much dissatisfaction. Moreover, the problem of paying the transport costs for their disabled adults still persists for families. These issues will be monitored particularly by the Mediator of the French Republic in the course of 2009. ►

► **ASBESTOS: IT IS TIME TO STOP THE STUDIES AND TAKE ACTION!**

Every year, members of Parliament ask in the PLFSS for a reform of the early retirement pension scheme for asbestos workers (Acaata). An article was added through amendment to the social security funding law for 2007, stipulating that a decree should review the condi-

tions for granting this Acaata. Furthermore, two parliamentary reports, one report from the Inspectorate general of social affairs (IGAS) and one report from the working committee on the Fcaata reform, presided over by Jean Le Garrec, were devoted to an assess-

ment of the system of indemnifying asbestos victims. Nothing has been done to that effect. Two years after its registration in the PLFSS, the decree has still not been published! However, the level of this health tragedy is pointed out again in the Le Garrec report: 1,575 establishments are on the Fcaata list and 49,358 people benefit from Acaata. Auditioned in February 2008 by the Le Garrec commission, the Mediator of the French Republic again underlined the shortcomings and unjust impacts of the early retirement of asbestos workers, vitiated by two major flaws: unequal protection of the victims according to their insurance schemes or status, conflicting rules on coverage and lack of coordination between the schemes. Some special social security schemes simply do not cover the specific risk of exposure to asbestos and cannot be resorted to for Acaata. This is, among others, the case for civil servants (with a few exceptions) who are not eligible for this benefit. Although in such cases, they can be covered by their health insurance scheme, their treatment is more unfavourable. Employees that depend on the miners' scheme are also excluded from this system. Another inequitable situation is that of contract or temporary employees working in the listed establishments, but never taken into account... As for craftsmen and liberal professionals, their scheme does not provide for any compensation for occupational diseases!

When Acaata is provided for, the social security of asbestos victims is more or less extended according to the scheme in question. Some of them take into account the overall duration of the employee's exposure, while others content themselves with applying the period



during which the worker had been affiliated to their scheme... A lot of this type of differences create real inequality of treatments between asbestos victims.

Furthermore, each scheme independently creates its own coverage rules, which is a source of strong differences and lack of coordina-

tion between the schemes. The Mediator of the French Republic received several complaints from employees exposed to asbestos who had been unable to benefit from Acaata due to their professional mobility.

In 2005, the Mediator of the French Republic had made a first reform

proposal to improve the social security of asbestos workers. The Mediator of the French Republic insists on the urgent need to see the Acaata reform through and to end these fully inequitable treatments of the same health tragedy.

## HUMAN RIGHTS AND POLICE FILES: THE NEED FOR A BALANCE

The creation, in June 2008, of automated personal data processing system, called Edvige (Documentary management and use of general information) gave rise to strong emotion in summer. In September, the government withdrew this decree and presented to the Cnil the new Edvirsp project (Documentary management and use of public security information) taking account of the recommendations made by the legal commission of the National Assembly. In October, the Interior minister reactivated the working group, presided over by Alain Bauer, on the police and gendarmerie files created in June 2006. The Mediator of the French Republic, a member of this working group, had presented several proposals, validated by most members of this group and which are part of the recommendations contained in the report presented on 12 December 2008.

In fact, complaints are regularly

sent to the Mediator of the French Republic concerning the use of police files referred to as police records, basically the offence processing system (Stic), managed by the national police and the legal documentation and operation system (Judex) managed by the national gendarmerie. The law of 15 November 2001 on day-to-day security, which has allowed the consultation of judiciary-police files for administrative purposes, the law of 18 March 2003 on national security, the law of 23 January 2006 on the fight against terrorism and, finally, the law of 5 March 2007 on crime prevention have reinforced this use for administrative investigations prior to certain decisions on recruitment, assignment, authorisation, approval relating to social security, or on the possession of dangerous products. These laws have also reinforced the nature of the grounds for the decision of administrative autho-

rities: these latter can henceforth not only assess the actions, but in a more subjective manner the "behaviour and actions" of the requestor which would be contrary to the honour, integrity or good practices, or hamper the security of persons or property, public or State security.

The recommendations made by the Mediator of the French Republic in this second Bauer report are:

- Creating a permanent control group, which must henceforth meet before each creation or major modification of a police file;
- Guaranteeing a contradictory procedure when a favourable recruitment, assignment, authorisation or approval procedure results in an administrative investigation and consultation of the police files Stic and Judex;
- Creating an appeal channel for some public prosecutor's decisions;
- Extending the list of cases that justify an update of the files with ►



- non-proceedings related decisions not yet mentioned;
    - Educating the general public on the use of these files.
- But for now, it is all about simple recommendations contained in a new report...



## REORGANISING THE STATE'S DEPARTMENTAL SERVICES: PAYING ATTENTION TO PUBLIC INFORMATION

The general review of public policies will lead to a profound change in the organisation of the State's regional administration, as from 2009. Whereas the regional level must become the common law level for public policy control, the departmental level is bound to group together local management services, in contact with the general public. The objectives of this reorganisation announced in the prime minister's circular dated 7 July 2008 appear commendable – offering a better quality of service to

the general public, based on regional priorities, organised more comprehensively and at less costs. Yet we do not have to underestimate the upheaval it will lead to locally. Instead of 20 regional directorates, we will have three or four. Concretely, some structures clearly identified by the general public as DDE, DDA or Ddass will be grouped together into new structures and often in different premises.

These changes may perturb the general public and result at best in

an additional need for user information and orientation, and at worst in an influx of complaints.

The Mediator of the French Republic, who has already highlighted several times the importance of the quality of information and reception in public services, wants the directives, which will be given to prefects by the government for implementing this ambitious reorganisation, to fully take account of the need to place the user at the centre of the system.

## NINE OTHER ISSUES TO BE MONITORED IN 2009

### Implementing the guardianship reform

The law of 5 March 2007 on the reform of the legal protection of minors, which took effect on 1<sup>st</sup> January 2009, is a major evolution. But some uncertainties persist concerning the application of the law while other uncertainties emerge on the delicate issue of means. The major advantages

brought in by the law are:

- Better recognition of the imprescriptible rights of the protected person;
- The priority given to the family in the appointment of a guardian;
- A better definition of the legal protection field compared to that of social assistance;
- The possibility for each one to organise his or her legal protection;

– The time-related limitation of legal protection measures and control of the profession of trustee in charge of the protection of adults.

The Mediator of the French Republic has helped considerably to improve the law, and several of his proposals were retained in the 2007 law. Nevertheless, he deems it important to re-examine the following proposals.

**1.** The expertise capacities of Treasury officials should be available at the appeal court, to control the accounts of protected persons. For example, the regional union of family associations (Udaf) in Pau has filed a petition for bankruptcy, which is prejudicial to the persons under its guardianship, who do not even have the status of privileged creditors. An official control of irregularity would have prevented such a situation.

**2.** Some guarantees must be provided while taking an inventory of the assets of a protected person, which may in some cases be entrusted to an auctioneer or ministerial official.

**3.** A limit must be set for the activity of individual representatives (private managers), to guarantee actual individual follow-up of the protected person .

**4.** All the county councils are not yet ready to start their new mission concerning the personalised social assistance measures (Masp). There is an urgent need to create an assessment group, including members of Parliament, representatives of county councils, and the relevant ministries, to evaluate the impact and concrete application of Masps in the departments. The question of means concerns both the judges (80 guardianship judges in equivalent full time work), head court clerks (90 ETP), county councils in charge of the measures used to

avoid unjustified guardianships, as well as the staff, DDASS and DRASS in charge of controlling the social system. Finally some questions persist on the training conditions for trustees and on the recruitment of specialist doctors: the deadline provided for by the law for stock revision should be extended by two years.

### **The law on prisons: a perfectible project**

In 2009, the draft prison law adopted by the Council of ministers in July 2008 will be debated upon in both houses of Parliament. The Mediator of the French Republic, who has already been auditioned by the draftsman of the Senate's law commission in November 2008, intends to continue his action of informing members of Parliament so as to help improve the law, by insisting, for instance, on the need to create a legal access point in all the prisons, or to correct the malfunctions observed in the management of detainees' personal belongings and, more generally, by taking into account the delegates' remarks, mentioned in the first part of the report.

### **Implementing the active solidarity income (RSA)**

The active solidarity income (RSA) enables every person, whether or not he is able to work, to have a minimum income and see his

resources increase when the income from his work increases. This system, which groups together several allowances, gives rise to questions concerning its implementation. When the RSA was in its experimental phase, and more when it will be generalised in June 2009, the Mediator of the French Republic will remain extremely attentive to the implementation modalities, especially regarding the support aspect which remains to be developed.

### **Mobility of civil servants**

The statuses of the three public functions are still not identical, which causes some injustices. For instance, the regional civil service status did not expressly provide, at the end of all the statutory sick leaves of the civil servants concerned, for the maintenance of a half pay until the date of the administrative decision to remove the names of the executives from the book. The decree of 11 January 1960 on the social security of permanent staff of the departments, towns and their public establishments without an industrial or commercial character, stipulated that the agents concerned were entitled to benefits in kind just like the beneficiaries of disability pension benefits. But this right had not been specified in the regional civil service status, whereas it was traditionally in the State civil ser- ►

- vice status and, since the decree of 26 November 2006, in public hospitals, thanks to the intervention of the Mediator of the French Republic. Result: some regional civil servants could remain without resources sometimes for two years, because of poor knowledge of laws in small towns. Therefore, the Mediator of the French Repu-

blic has proposed a reform to harmonise the law on the status of the three public function categories, by including the regulation on the payment of half days, and has obtained its adoption (decree 2008-1191 of 17 November 2008). Finally, in a social context in which mobility, not only between the three public function cate-

gories, but also between the private and public sectors, is a driving force of State reform, one may wonder that the experience made in the private sector is not better taken into account in the reclassification of those who have already taken or will take the step to change. For example, since the candidates accepted among the teaching and research staff of higher education and research Institutions had exercise equivalent functions in private organisations, only a fraction of their services are included in the calculation of seniority (limit not fixed as clearly for other civil servant categories). The Mediator of the French Republic has asked Xavier Darcos, the Education minister, whether such a modification was being examined.

### **Creating regional health agencies**

The planned reform of the health-care system, aimed at ensuring a better distribution of healthcare offers, calls for total vigilance on the part of the services of the Mediator of the French Republic. How do the new players find their place? What will be their role in relation to the existing organisations? Will the patient be at the heart of the system? These are so many questions which the Mediator of the French Republic will help to answer as a field observer and proposal force.

### **The new rules of the public employment service (SPE)**

The merging of the national employment agency (ANPE) and the Assedic network, on 1<sup>st</sup> January 2009, within the framework of the reform of the public employment service (SPE) makes it possible to create a single "employment unit" in charge of indemnifying job-seekers and facilitating their job





search. The law on the rights and obligations of job-seekers, especially the accompanying decree 2008-1056 of 13 October 2008, aims to improve the follow-up of job-seekers based on a mutual undertaking between the SPE and them, and on the creation of a personalised project of access to employment (PPAE). The Mediator of the French Republic will be very attentive to the modalities of introducing the new operator and the new operating rules of the unemployment insurance scheme, especially concerning the activity of the national Mediator of the SPE, created on the government's initiative, and whose mission will consist in receiving and handling individual complaints about the working of this institution.

### **The complexity of the process of validating professional experiences**

The law of 17 January 2002, known as the law on social modernisation, introduced the general principle of an individual right to the recognition of professional experience for the acquisition of a title or diploma. Now, with years, the Mediator of the French Republic received some complaints about the complexity of this procedure. He drew the attention of the Education minister in 2007 to this system which, to him, did not seem to attain the fixed objectives. In response to

the remarks and concerns of the Mediator of the French Republic, the Éric Besson report of September 2008 reflected a too long, less legible and dissuasive report.

### **Mobility in Europe sometimes inapplicable in reality**

Workers' mobility within the European Union remains low, or even abnormally low. About 2% of Europeans live in a European Union

country that is not their country of origin. The same thing obtains among students and researchers. In fact, a lot of obstacles exist, especially regarding the recognition of diplomas, which comes up against the basic principle of member States' competence in terms of education and against the now older principle: the autonomy of universities. In this respect, harmonisation of diplomas has been





- abandoned in favour of correspondence between diplomas. Concerning workers' mobility, an important step was taken in 2008 by France, since a draft law is in the making, to ratify the regulation adopted on 30 May 2008 concerning the transposition of the European directive on the recognition of professional qualifications in regulated professions.

This transposition regulation implements the mutual recognition, by virtue of which a member State that makes access to a regulated profession or its exercise subject to the possession of professional qualifications, shall recognise for access to its exercise the professional qualifications obtained in another European Union...

Finally, the Mediator of the French Republic intends to carry out the recognition by France of the partnerships entered into in foreign countries, especially in Europe (see Page 57, Politics at a standstill).

### **Insecurity in secondary education: orientations to be confirmed in 2009**

Supply secondary school teachers constitute an ever growing insecure population. They are often paid with several months delay and cannot work for more than 200 hours a year. Moreover, they are rarely entitled to unemployment benefits or paid leave. Contract workers are also characterised by a lot of service interruptions and have little or no possibilities of obtaining open-ended contracts, or of being confirmed as permanent staff through internal competitive exams. In the spring of 2008, the Mediator of the French Republic wished to encourage constructive dialogue between the different actors involved, and made a reform proposal sent on 20 June to the relevant ministries, in the sense of a clarification and moral improvement of some practices.

From the discussion held between Xavier Darcos, the Education

minister, and the Mediator of the French Republic on 30 September emerged several points the respect and implementation of which need to be followed in 2009: undelayed remuneration of temporary work and paying supply teachers the indemnity for following up pupils when due (participation in staff meetings, for instance).

On the other hand, the payment of kilometre-based indemnity and work termination indemnity proposed by the Mediator has been postponed. With the prospect of adopting the draft law on mobility in the civil service, the minister has excluded any recourse to temporary workers for educational needs, and the creation of joint consultative commissions in each local education authority, with a view to more transparency in the recruitment of supply teachers. ■

# ABOUT THE INSTITUTION

The evolution of the Institution is manifest in the activity of its sectors. Telephone, e-mails, e-mediator site show how the Mediator of the French Republic is open to any form of communication that facilitates the citizens' access to his services. His services continue their efforts and are creating new partnerships in order to provide increasingly more precise and instructive information. Delegates report an unquestionable reality from the field (prisons, MDPH – departemantal handicapped homes, offices). His experts make precise reflections on possible and necessary legal improvements. All these elements make the Mediator of the French Republic a recognised player whose opinion and testimony are increasingly sought within the framework of legal reforms.



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# THE REGIONAL DEVELOPMENT SECTION

## An Institution that is getting closer to those who need it

In keeping with its mission, the Institution is present in a growing number of reception centres and getting increasingly closer to the citizens that need it: residents of sensitive neighbourhoods for whom administrative mysteries are incomprehensible, but also people whose situation do not allow easy access to law, such as disabled persons or detainees.

Today, 197 delegate Mediators of the French Republic receive the general public in local structures, such as legal-information centres, legal access points or public service centres. 108 delegates still receive people in prefectures and 33 in sub-prefectures. Most of the recent locations resulted from the permanent desire to get closer to users; they accept to have office hours in two, or even three different locations.

Some of them have thus split their office hours in Troyes in the Aube, Noyon in the Oise, and in Lomme in the north, or in the 13<sup>th</sup> district of Paris. There are also two new offices in the sub-prefecture of Arcachon (33) and Avallon (89).

### Reinforced presence in prisons

The generalisation of the prison experiment continues. By 31 December 2008, 45 prisons were receiving a delegate Mediator of the French Republic on a weekly basis. The most recent delegate Mediator offices were opened in the prison in Saint-Martin-de-Ré, in detention centres in Salon-de-Provence (13), Val-de-Reuil (27), Varennes-le-Grand (71), and the prison in Rouen (76). In 66 other prisons and detention centres, delegate Mediators, trained on this new approach to their function, intervene on a case-by-case basis to meet the needs of detainees. Within one year (December 2007 to December 2008), the number of detainees with direct access to a delegate Mediator of the French Republic increased from 26,500 to more than 44,000.

*Within the services of the Mediator of the French Republic, the Regional Development section manages a dense network of delegate Mediators.*

**275** delegate Mediators.

**386** reception centres.

**44,000** detainees have access to a delegate Mediator.

### A harmonious development thanks to combined efforts

Such an important growth should not take place to the detriment of the quality of service. The delegate Mediators are given continuous training by the Institution (more than 300 training days in 2007 and 2008). Regular exchanges via an intranet network, a messaging system and a forum are possible thanks to the laptop PCs they have been equipped with.

The delegate Mediators are also encouraged to share their knowledge through team work. Today, 189 delegate Mediators in about fifty departments meet regularly at work meetings. This enhances consistency in the approach to cases and offers an additional support to delegates who can thus benefit from each other's experiences.

Considering the level of satisfaction shown about this new working approach, it has been decided to extend the team work to the entire network of delegate Mediators in 2008 and 2009. The grouping will be made according to geographic criteria or availability of transport facilities. The Centre, Brittany and Champagne-Ardenne regions are expected to soon adopt this new working method for 33 other delegates located in 17 departments.

# THE ADMISSIBILITY SECTION

## Priority: handling urgent cases and helping improve the provision of information to the general public

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

The Admissibility section performs two distinct functions. The first one consists in receiving and examining the requests sent to the Mediator of the French Republic. Admissible complaints are then forwarded to one of the Institution's five examination sections, or to regional delegates. In 2008, the admissibility section received 4,725 complaints and examined 2,330 cases that did not meet the conditions of admissibility fixed by law. The most frequent disputes are of social origin. The second function of the Admissibility section corresponds more particularly to the objectives of the Mediator of the French Republic in terms of access to the law, proximity and education.

It is all about handling complaints which are not admissible in accordance with the law of 3 January 1973. The non-admissible cases handled in 2008 basically concerned fines and private disputes: family problems, relations between tenants and landlords, consumer law, on-going legal proceedings, etc.

### Helping citizens to have access to law through proper information

Non-admissible cases are examined in order to give each complainant the clearest, most comprehensive and most useful answer possible. Each reply specifies why the Mediator of the French Republic is not empowered to intervene in such a case, which steps the complainant should have taken – or can still take –, the addresses of the organisations or persons to contact, if need be. In fact, the admissibility

*Within the services of the Mediator of the French Republic, the Admissibility section receives and channels complaints to the relevant sections. It also examines non-admissible complaints and urgent cases...*

**4,725** cases received, including 154 cases handled by the emergency unit.

**49.31%** of the complaints sent to the Institution are not admissible, i.e. 2,330 cases examined by the admissibility section.

**2,498** e-mails received and processed.

section has noticed that most citizens are not familiar with administrative procedures.

In line with its efforts for cooperation with the information services, started in 2006, the admissibility section developed in 2008 a partnership with the French Documentation service in order to improve further public information and orientation.

### Adapting both to emergency situations and all methods of communication

Sometimes, the admissibility section does detect the urgency of a complaint upon its reception: threat of expulsion, blocked bank accounts, loss of minimum income entitlement, etc. 154 cases were thus handled by its emergency unit in 2008.

In 2008, the admissibility section received 2,498 e-mails.



# THE GENERAL-MATTERS SECTION

## High technicality in an ever-changing environment

Enumerating the areas covered by the General-matters section would amount to drawing a never-ending list of everyday tragedies and the big matters of principle which punctuate everyone's life. This is a section where legal rigour and initiatives are combined to effectively examine admissible complaints.

The people in charge of the general-matters section are from the legal services of the central administrations, regional authorities or public organisations. They combine their knowledge of administrative life with their wish to support complaints which merit mediation so as to find fair solutions, in keeping with the legal framework and the interest of the parties involved. This is a rigorous and creative work, which may neither accuse an administration, nor undermine the political liberty of elected representatives. It encourages, if necessary, the administration or authority to modify its practices.

### AREAS COVERED BY THE GENERAL-MATTERS SECTION

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

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

**1,046** cases were closed in 2008.

**1,179** complaints were received.

**21%** of the disputes concerned town planning, environment, the public domain, public works and roads.

**28%** of the disputes concerned fines and road traffic issues.

Quite often, it is necessary to "dissect" a situation which has become complex over the years, before finding a legal and fair solution. The Mediator of the French Republic cannot impose any solution. Since he is neither part of the dispute, nor the legal representative of either parties, nor a judge, he follows matters from a distance, which enables him to offer the service he is offering free of charge to complainants, and to find an agreement between the parties involved on a solution which closes the past and opens up the present. This requires the readiness to listen and... a lot of time. Due to the variety of the cases it handles, the general-matters section has a lot of interlocutors at the local level (regional authorities, prefectures, DDE, DRIRE, DRASS, etc.) and national level (especially in ministries). The cases handled require high technicality and constant update of the knowledge of regularly changing laws and jurisprudence. For the most important or frequent issues, the general-matters section compiles technical and topical notes highlighting the main lines of a reform to envisage.

# THE CIVIL SERVANTS/PENSION BENEFITS SECTION

## Employment and insecurity: growing number of complaints

Contrary to clichés, the social security of civil servants is not obvious, and the civil servants/pension section handled much more cases in 2008 in this area than in 2007.

Insecurity is gaining ground in the civil service, and job losses by civil servants are no longer something rare. On the other hand, the 2003 pension reform, now a bit older, led to far less complaints.

In fact, the number of pension-related cases handled by the section in 2008 fell by 8%, whereas those pertaining to civil servants' disability increased by 8% and those concerning employment problems in the civil service by 11%.

Regarding complaints about the career of civil servants, the section noted a high increase in the number of cases due to the new laws on redeployment in category A. These laws create real injustice for civil servants already in this category and who feel disadvantaged not only in their current professional situation, but also in their future retirement pension. Therefore, the Mediator of the French Republic has proposed a reform so that some transitory measures can be taken to avoid much prejudice for previously promoted workers in the category, compared to the new ones and according to the tradition which stipulates that a new regulation should not be prejudicial to the interest of the officials concerned.

Moreover, in terms of frequency, the Mediator of the French Republic always receives a large number of complaints concerning access to unemployment benefits, not only because small towns handle wrongly the complexity of the law on this point, but also because they practice self-insurance, while the payment of unemployment benefits they have not provided for, and thus not budgeted for, represents a heavy financial burden they do not want to bear.

Thanks to the action of the Mediator of the French Republic, many have understood that joining the Assedic is essential given the

*Within the services of the Mediator of the French Republic, the Civil servants – Pension benefits section examines complaints sent in by civil servants from the three civil service categories.*

**437** cases opened.

**642** cases closed.

**50%** of the complaints received by the section were due to an information problem.

**1/3** of the cases handled in 2008 concerned retirement benefits.

**50%** concerned the career of civil servants

**8%** concerned disability.

current changes in the civil service and the increasing number of contract civil service workers.

Finally, the reform proposal made by the Mediator of the French Republic to harmonise the statuses of the three civil service categories has been definitely adopted, and complaints in relation to regional civil servants automatically sent on sick leave and who sometimes find themselves for several months without income due to administrative transgressions should become rare.

In general, the section handles increasingly very complex cases which require much technicality. Moreover, the number of successful mediation operations is increasing constantly (it doubled between 2005 and 2008). This is basically because cases are handled gradually as they arrive in the section, which allows more effective and more credible contact with partner administrations.

# THE JUSTICE SECTION

## Directing the complainant and facilitating dialogue with the administration

First examination section in terms of number of cases received, the Justice section noticed in 2008 a stabilisation by nature of the different requests. Moreover, the feeling of arbitrariness sometimes expressed in the complaints lodged by foreigners was given sustained attention in order to explain the decisions and point out the elements not sufficiently taken into account by prefectural services.

The Justice section handles disputes between natural persons or corporate bodies and the public service of the judiciary. This activity covers the three components of the Justice ministry: courts, prisons and judicial means of protecting the youths. It also covers the administrative judicial tasks handled by members of the jurisdictions, as well as the activities of the professionals that participate in the jurisdictional procedures: lawyers, solicitors, notaries public, sworn experts. The Justice section also handles cases concerning people's civil status or the legislation relating to foreigners.

With 45% of the cases handled, foreigners' right is the largest part of the activity of the Justice section, which is destined to assist foreigners all along their life: visa, stay permit, family reunion, naturalisation, etc. In this particular area, the Justice section does an important pedagogical work since the complainants sometimes consider as unjust the administration's "power of assessment".

With 30% of the cases handled, matters pertaining to civil status and citizenship represent the most important part of the complaints handled by the sector. The rest of the activity basically consists in handling requests about criminal and civil-law matters, guardianship as well as court officers. It should be noted that, notwithstanding their particularly complex nature, sometimes civil status-related cases may be resolved within 48 hours. Generally, the examination period does not go beyond four months. The Justice section generally works with the

*Within the services of the Mediator of the French Republic, the Justice section handles disputes between natural persons or corporate bodies and the public service of the judiciary, as well as questions about civil status and foreigners' rights.*

foreigners' office of prefectures, the central civil status office of Foreign Ministries, public prosecutors, clerks at the citizenship department of the Justice Ministry, etc.

The importance of the intervention of the Mediator of the French Republic in prisons was confirmed in 2008. The generalisation of this experience will continue in 2009.

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**580** cases  
opened 2008.

**878** cases  
closed.

# THE SOCIAL SECTION

## Encouraging amicable settlement between insurance contributors and social security organisations

Within the services of the Mediator of the French Republic, the social section examines complaints pertaining to the obligatory social security coverage of the entire population, except civil servants.

The social section basically examines disputes concerning social security benefits, basic and supplementary pension, family and social welfare allowances, minimum benefits, housing benefits, employment support and unemployment benefits.

Explanation is the word that characterises the activities of the Social section. In the labyrinth of the social security procedures and laws, the requestor is often helpless or appalled. People do not understand why they are refused a support or why a benefit is cancelled without prior notification, or explanation. While examining cases referred to it, the Social section often has the opportunity to explain social security regulations and their application.

Another characteristic of the Social section is its method of working as a network with its correspondents in social security organisations and administrations, or with regional delegate Mediators of the French Republic who are often closest to the complainants. It is, therefore, the responsibility of the Social section to strive for maximum efficiency in its actions, by choosing the most pertinent contacts and working method according to the urgency of the cases to be treated.

The inadaptability of laws to social changes makes it more difficult to examine the complaints sent to the Social section.

Social mobility and multiple professional situations associated with different schemes are largely the reason for the increasing complexity of complaints, especially in terms of health insurance.

Furthermore, complaints sent in by disabled persons or parents of disabled children highli-

*Within the services of the Mediator of the French Republic, the Social section examines complaints pertaining to the obligatory social welfare coverage of the entire population, except civil servants.*

ght the emerging needs of disabled persons: disabled-child education allowance, payment of accommodation and transport expenses, compensations, etc.

The social section is particularly striving to create links with the MDHPs (departmental handicapped homes). It contributes to the evolution of the social security of disabled persons (management committee, law of 2005, first national conference on disability, international partnerships, etc.).

To extend its activities to the largest part of the population, the Social section organises training sessions and offers technical assistance to regional delegate Mediators of the French Republic.

**668** cases were closed in 2008.

**39%** of the cases concern health insurance, 12% of which concern supplementary insurance.

**19%** concern health insurance.

**19%** concern unemployment.

**57%** consist of information provision.

**83%** of the mediation operations are successful.



# THE TAXATION SECTION

## Towards more guarantee for taxpayers

There is still a strong need to educate complainants about the tax administration. Nevertheless, the regulation application conditions, often regarded as unstable and too restrictive - and thus unjust, reinforce taxpayers concern about obtaining some guarantees.

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

Questions of tax investigation (procedure, legal interpretation of facts, tax collection difficulties) in companies, some of which stake their survival and their employees' jobs, concern about 20% of the complaints received. Tax investigation for individuals generally result from that of companies in which they are managers or associates, or from cases of usurpation of identity.

Finally, complaints against regional authorities mainly concern increments, deemed excessive, in council taxes, especially for the funding of the collection of household refuse, as well their real estate valuations and cases of exemption.

Among these complaints, it seems that in addition to the solutions of compromise, tax relief or deduction obtained or time given to the complainants, the replies also contribute immensely to pedagogy and explanation of administra-

*Within the services of the Mediator of the French Republic, the taxation section handles complaints filed by natural persons or corporate bodies.*

**342** cases opened 2008.

**384** cases closed in 2008.

**2/3** of the complainants are private individuals.

**1/3** were corporate bodies (companies and associations).

**15%** of all the cases came from small and medium-sized businesses.

tive decisions, especially when the case leaves no room for mediation or free review, which is now frequent.

Also more frequent are replies made in the field of law, following an intervention at an administration due to conditions considered as a malfunction and in which it implements the regulation. In fact, these legal application conditions are sometimes considered by taxpayers as incomprehensible and unjust because of the instability of the rule of law resulting from them (retroactivity, change of doctrine, illegibility and complexity of texts). Such is the case, especially for tax credits relating to the environment and sustained development (heat pump, insulation), and granting of bonuses and help (employment bonus, mobility help).

Therefore, the activity of the sector, with 84% successful mediation rates, remains basically oriented towards State public finances.

# THE REFORM SECTION

## Getting the authorities to accept public debates on important issues

In a legislative landscape where escalating laws may hamper the authority of law and generate a certain confusion, the reform-proposal power of the Mediator of the French Republic is basically exercised in two areas: the search for more equity and the correction of malfunctions in the public service. It helps to improve administrative procedures and practices and make them simpler and justice-oriented.

The laws of 3 January 1973 and of 12 April 2000 confer on the Mediator of the French Republic the power to make reform proposals himself, through direct referral from a citizen, a member of Parliament or any member of the civil society. The reform proposal mission is a logical extension of the individual mediation task. In fact, this makes the Mediator of the French Republic an observer of the social realities that fuel his reflection, with a view to improving our laws. Beyond that, the Mediator of the French Republic intervenes in a wide range of social issues: changes in the family, pension, harmonisation of European and national laws, protection of citizens, consumers and fragile populations, indemnification of work accidents and occupational diseases, as well as victims of health tragedies, working of justice and health-care systems, etc.

The reform proposals sent to the ministries concerned are either aimed at correcting the malfunctions in a public service or in an administration, or reducing the situations of iniquity resulting from the application of a law. In 2008, 28 new reform proposals were made on various issues such as the equality of men and women in terms of taking children's education into account for pension entitlements, legal and medical expertise, exemption from television tax in prisons, indemnification of victims of blood transfusion, modification of attrition rate, etc.

Out of 68 proposals, only six were adopted in 2008, and it is regrettable that the Mediator of

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

**28** reform proposals made in 2008.

**68** reform proposals awaiting a reply.

the French Republic is not increasingly able to arouse a real public debate on his most important proposals before they are rejected by the public authorities. In addition to the 14 proposals on improving pension calculation modalities (calculating the average annual salary, survivors' pension, children-related increments in the national scheme, children-related bonuses in the civil service, extending the contribution periods, early retirement for long careers), this lack of debate with ministries was manifested in connection with the extreme insecurity of supply secondary school teachers for whom very precise improvements had been recommended, most of which were rejected.

This is why the Mediator of the French Republic will be very attentive to the changes in the powers of the Human rights Defender, including the intervention modalities, which will be fixed by an organic law and should include, in particular, the publication of reform proposals in the Journal Officiel and the obligation for the minister concerned to provide an answer, with justifications, within a given deadline.

# ADMINISTRATIVE AND FINANCIAL MANAGEMENT FOR 2008

## BUDGET €10,802,751.00

Staff remuneration charges	€6,922,050.00
Staff	€5,562,050.00
Delegates	€1,280,000.00
Training	€ 80,000.00
Day-to-day operation charges	€3,640,701.00
Office premises (including rent)	€2,466,601.00
General operating expenses	€832,100.00
Other external services	€342,000.00
Investments	€240,000.00 €

## 2008, a new accounting status

In 2008, an accountant in charge of executing the Institution's payment and income orders was introduced at the Institution, which imposed on the administrative and financial services a new organisation of tasks, specific training and the creation of an internal procedural guide. These services have equally prepared the "hand-over report" between the Mediator of the French Republic and the ministerial budget and accounts controller.

The decree of 31 January 2008 on the organisation and working of the services of the Mediator of the French Republic created some services at the Institution. It stabilised definitely the situation of the staff and, in particular, that of contract workers whose contracts are no longer terminated at the end of the Mediator's mandate. The application of this decree ushered in some new internal developments for the Institutions, especially:

- Reinforcement of the role of the participation committee and renewal of its operation.
- Creation of a regulation on the services of the Mediator of the French Republic, which was examined in a joint committee at the end of September.
- Creation of a computerised reception guide for the staff, which should soon be available on the Institution's intranet.
- Implementation of a long-term training plan for the Institution's staff, in accordance with the legal framework of the life-long professional training, with the completion of a first audit of the staff members' skill.

- The creation of a uniform contract for the staff members, made possible by the legal and administrative existence of the services, was performed in the first semester of 2007: contract-based secondment or provision with management delegation.

- Reform of the staff compensation policy, with a view to achieving consistency and reinforced control, considering the stabilisation of the officials' individual situation and the generalisation of the management delegation agreements for the staff members provided by various political entities. This reform will be completed in the course of 2009.

Finally, in view of the announced change of the services of the Mediator of the French Republic from programme 129 to programme 308, a pooling work has started with Halde, Cnil and CSA, especially concerning officials' mobility and writing of tender specifications.

## Staff of the Mediator of the French Republic (as of 31 December 2008)

	TOTAL	CATEGORIES		
		A	B	C
Staff made available to him by the administrations	33	20	8	5
Staff of social welfare organisations (CPAM, Cramif and Urssaf)	4	0	0	4
Seconded staff	11	9	0	2
Contract staff <sup>(1)</sup>	36	25	1	10
Staff assigned by the SGG <sup>(2)</sup>	13	4	2	7
(10 of whom had the seconded staff status until 2007)				
<b>TOTAL</b>	<b>97</b>	<b>58</b>	<b>11</b>	<b>28</b>

(1) Including two trainees

(2) The government's general secretariat

# Contacting the Mediator of the French Republic and his delegates

## THE MEDIATOR OF THE FRENCH REPUBLIC

7, rue Saint-Florentin, 75008 Paris  
Tel.: +33 (0)1 55 35 24 24  
Fax: +33 (0)1 55 35 24 25  
[jpdelevoye@mediateur-republique.fr](mailto:jpdelevoye@mediateur-republique.fr)

## DELEGATE MEDIATORS OF THE FRENCH REPUBLIC

The list of delegate Mediator of the French Republic, their address and office hours are available on the Institution's website:

[www.mediateur-republique.fr](http://www.mediateur-republique.fr)

Column: Delegates / where to find them?



**HEALTHCARE SECURITY AND SAFETY UNIT**

 **0 810 455 455**  
PRIX APPEL LOCAL

and

[www.securitesoins.fr](http://www.securitesoins.fr)



**CHAT WITH THE MEDIATOR OF THE FRENCH REPUBLIC**

e-mediator is accessible via Windows Live Messenger and Google Talk. Just add him to your contacts and start chatting with him.

MSN: [mediateur-republique@hotmail.fr](mailto:mediateur-republique@hotmail.fr)  
Google Talk: [mediateur.republique@gmail.com](mailto:mediateur.republique@gmail.com)

# Sending your complaint to a member of parliament of your choice

## NATIONAL ASSEMBLY MEMBER

Assemblée nationale  
126, rue de l'université, 75007 Paris  
Tel.: +33 (0)1 40 63 60 00  
addresses and office hours:  
[www.assemblee-nationale.fr](http://www.assemblee-nationale.fr)

## SENATORS

Palais du Luxembourg  
15, rue de Vaugirard, 75006 Paris  
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[www.senat.fr](http://www.senat.fr)

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